



3Kern County Sheriff's Office

Policies and Procedures

TITLE: EMPLOYEE DISCIPLINE – SUPERVISOR/MANAGERS RESPONSIBILITIES FOR COMPLAINTS		NO: D-0200	
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POLICY

It is the policy of the Sheriff's Office that all its on-duty and off-duty members conduct themselves according to standards set forth in this manual, the law, and the expectations of the Sheriff-Coroner of the County of Kern.

The Sheriff's Office recognizes that in order to maintain public trust, it must diligently investigate all civilian complaints to establish the facts surrounding the given incident. When it is determined that misconduct has occurred, the involved employee(s) must be held accountable through a disciplinary process that is fair and consistently applied.

A complaint shall not be dismissed because the complainant cannot identify the deputy involved in the incident. In situations where the deputy's identity is unknown, the investigator shall thoroughly investigate the matter and make concerted efforts to uncover the deputy's identity.

All investigations involving misconduct will follow Sheriff's Office investigative standards, the Public Safety Officers Procedural Bill of Rights Act (Government Code (GC) § 3300 et. seq.) as applicable, and current statutory and case law.

When a supervisor (or other divisional personnel) is performing a personnel investigation or an employee interview which could result in discipline, the subject employee, if a peace officer, must be advised of his/her rights. The advisal of rights will be given to the subject employee by the Sheriff's Office member present during the interview from the Internal Affairs Interview Guide.

All other employees may be extended these rights, should the interviewer so elect. When in doubt, the interviewer should extend all rights as far as reasonable.

Before final discipline is imposed regarding an employee's misconduct, several factors will be taken into consideration. These include the seriousness of the offense, the employee's work history, the employee's acceptance of responsibility in following policy or agency standards, and discipline history. The impact of the misconduct on the department, department members, and public trust shall also be considered. Except in instances of serious misconduct (as defined in D-0100), discipline should be reasonable and progressive. Corrective action can take the form of punitive discipline or non-punitive corrective action. In either case, it shall have the purpose and focus of correcting the employee's behavior, letting other employees know what behavior is not acceptable, and keeping the faith or restoring trust with the public. In each investigation, all relevant evidence, including circumstantial, direct, and physical evidence, shall be considered, and a credibility

determination shall be made based on that evidence.

The information contained within this policy shall cover civilian initiated and Sheriff's Office initiated investigations. To ensure that all personnel complaint investigations are thorough, fair, and resolved in a timely manner, the Internal Affairs Unit will serve as the central coordinator and quality control hub for all personnel complaint intakes, investigations, and review processes (even for those cases not requiring a full administrative investigation).

Supervisors, managers, and investigators will investigate every allegation of misconduct, even if the allegation is not specifically articulated by the complainant.

All investigations shall be as thorough as necessary to reach reliable and complete findings. Any supervisors, managers, or investigators involved in the complaint, who authorized the conduct that led to the complaint, or who have a conflict with the personnel involved, shall not conduct that particular complaint investigation.

All corrective action must comply with the following procedures for handling written and verbal complaints.

PUBLIC COMPLAINTS

Written Complaints¹

Any member of the Sheriff's Office who is given a written personnel complaint shall:

- Accept the complaint as written by the complainant.
- Give the complaining party a copy of his/her statement at the time the complaint is filed.
 - If a public complaint is received via mail or through drop-off, Internal Affairs will mail a copy of the complainant's written statement to them.
- Forward the complaint to the Internal Affairs Unit for complaint processing.
- The Internal Affairs Unit will then forward the complaint to the affected Division Commander in which the subject employee is assigned, unless otherwise directed by the Support Services Bureau Chief Deputy. See "Sheriff's Office Initiated Complaints" section listed below for guidance.
- If a complaint is received, the supervisor will not make a Standards entry.

Verbal Complaints

If the complaint is being made verbally, the employee shall notify a supervisor who will handle the complaint. If no supervisor is available, the employee will get the complainant's name, contact number, and nature of the complaint. The employee will provide this information to their supervisor via phone call, email, or memorandum.

¹Written complaints include but not limited to website comments, email, letter, note, and social media posts.

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All supervisors who receive or are made aware of a verbal complaint from a member of the public shall:

- Interview the complainant to determine the nature of the complaint.
- Seek to identify and obtain statements from any witnesses.
- Seek to identify and collect any evidence.
- Consider the following:
 - 1) Seriousness of the offense,
 - 2) Impact or potential impact on the Sheriff's Office and its members,
 - 3) Employee's work history and acceptance of responsibility,
 - 4) Employee's prior disciplinary history, **and**
 - 5) Impact on public trust.
- Determine if the complaint is within supervisor's scope to handle as outlined in the "Supervisory Corrective Action" section below.
- If the supervisor determines they are unable to address the complaint at their level, they will forward the complaint via their chain of command via a memorandum and follow the procedures under "Complaints Recommended for Internal Affairs" below.
- Complete a Standards complaint tracking entry as outlined below.

Language Access

An interpreter who is not connected to the underlying complaint shall be utilized when obtaining statements or conducting interviews with any limited-English proficiency complainant or witness.

AXON STANDARDS COMPLAINT TRACKING

The supervisor will utilize the Axon Standards system to accurately log and track verbal complaints if the complaint was investigated and handled at the supervisor level. The supervisor receiving a verbal complaint from a member of the public or an inmate shall enter that complaint into Standards. The supervisor will include:

- Involved deputy(ies), detentions deputy(ies), or civilian staff names.
- Complainant information.
- Witness(es) information.
- Summary of the allegation(s).
- Summary of any preliminary investigation completed.
 - Review of reports, CFS, BWC, etc.
- Supervisor's actions taken to address the allegation:
 - Verbal admonishment/counseling.
 - Documented Oral Counseling (DOC).
 - Note: Supervisor shall consult with a Lieutenant or manager prior to any DOC being issued to an employee.
- List relevant policies, rules, and/or law violations.

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- The supervisor will recommend a disposition for each allegation with one of the following findings (for DOJ Statistical Tracking – Penal Code (PC) § 832.5 & § 13012):
 - Exonerated.
 - Not Sustained.
 - Sustained.
 - Unfounded.
 - Unfounded-Frivolous.
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- The completed Standards entry will be forwarded to the supervisor’s section Lieutenant, or civilian manager for civilian supervised units.
 - The Lieutenant or manager is ultimately responsible for making a final determination in the disposition of the complaint. If a final determination cannot be made, consultation with a Division Commander or higher rank is required.
 - The Lieutenant or manager will review the complaint and investigation to determine if the complaint was handled appropriately and was within the supervisor’s scope.
 - The Lieutenant or manager will decide on the correct disposition for each allegation within the complaint.
 - Once the Lieutenant or manager reviews the Standards entry, they will type in the notes section of the Standards entry whether they concur or do not concur with the recommendations and forward the entry to “Request internal affairs review.”
 - If the Lieutenant or manager does not concur with the recommendations of the supervisor, they will notate such and provide additional recommendations (e.g., remedial training, further investigation, etc.). Refer to D-0300 for further information on recommendation processes.

Note: Internal Affairs will mail a closeout letter to the complainant after the disposition is reached. See D-0300 heading “Public Complaint Disposition Notification” for further information.

SUPERVISORY CORRECTIVE ACTION

Supervisors are expected to attempt to correct behavior with lesser forms of non-punitive corrective action such as verbal admonishment, supervisory notes made in preparation of an Employee Performance Review (EPR), EPR comments, or documented oral counseling (DOC) where appropriate (see D-0100-Attachment B). For employee issues clearly identified as work performance or a violation of any rules set out in Section “B” or “C” of this manual, supervisors must weigh whether the issue can be addressed at a supervisory level:

- Examples include, but are not limited to:
 - Sleeping on duty.
 - Careless workmanship.

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- Refusal/inefficiency/delay in performing or carrying out orders, deadlines, completing work assignments.
- Concealing or attempting to conceal defective work.
- Failure to take reasonable action while on duty when required by law/statute or policy.

VERBAL ADMONISHMENT PROCEDURE

If the nature of the employee's behavior requires an immediate correction, supervisors shall verbally admonish the employee of the issue as well as what is expected of them.

DOCUMENTED ORAL COUNSELING (DOC) PROCEDURE

If a DOC is appropriate, a supervisor may pursue a DOC after consultation with a Lieutenant or manager. A DOC can be issued by a supervisor if the supervisor believes there is no serious misconduct alleged or discovered.

The official (signed) DOC will be stored in the employee's D-0500 supervisory file until the end of the employee's rating period. The official DOC will be sent to the Human Resources Section and stored on an electronic platform for the retention period.² The supervisor has the discretion to keep the DOC in the D-0500 file until the end of the rating period. After that, it shall be sent to the Human Resources Section. Alternatively, the supervisor may choose to submit it to Human Resources immediately after serving the employee the DOC or before the rating period concludes. See KCSOPPM D-0500 for further information.

An inquiry with the Internal Affairs Unit into past-pertinent discipline shall be done when considering the issuance of a DOC.

Note to supervisors and managers: The DOCs that are not relevant to the current annual evaluation period and are not part of a recurring pattern within the last 24 months shall not be referenced in annual employee performance reports. If the member is to receive a DOC, they may, within thirty (30) calendar days after service, submit a written statement to be attached to the DOC. This written statement shall accompany the DOC.³

WRITTEN REPRIMAND PROCEDURE

If the nature of the employee's behavior is serious enough to require discipline, in complaints that do not contain any allegations of serious misconduct (as defined in KCSOPPM D-0300), where verbal counseling or a DOC is inappropriate, a supervisor may pursue a written reprimand. In these situations, the supervisor will obtain the approval of their Division Commander before proceeding. See the "Administrative Review Procedure" section for guidance.

² Government Code § 34090, Government Code § 34090.5, and County of Kern Administrative Bulletin No. 11.

³ Government Code § 3306.

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- Any supervisor seeking authorization to serve a written reprimand in a disciplinary matter will consider the following:
 - Past attempts to correct behavior.
 - Employee's most recent Employee Performance Review (EPR).
 - Seriousness of violation.

An inquiry with the Internal Affairs Unit into past-pertinent discipline shall be done when considering the issuance of a written reprimand.

When a supervising employee determines that a written reprimand could be necessary to correct poor performance on the part of an employee under their supervision, or the employee has failed to perform a listed duty, they will:

- Comply with the requirements of GC § 3300 et. seq., if the employee is a peace officer.
 - Particular attention must be paid to GC § 3303 (investigation and interrogation rights, punitive action).
- Investigate the incident and establish:
 - The identities of the individuals involved, if any.
 - The acts or omissions that constitute the poor performance or failure to perform a listed duty.
 - The statements or accounts of all persons involved, except the subject employee.
- Prepare a written report in memorandum form that includes all the above, plus:
 - The rules, regulations, policies, or orders alleged to have been violated.
 - An acceptable work standard and identify how the employee has fallen short.
 - Any previous reprimands or discipline the subject employee has received.
 - This will require a review of the employee's D-0500 file, personnel file, and/or an inquiry with the Internal Affairs Unit for past pertinent discipline.
- Consider utilizing a Peace Officer's Bill of Rights (POBR) memorandum if the subject officer's statements are deemed substantive to the misconduct investigation. Include information from the POBR memorandum in the final memorandum.
- Forward this report and all supporting documentation to their Lieutenant or manager (or Commander, if Lieutenant or manager is absent from the chain of command). In cases where the supervising employee is of the rank of Lieutenant or higher, the documentation will be forwarded to the next highest rank.
 - Department supervisors are encouraged and empowered to issue written reprimands, when appropriate, provided all other provisions of this section have been adhered to. Supervisor requests to issue a written reprimand shall be included in their memorandum to the Division Commander (through the chain of command).

Any Lieutenant or manager receiving such a report will:

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- Act as the Sheriff's Office's reviewing authority.
- Review the investigation and facts of the incident and identify any other investigative opportunities.
- If insufficient information is included in the report, return the report for further investigation.
- Identify policy and procedure or civil service rules potentially violated and recommend discipline.
- Send the investigation and a disciplinary recommendation to the Division Commander.

The Division Commander receiving such a report will review the investigation and all documents, attachments, memorandums, and evidence to consider the proper discipline (if necessary).

When facts justify a written reprimand, the Division Commander will:

- Act as the Sheriff's Office's reviewing authority.
- Approve and instruct the supervisor to prepare a written reprimand using the approved format (see D-0100-Attachment A).
- Ensure the "Disciplinary Review Board" form (see D-0300-Attachment A) is filled out prior to serving the subject employee.
- Cause the written reprimand to be served within the statutory timeframes.
- The official (signed) written reprimand and "Disciplinary Review Board" form will be sent to the Internal Affairs Unit.
- The Internal Affairs Unit will store the copies of the written reprimand and "Disciplinary Review Board" form electronically.
- The Internal Affairs Unit will have the official documents stored in the subject employee's personnel file unless overturned through the appeals process.

When the apparent facts could justify discipline greater than a written reprimand, the Division Commander will follow the procedure set forth under the "Complaints Recommended for Internal Affairs" heading below.

If a supervisor or manager has questions about misconduct, they are encouraged to contact the Internal Affairs Unit for clarification or guidance. In each investigation, all relevant evidence, including circumstantial, direct, and physical evidence, shall be considered, and a credibility determination shall be made based on that evidence.

Note to supervisors and managers: Written reprimands that are not relevant to the current annual evaluation period and are not part of a recurring pattern within the last 24 months shall not be referenced in annual employee performance reports. If the member is to receive a written reprimand, they may, within thirty (30) calendar days after service, submit a written statement to be attached to the written reprimand. This written statement shall accompany the written reprimand. See D-0600 regarding appeals for written reprimands and disciplinary transfers.

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COMPLAINTS RECOMMENDED FOR INTERNAL AFFAIRS

A supervising employee, who becomes aware of serious misconduct (defined in D-0300), or apparent facts that could justify discipline greater than a written reprimand, based on the part of any employee, will:

- Prepare a confidential memorandum, including:
 - The rules, regulations, policies, or orders applicable to the incident.
 - A detailed description of the actions he/she took (if any) concerning the incident, collection of relevant materials/evidence/information principal to the personnel complaint.
- Forward the confidential memorandum and all supporting documentation and information to their Lieutenant. In cases where the supervising employee is of the rank of Lieutenant or higher, the documentation will be forwarded to the next highest rank. In cases where a Lieutenant is not present in the chain of command, the documentation will go to the next highest rank.
- The Lieutenant (or reviewing ranking member of the Sheriff's Office) will review the documentation and forward a completed complaint review to the affected Division Commander. If potential criminal allegations are present, the Lieutenant will notify the affected Division Commander for direction.
- The Commander will author a memorandum to their Bureau Chief Deputy, summarizing all available documents, videos, and information. Additionally, they should include a list of possible Sheriff's Office policies and/or Civil Service Rule violations. Include their disposition and recommendation as to how to proceed in the matter (e.g., Internal Affairs Investigation, division-level investigation).
- Attach all obtained documents to their memorandum.
- Forward all documentation to the affected Bureau Chief Deputy, via the Internal Affairs Unit to the Internal Affairs Section Lieutenant for tracking purposes.

In the unique situations when the Internal Affairs Unit is made aware of a Sheriff's Office-initiated personnel complaint, before the affected Division Commander is notified, the Internal Affairs Unit will create a preliminary investigation package, assign a case number, and forward it to the affected Division Commander unless otherwise directed by the Support Services Bureau Chief Deputy. See "Sheriff's Office Initiated Complaints" section for guidance.

SHERIFF'S OFFICE INITIATED COMPLAINTS

When a case is assigned out as a preliminary investigation package, the affected Division Commander will:

- Evaluate the nature of the complaint.
- Review the Personnel Complaint form (if applicable) and all associated memorandums or documents.

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- If there are potential criminal allegations and/or alleged serious violations of policy (as described in Policy and Procedure section D-0300), notify your Bureau Chief Deputy for direction.
- Assign the preliminary investigation to the affected section Lieutenant, who in turn will assign it to a Sergeant in the employee's section.
- The Sergeant will review all investigative material (e.g., body-worn camera footage, jail video/audio recordings, LERMS reports, internal statistical reports, jail logs, CJIS incident reports, or other associated relevant material). At the conclusion of the preliminary investigation, the Sergeant will author a memorandum to the affected section Lieutenant. The memorandum will include:
 - The rules, regulations, policies, or orders applicable to the incident.
 - A detailed description of the investigative actions they took (if any) concerning the incident, collection of relevant materials/evidence/information principal to the preliminary investigation.
- The affected Lieutenant will review the documentation and forward a completed complaint review to the affected Division Commander.
- The affected Commander will author a memorandum to their Bureau Chief Deputy, summarizing all available documents, videos, and information. Additionally, they should include a list of possible Sheriff's Office policies and/or Civil Service Rule violations. Include their disposition and recommendation as to how to proceed in the matter (e.g., handle at the supervisor level, Internal Affairs Investigation, division-level investigation, written reprimand, DOC, close-out as unfounded, unfounded-frivolous, exonerated, or not sustained).
- Attach all obtained documents to their memorandum.
- Forward all documentation to the affected Bureau Chief Deputy, via the Internal Affairs Unit, to the Internal Affairs Section Lieutenant for tracking purposes.
- The Division Commander will have thirty (30) days to return all relevant material, preliminary investigation documents, and associated material pertinent to the personnel complaint. If additional time is needed, an extension request can be approved by the affected Bureau Chief Deputy.
- The Division Commander is responsible for ensuring each investigation has been thoroughly completed.

INVESTIGATING ALLEGED MISCONDUCT

The investigator responsible for handling misconduct cases will actively work to identify all individuals present at the scene or involved in the incident that led to the misconduct allegation, which includes all Sheriff's Office employees. In the investigative report, the investigator will document the identities of all Sheriff's Office employees and other witnesses who were present but claim they did not witness or partake in the incident. If these claims are unsupported by evidence, the investigator will conduct additional inquiries.

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The investigator will not automatically favor a deputy's statement over a non-deputy's statement and will not disregard a witness's statement simply because the witness is connected to the complainant or has a criminal history. The investigator will work on resolving any differences between witness statements.

Every investigation into misconduct shall include a thorough investigative summary to ensure that the evidence supporting the investigation's conclusions is clearly documented and accessible to staff making disciplinary recommendations.

All witnesses, including those who are involved in an incident who becomes the subject of a personnel complaint, shall provide a written statement regarding their involvement in and/or observations of the incident or be interviewed.

PEACE OFFICER DECERTIFICATION – GC § 1029 & PC § 832.7

- This law established a requirement that peace officers be certified by the California Commission on Peace Officer Standards and Training (POST). It allows a mechanism to revoke or suspend peace officer certifications due to:
- **Dishonesty:** To the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by a peace officer or custodial officer.
 - Including, but not limited to false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.
- **Abuse of power:** Including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.
- **Physical abuse:** Including, but not limited to, excessive or unreasonable use of force.
- **Sexual assault:** As described in subdivision (b) of Penal Code Section 832.7 and shall extend to acts committed amongst members of any law enforcement agency.
- **Demonstrating bias:** Verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner.

When determining bias, biased conduct is any conduct, including but not limited to, conduct online, such as social media use, engaged in by a peace officer in any encounter with the public, first responders, or employees of criminal justice agencies, as defined in Penal Code Section 13101, which is motivated by bias toward any person's protected class

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or characteristic, as identified in Civil Code Section 51(b), whether actual or perceived. Biased conduct may result from implicit and explicit biases. Conduct is biased if a reasonable person with the same training and experience would conclude, based upon the facts, that the officer's conduct resulted from bias towards that person's membership in a protected class described in Civil Code Section 51(b). An officer need not admit biased or prejudiced intent for conduct to be determined to be biased conduct (PC § 13510.6 and 11 CCR § 1022).

- **Acts that violate the law:** Law violations which are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public.
- **Participation in a law enforcement gang:** A group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing.
- **Failure to cooperate:** Failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to Chapter 1 of Title 4 of Part 4 of the Penal Code.
 - The lawful exercise of rights granted under the United States Constitution, the California Constitution, or any other law shall not be considered a failure to cooperate.
- **Failure to intercede:** Failure to intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

SUPERVISOR AND COMMAND AUTHORITY TO PLACE EMPLOYEE ON LEAVE

The commanding officer or supervisor may place any subordinate on paid leave for insubordination or disruptive behavior. The subordinate shall be told that he/she will report to the Internal Affairs Unit the next business day at 0800 hours. The suspending officer shall immediately forward a written report on the suspension, through the chain of command, to the affected Chief Deputy or their designee.

OBTAINING ADVICE FROM COUNTY COUNSEL

Generally, supervisors and managers should seek advice from Internal Affairs on disciplinary issues. Members of the Internal Affairs Unit or Lieutenants and above may contact the County Counsel's Office for advice or assistance. Internal Affairs may furnish any materials or information to the County Counsel's Office necessary to provide legal services.

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