

Internal Investigations Complaint Classification Review of the King County Sheriff's Office



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JULY 3, 2018

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I. INTRODUCTION

1. Review Background

The King County Office of Law Enforcement Oversight (OLEO) retained Daigle Law Group (DLG) to conduct a review of the King County Sheriff's Office (Sheriff's Office) Internal Investigations Complaint Classification process.

Fair, impartial, and timely internal review of allegations of law enforcement officer misconduct is paramount for maintaining agency integrity and public trust. The acceptance and classification of complaints against officers are the first two phases of the internal review process for allegations of employee misconduct. The intake and classification process determine if, how, and by whom an allegation may be investigated. Failure to properly evaluate and classify an allegation of misconduct may have a detrimental effect on whether the complaint is adequately reviewed. A robust and well-functioning accountability system in which officers are held to the highest standards of integrity is critical to the legitimacy of the Sheriff's Office, and should be a Sheriff's Office priority.

A police agency's mechanism for receiving and investigating allegations of alleged officer misconduct is of great importance to the department and the community. A well-functioning accountability system is one in which the Sheriff's Office:

- Openly and readily receives complaints reported by civilians and officers;
- Fully, fairly, and efficiently investigates those complaints;
- Supports all investigative findings by the appropriate standard of proof and documents them in writing;
- Holds accountable all officers who commit misconduct pursuant to a disciplinary system that is fair, consistent, and provides due process; and
- Treats all individuals who participate in KCSO's internal disciplinary process – including complainants, officers, and witnesses – with respect and dignity.

To achieve these outcomes, the Sheriff's Office and OLEO can collaboratively ensure that complaints are received, categorized correctly, and investigated fully.

2. Reviewer Expertise

Attorney Daigle and Daigle Law Group, LLC has developed and conducts Internal Investigations training across the country that provides investigator certification. We have worked on projects involving agencies under Department of Justice Settlement Agreements, and have revamped various internal investigations systems, with a focus on accountability. Attorney Daigle has worked for and with agencies across the Country reviewing the mechanism of accepting and investigating allegations of misconduct. This reviewing includes development of department policies on investigating misconduct, training department members to receive and properly investigate allegations, and evaluating the completed investigation for effectiveness.

3. Scope of Review

The scope of services for this report is to review the Sheriff's Office Internal Investigations Complaint Classification Process, including policies, training, and operations. That evaluation also includes an analysis of complaints and classifications, in all classification categories, within a specific timeframe. Within the scope of this review, we examined:

- policy definitions;
- complaint acceptance and intake methods;
- overall internal investigations procedures;
- staff roles;
- investigative methodology;
- manner in which complaints are recorded; and
- investigation outcomes.

The intended purpose of this report is to provide the Sheriff's Office and OLEO information and expertise for use during the internal investigations review process and deliberation of potential changes to policy, training, and supervision, where necessary, for liability protection.

II. ANALYSIS OF COMPLAINT CLASSIFICATIONS

1. Sheriff's Office Classification Categories

The analysis of policies, Standard Operating Procedures (SOP) and actual IA-Pro files lead to a determination that complaints received by the Sheriff's Office fall in one of three categories:

- **Inquiries** – complaints that allege major misconduct or policy violations that are investigated.
- **Supervisor Action Log (SALS)** – complaints that alleged minor misconduct referred to supervisors to address with personnel informally.
- **Non-Investigatory Matters (NIMS)** – allegations that do not raise misconduct or policy violations.

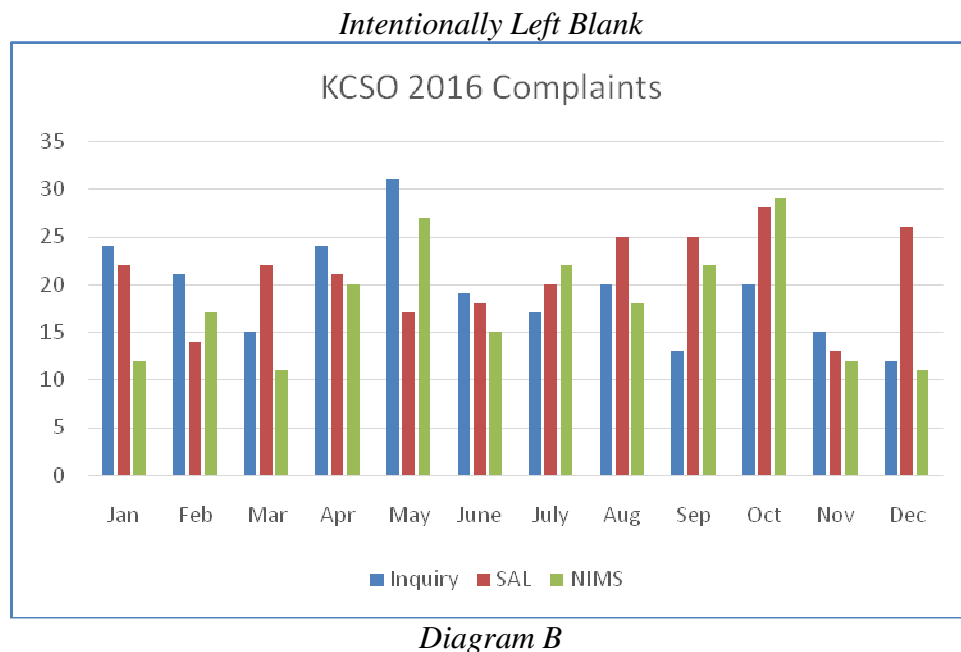
The Sheriff's Office's Internal Investigations Unit (IIU) Captain typically assigns these classifications based on the guidance provided within the General Orders Manual 3.03.000 – Investigation of Personnel Misconduct. A review of General Orders Manual Chapter 3, specifically Complaint Procedures Received by IIU (3.03.030), requires that investigators shall take an initial statement from the complainant and conduct a preliminary investigation to determine if the complaint will be investigated in IIU or to be investigated at the Precinct/Section level. From this preliminary investigation, a classification of the complaint will be made and complaint number assigned. A detailed review of the policy is in Section III below.

2. Complaint Review Methodology:

When conducting the analysis of the Sheriff's Office's Internal Investigations operations, DLG received access to the Sheriff's Office IA-Pro system, which stores administrative files, such as complaint investigations. Utilizing IA-Pro, DLG reviewed IIU investigations during the 2016

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calendar year. The data revealed that the Sheriff's Office received a total of 698 complaints. Of those received, 216 were classified as NIM, 251 were classified as SAL, and 231 were classified as an Inquiry. *See Diagram B below.* As a result of the Sheriff's Office's current internal investigations procedural structure – as discussed below – the data revealed that out of 698 complaints, only 231 could result in any sort of discipline and become part of the progressive discipline system.



An operational review of all 2016 the Sheriff's Office's complaints would be overly extensive. Therefore, a statistical sampling was conducted. Based on statistical sampling, using a 5% margin of error and a confidence level of 95%, DLG reviewed the IA-Pro files for 120 NIM complaints, 130 SAL categories and conducted a cursory review of 32 IIU files. These files were randomly selected by sampling every other complaint on a monthly basis.

3. Investigation of Complaints

According to GOM 3.03.000 and the IIU SOP, any complaint received is entered into IA-Pro as a preliminary investigation. The policy is unclear, however, whether this includes ALL complaints, even those that ultimately become a NIM. As discussed above, a **“preliminary investigation”** is defined as “steps taken by a supervisor or IIU to determine if an alleged complaint is potential misconduct.” However, neither the policy nor the SOP specify criteria on what procedural steps the supervisor or IIU must take before the complaint is classified. In other words, it is not clear whether these initial complaint reviewers are required to conduct some level of investigation, as the word “steps” does not necessarily mean “investigation.” As the policy indicates, once a complaint makes it way to NIM status, there is no investigation.

Furthermore, when a supervisor receives a misconduct complaint (the policy does not indicate whether this term includes complaints received as a SAL, but it can be inferred), supervisors

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only need take a statement from the complainant or witnesses if the complaint is *more than* a “minor infraction.” This causes concern as any “minor investigation,” regardless of severity of infraction, should include taking a statement from complainant or any individual. Supervisors should not just rely on the complaint form – which may contain only limited information, and possibly information that was filtered through an officer, if an officer took the statement rather than receiving a form filled out by the complainant.

As discussed above, policy provides complaints will only be assigned for “formal investigation” in IIU if the complaints are “egregious, repeated, criminal, or an abuse of authority, complex, or ordered by the Sheriff” (3.03.080). The policy further states that “if the complaint is not investigated by IIU, the member’s Precinct/Section Commander will be notified by IIU that the investigation is to be assigned to a supervisor.” (3.03.080). As the policy identified, once a complaint is assigned to an investigation at the worksite, it may be being handled outside of the disciplinary process. Therefore, an officer whose conduct does not quite meet the threshold for an IIU “formal investigation,” but may otherwise require or merit some form of discipline, would not be disciplined. This process precludes the Sheriff’s Office from addressing negative behavior at the root and allows such behavior to continue to the point where it may become that which merits a “formal investigation” as defined above. This system or complaint structure precludes the Sheriff’s Office from utilizing the spirit of “progressive discipline” or any sort of early intervention program.

Furthermore, 3.03.080(6), provides that when “a complaint of misconduct is received, the IIU Commander shall . . . conduct an investigation of a complaint when required.” This section, however, does not indicate the circumstance under which the IIU Commander is not required to conduct an investigation that was not presumably sent for a “worksite investigation,” and provides yet another opportunity for the Sheriff’s Office to fail to adequately investigate complaints or allegations of misconduct. Additionally, what is troubling is that nowhere in the policy (3.03.000) or in the SOP does it specify that a supervisor, who is a witness to alleged misconduct or who authorized the actions which led to the misconduct, is prohibited from investigating the allegation of misconduct. We have recommended below a process to ensure that no conflict of interest is present in IIU between the investigator and the complaining/ subject officer.

4. Overall Opinion on Reviewed Files

Review of the IA-Pro files was difficult and tedious due to the Sheriff’s Office’s failure to ensure consistency throughout the data entry of these files. While some of the investigative files were detailed and contained the required investigative documents, which demonstrated an attention to detail in the investigation, many contained limited or no investigative steps. The basic elements of a complete investigation were missing from a majority of the files, which resulted in the overall opinion of inconsistency within the files. During the review, the following observations and conclusions were made:

- Multiple times the files were unclear as to how the complaint was filed and/or who filed the complaint. While complaints were received through multiple sources, the documentation was limited. Often when an email was the manner in which the complaint

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was documented the email did not include sufficient information and the supervisor did not follow-up on the email or respond to the email. Likewise, there were numerous occasions with limited information related to the complaint, which raised the question as to how the reviewer even made the initial complaint classification.

- The use of IA-Pro is an effective means to document and manage a complaint against a member, but only if the data and information is entered into the system. Overall, limited information was available in the IA-Pro files. The area with the most inconsistency was the IA-Pro summary section, which was either nonexistent or weak, and does not specify who made the entry. The concern is that IA-Pro, like any system, is only as effective as the information that is input into the system. This was discovered in reviewing NIM, SAL and Inquiry files. While some files contained investigator's follow-up report, they were often nonexistent, incomplete or difficult to locate with limited summary sections. With a lack of additional information, it was difficult to determine the completeness of the investigations, and if there was corresponding evidence to support the finding. Using a system like IA-Pro requires consistency and all files should have a summary that allows a reviewer to quickly identify the complaint, the scope of the investigation and the finding. The lack of this consistent information supports the conclusion that there were no minimal standards met for consistent processing of received complaints.
- The Sheriff's Office utilizes Preliminary Complaint forms and Commander Oversight forms to collect analysis evidence regarding the complaint and to document the manner in which the Commander reached conclusions. A majority of the NIM and SAL files in IA-Pro did not have either form, or forms were not sufficiently completed. This raises the question of how complaints reach final resolution, and why supervisors fail to return incomplete complaints to investigators to complete the required forms.
- The Sheriff's Office should consider the use of an IA Report template to ensure consistency throughout all investigations, regardless if classified as a NIM, SAL, or Inquiry. The use of programs like IA-Pro, without an effective reporting system, results in incomplete and inconsistent files. In all categories - and more importantly in IIU files¹ - there should be a detailed report outlining the case. This project was especially taxing due to the fact that in the majority of files reviewed, there is no central summary of investigative efforts or findings. More importantly, there is no analysis of policy violations. A proper report structure provides:
 - A background of the complaint;
 - Summary of the complainant statement;
 - Summary of the witness statements;
 - Summary of the employee statement;
 - Identification of disputed facts;
 - List of evidence considered;
 - Credibility assessment;
 - Member or supervisory accountability section;

¹ Although more detailed than those contained in NIM or SAL files, the documentation in follow-up reports in IIU files were still lacking compared to industry standards.

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- Training and policy recommendations; and
- Recommended findings with analysis of Sheriff's Office policy.

A long history of industry standards calls for the preparation of a detailed report at all levels of a complaint investigation. This process clarifies for command staff the information available to determine if the investigation is complete and thorough. This effort will best ensure that the investigation will survive proper scrutiny should a challenge be brought alleging that discipline was inappropriate. The main question will be: are the allegations fully and fairly addressed in the investigation?

- The Sheriff's Office should consider requiring supervisors to complete a Conflict of Interest form before they begin the investigation to ensure that they were not involved in the incident, and also that there is not any other conflict.
- We found numerous files that stated that the investigation was closed because the complainant was unable or unwilling to communicate with the investigator. This directly conflicts with the Sheriff's Office policy that anonymous complaints will be investigated. Supervisors should receive additional training that enhances the use of investigative techniques to prove or disprove an allegation if the complainant does not desire to participate in the process, or upon receipt of an anonymous complaint.
- Unresolved questions that were discovered during our review of files could have been addressed given the opportunity to conduct interviews and access to additional evidence. **What is more concerning is when command staff allowed a classification of an investigation when the subject officer was not interviewed and available investigative techniques were not utilized.** An example is driving complaints. Investigations identified a possible employee, but there were no interviews with that Deputy or no review of available technology that may assist in identifying involved personnel. Common industry standards find that complaints, even those that are anonymous, must be fully investigated. Failure of a complaint to identify the officer does not mean that efforts cannot be taken by the department to identify who the subject officer is and question the officer about the allegation. The review process should ensure that all investigative steps were taken to sustain or not sustain the allegation.
- The Sheriff's Office should consider providing in-service training to supervisors and commanders on how to properly complete the Preliminary Complaint Form and the Commander Oversight forms.
- The reviewed NIM and SAL files show little to no communication with the complainant after the complaint is filed. Common industry standards recommend sending an initial letter on receipt of the complaint, providing status updates during the investigation, and sending a letter to the complainant that documents the complaint resolution and findings. There is no evidence that this occurs on a consistent basis.
- There is a clear lack of consistency on how complaints are classified. The current process of selecting how the complaint is classified, based solely on the complaint type and with

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no apparent investigation, is subjective. All complaints coming into the Sheriff's Office should be classified as a complaint and should be classified with the appropriate complaint level. The problem with the current classification system is that NIM and SAL can lead to no discipline and includes minimum review of a Deputy's actions. A great example of inconsistencies within the system is complaints involving allegations of discourtesy or rudeness. Complaints of discourtesy were found in all three categories. This leads to confusion in determining how a discourtesy complaint can be classified as a NIM, SAL, and Inquiry.

4. Review of Individual Classifications

a. Preliminary

General Order 3.03.010 defines an **"Inquiry"** as an "entry into Blue Team that documents any communication directed to a member of the Sheriff's Office which, if true, alleges misconduct by any member of the Sheriff's Office." By this very definition, a NIM would not be entered into the system initially as an "Inquiry." **"Preliminary"** is defined as "an entry into Blue Team used to document any reported or observed possible violations of policy." According to this definition, no complaint that ends up a NIM would be entered in as a "preliminary" – this contradicts policy that requires that all complaints are put in as a "preliminary."

A **"Preliminary Investigation"** is defined as "steps taken by a supervisor or IIU to determine if an alleged complaint is potential misconduct." (Emphasis added). An additional issue with this definition is that it indicates "except in unusual circumstances, (i.e. complainant intoxicated, incapacitated, etc.), the preliminary investigation is not complete until an interview of the complainant has been conducted." This definition seems to indicate that the officer does not have to take the interview of an "intoxicated" or "incapacitated" individual. Instead, this section should indicate that the preliminary investigation is *not* complete until an interview of the complainant is conducted, and in the case of an intoxicated or incapacitated complainant, the interview should be conducted once the individual is no longer intoxicated or incapacitated.

It is further unclear what is meant in the definition by the phrase "steps taken," and whether it includes the steps listed under 3.03.155, "Investigative Steps." This is unlikely, however, as one can infer from the current policy that these steps only apply to an investigation that is assigned to an IIU investigator. If these steps do actually apply, it does not appear that the Sheriff's Office follows procedure. If, however, they only apply to an IIU case, and not a "lower level" investigation, the question of "why" must be asked. Why do these procedures not apply to *all* complaints that come to the attention of the Sheriff's Office – in whatever form they may take? The files showed a great variance in the scope of the preliminary investigations. Without proper investigative steps for a complaint, a law enforcement agency is unable to adequately categorize, classify, and investigate complaints, and ultimately assign appropriate discipline. As a result, KCSO will first need to change its philosophy of categorizing a complaint after a "preliminary investigation."

b. Non-Investigative Matter (NIM)

Our analysis of current Sheriff's Office policy identified that an allegation classified as a "Non-Investigative Matter (NIM)" does not require any investigation, nor is it part of the disciplinary system. NIM is defined as a "concern expressed by a citizen that, if true, is not an allegation of misconduct." 3.03.010. Once an allegation is classified as a NIM, no investigation occurs and it is only "forwarded to the worksite supervisor for informational purposes." (3.03.030.) However, although NIM is defined as "not an allegation of misconduct," we determined through our review that NIM files included several allegations that, if found to be true, would be an allegation of misconduct. Therefore, it is clear that individuals responsible for the screening process are either misclassifying or are prematurely classifying complaints or allegations. The review of the 2016 sample revealed that of the 120 complaints reviewed 38 - or 31% - had no preliminary investigation and appear to be classified based solely on the subjective perception of whether the complaint or complainant had merit.

As discussed above, the IA-Pro files are inconsistent, lack investigative material and, in a majority of cases, do not provide sufficient evidence that a subsequent analysis into a policy violation was conducted. It is unclear after a detailed review of 120 files why the Sheriff's Office utilizes a NIM classification. More concerning was the lack of consistency in the method utilized to determine that the case should be classified as a NIM or the process utilized to investigate a complaint. This was especially concerning when the allegation received by the Sheriff's Office was reasonably identifiable as misconduct and clearly did not fall into the NIM definition. For example, during our analysis, we attempted to categorize the actual allegation in the complaint made against the agency member and of the complaints reviewed, 30 of the 120 - or 25% - were for courtesy or discourteous conduct. Other example topics included: excessive force, illegal search and seizure, biased based policing, and service complaints. It is understandable that service related complaints can be handled with a more streamlined approach, but there still is the possibility that these complaints can lead to a violation of policy.

When reviewing the 120 NIM files in our sampling, we discovered that complainant "concerns" or "complaints" that – if true – *would* be an allegation of misconduct ended up with a NIM classification. The individual assigning the classification of NIM would do so for matters wherein there was "little evidence" or if they were unable to locate witnesses, etc. The analysis found that of the 120 NIM files reviewed:

- 11 files (or 9%) we did not agree with the classification of "NIM";
 - These files included allegations involving Courtesy, Violation of Authority, Sexual Assault, and Reckless Driving.
- 65 files (or 54%) we did agree with the classification as identified by the evidence; and
- 44 files (or 36%) we were unable to determine if the classification was proper.

Therefore, in total 55 files (almost 46%) of NIM files reviewed were classified incorrectly or contained insufficient justification for classification. Additionally, all of the 120 NIM cases led to a finding of "information only." It is not clear what "information only" means or how it works in the disciplinary process.

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Pursuant to the Sheriff's Office policy, however, these 11 files were not an acceptable or permissible classification of a complaint as NIM. Even though these complaints would be an allegation of misconduct – if true – the Sheriff's Office categorizes them as a NIM when there is “not adequate evidence” or for other listed reasons. According to the definition of NIM, as referenced above, these matters are not investigated. Therefore, there is no requirement that the individual classifying the complaint even take the statement of the complainant. The only information the classifier has available to decide whether the complaint is a NIM, is what little information is listed on the complaint form or a summarized statement the complainant may have provided. Since there is no policy requirement to investigate these matters, it is not possible for a NIM to turn into an “Inquiry” following a “preliminary investigation.” In fact, while there were cases in our sampling where an Inquiry was changed to a NIM after investigation, not one case involved a change from a NIM to an IIU investigation. The analysis of the 120 NIM files found 13 – or 10% – classification changes. The 13 classification changes included changing from an IIU to a NIM or from a NIM to a SAL. While there are classification changes from the IIU to the NIM or SAL not from the NIM or SAL to the IIU. As stated above, neither of these classification changes ultimately results in any form of discipline.

c. Supervisor Action Log (SAL)

Our analysis of the current Sheriff's Office policy identified that an allegation classified as a SAL does not require any investigation, nor is it part of the disciplinary system. A **“Supervisor Action Log (SAL)”** is defined as “an entry into Blue Team used to document a supervisor action related to observed or reported minor policy infractions.” In Section 3.03.030 – a policy infraction that is a “minor” infraction is sent to the supervisor as a SAL. This is the only portion of the policy that gives examples of a classification. These examples of “minor” include “tardiness, uniform/equipment violations, personal appearance infractions, minor omissions in assigned duties, and minor regulations concerned with efficiency or safety.” In a SAL investigation, it appears that the supervisor does not need to take a recorded statement from a complainant or witnesses unless the complaint is considered “more than a minor infraction.” (3.03.025.)

During this analysis, we reviewed 130 SAL complaints. The biggest concern is the IA-Pro disposition of “no discipline” or “info only.” There were discussions of “Corrective Counseling,” but based on the selection of “no discipline” for all 130, that indicates that such counseling does not fall in the progressive discipline process. A majority of the entries reviewed were for personnel related issues, such as tardiness, attendance, sick leave and employee related issues. Especially concerning was the discovery of false arrest, courtesy, and driving complaints placed under a SAL. Of the 130 reviewed SAL complaints:

- 13 (or 10%) involved Courtesy;
- One complaint involved a Deputy allowing a driver under 21 to drive away after the Deputy knew the driver had smoked marijuana within 4 hours;
- One was use of force, along with a search and seizure not properly documented by the Deputy;
- One was an allegation of false reporting in a police report;
- One was an allegation of an illegal firearm search;

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- One was use of authority;
- Five (5) involved driving;
- In nine (9) of the reviewed files, we did not agree with the findings; and
- In eight (8) of the reviewed files, there was not enough information to determine if we agreed with the findings.

Therefore, in total 130 files (almost 30%) of SAL files reviewed were found to be classified incorrectly or contained insufficient justification for classification. While a SAL may be an effective means within IA-Pro to document "minor infractions," the classification must be based on the seriousness of the complaint at the time it is received, not after it is investigated. While there were files with complete investigations and proper command review, those were in the minority and not consistent with the overall sample. A proper progressive discipline process and an effective early warning system ensures that history of actions is effectively investigated and documented. The purpose of the system is to protect the member and the Sheriff's Office, and to provide the officer with guidance and necessary resources to correct the alleged behavior.

d. Inquiry

Our analysis of the current Sheriff's Office policy identified that an allegation classified as an Inquiry "IIU" does require an investigation and is part of the disciplinary system. IIU investigations are also provided to the OLEO for review. An "**Inquiry**" is defined as "an entry into Blue Team that documents any communication directed to a member of the Sheriff's Office which, if true, alleges misconduct by any member of the Sheriff's Office."

Our review of IIU cases were solely to get a feel for the Inquiry process since the OLEO reviews each IIU file for completeness. A review of thirty-two (32) IIU investigations finds detailed work; however, it must be reviewed document by document because quality of the "investigative follow-up reports" are largely inconsistent. An Internal Investigations template report (see Appendix A) should be used for consistency of the investigation and review process. In all categories - and more importantly in IIU files - there should be a detailed report where the case is outlined, as discussed in detail above. The files did contain an A-128, Command Review and IIU summary. These documents were a summary, but not sufficient for scrutiny. These reports should be put together in a form that would allow the Commander and Sheriff to draw conclusions based on evidence evaluation to determine just cause.

III. POLICY ANALYSIS

This report included a review and analysis of Sheriff's Office policies related to complaint acceptance to understand Sheriff's Office process and agency expectations.

Policies are developed to provide direction and guidance to officers in the field. Therefore, it is critical that they are clear and consistent in format, definition, content, and language. All policies should be organized with clear headings, subheadings, and topic points to afford greater clarity for the officers.

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As part of this investigation, we reviewed the King County Sheriff's Office Policy **3.03.000 – Investigation of Personnel Misconduct and the IIU Standard Operation Procedures (IIU SOP)**. While it is important that Sheriff's Office policies reflect best practices in the industry, they must also set the guidelines for implementation. When it comes to reporting and investigating misconduct, Law Enforcement agencies must create a culture wherein practices and policies must work in conjunction with one another. The purpose of a proper Investigation of Personnel Misconduct policy is to provide members and supervisors with clear guidelines for reporting, accepting, and investigating allegations of misconduct. These policy guidelines are essential for protecting all parties involved with a complaint while demonstrating that the Sheriff's Office is committed to documenting and investigating complaints and allegations of misconduct.

Overall, we found the Sheriff's Office's policies to be organized and informative, while providing officers with guidance and direction in the field. The policies clearly exhibit the Sheriff's Office's commitment to maintaining proper industry standards by clarifying a department philosophy of accepting all complaints. However, there are areas in which revised or additional procedures, standards, and definitions of applicable terms are necessary to provide complete, informative policies.

Our comments and suggestions on specific policy provisions and sections are discussed below under headings reflective of the individual policies.

1. Accepting Complaints

It's essential that the Sheriff's Office have an accessible system for accepting complaints.

The current policy provides that "members of the Sheriff's Office will accept all complaints of misconduct." The policy, however, should include language specifying that complaints must be accepted in writing or verbally, in person, by mail, telephone, facsimile, electronic mail, or by any other means, at any time. The policy should also state that the Sheriff's Office will accept third party complaints. Although the policy already requires members to accept and investigate anonymous complaints, the SOP does not provide language specifically stating that complaints may be received anonymously or from a third party.

It should be noted that a review of complaints against Sheriff's Office personnel from 2016 showed that the Sheriff's Office has and continues to take complaints from multiple sources including, mail, in-person, anonymous, email, phone, and third party. In addition, Sheriff's Office members as well as members of the public must be clear that the Sheriff's Office encourages people to bring forward legitimate complaints regarding possible misconduct. The policy should provide:

- a. Employees must courteously inform people of their right to file a complaint if they object to an employee's conduct. This includes any complaints made by an individual who is in the Sheriff's Office custody;
- b. Employees have a duty to assist any person who wishes to file a complaint by providing a

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complaint form, or promptly putting the complainant in contact with a supervisor who can assist with filing a complaint;

- c. No employee may refuse to assist any person who wishes to file a complaint or discourage, interfere with, hinder, delay, or obstruct a person from making a complaint;
- d. Employees should take into consideration language translation or disabilities of the complainant and make available accommodations.
- e. Employees, who withhold information, fail to cooperate with departmental investigations, or who fail to report the misconduct of employees to a supervisor shall be subject to disciplinary action. (We note that the policy requires employees to fully cooperate in Sheriff's Office administrative investigations, and that failure to cooperate may result in discipline up to termination. Section 3.03.100.)

The Sheriff's Office must also make informational materials about the right and process for filing a complaint available to the public through the Sheriff's Office personnel, internet, libraries, community groups/community centers, and at designated public spaces. The Sheriff's Office should post placards describing the complaint process, including relevant phone numbers and address where complaints can be made, permanently within each Sheriff's Office location. Furthermore, employees should carry the complaint form provided by the Sheriff's Office, which explains the complaint process in dominant languages in King County, in their vehicles or persons at all times while on duty.

2. Complaint Intake Process

Every effort shall be made by all employees to facilitate the convenient, courteous, and prompt receipt and processing of complaints. Whether received by phone or in-person, the complaint shall be handled promptly, professionally and without judgment. Employees must fully understand that any employee who interferes with, discourages, hinders, or delays the making of complaints shall be subject to disciplinary action.

As stated above, the policy should explicitly provide that employees assist individuals who wish to file a complaint against an employee, including explaining the Sheriff's Office's complaint procedures and providing complaint form(s) and/or complaint brochures.

When employees are approached by a person seeking to make a complaint, they will, when possible, call for a supervisor, obtain a brief description of the allegations, record contact information (name, address, phone number) from the complainant, and submit the complaint through BlueTeam. The BlueTeam complaint should be entered into IA-Pro in a reasonable amount of time and the IA-Pro case number should be provided to the complainant.

If a supervisor is not readily available, the employee will inform the complainant and advise them that they will be contacted by a supervisor or the IIU Commander by the next business day (and ensure that it is followed through).

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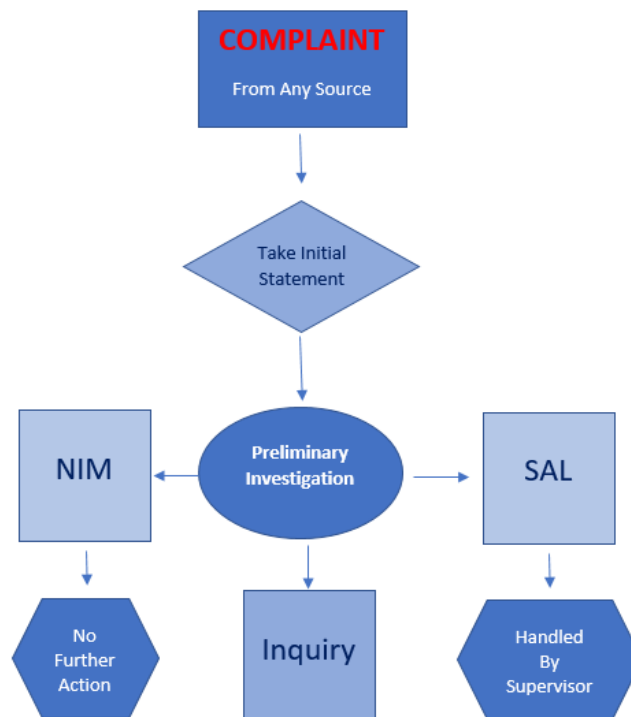
For in-person complaints, the policy should provide that: If an individual comes into the Sheriff's Office seeking to make a complaint, an on-duty Supervisor will immediately be notified to conduct a preliminary inquiry of the complaint. If a supervisor cannot respond to the location within a reasonable period, communications and desk personnel will provide the complaint form and instructions to the person wishing to file a complaint. The employee's supervisor taking the complaint will advise the complainant of the investigative process relative to his/her complaint, prior to the complainant leaving the station.

After the complaint is entered into IAPro, a copy of the form or letter with the IAPro case number will be mailed to the individual. The Sheriff's Office should require notification letters to be sent to complainant in every classification of complaint. Common practice requires an initial letter on initiation of the complaint, status updates and a final letter identifying findings.

The employee taking the complaint may describe facts that bear upon a complainant's demeanor and physical condition, but will not include his or her opinion regarding the mental competency or veracity of the complainant. In addition, the employee taking the complaint will issue the complainant a copy of the complaint form, which he/she will be allowed to review prior to leaving the station.

3. Complaint Process

A review of the current process as demonstrated in the policy and complaints was that complaints were received; Sheriff's Officer does attempt to take to take an initial statement and a "preliminary investigation" is conducted. Once the "preliminary investigation" is conducted, it is classified as either a NIM, SAL or Inquiry. A diagram of this process is below:



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What is clear from this process is that the NIM complaints have no disciplinary results and the SAL complaints reviewed had no discipline, meaning these two categories have a resolution of the cases outside the disciplinary system.

We would recommend a system that eliminates the current system. Based on national standards and effective operations every complaint that comes in is categorized as an Inquiry *without a preliminary investigation*. Once the complaint is received, it is categorized based on the allegation at the time it was received. This categorizing by allegation will identify the appropriate category. More importantly, all categories have the potential for some discipline from counseling to training or more severe. The complaint categories are discussed in section 4 and below in the REPORT.

4. Complaint Categories

The current policy divides complaints as criminal and non-criminal, and investigations are divided by "minor" and "major," depending on the type of discipline that may be received for sustained allegations. The policy also provides a separate section for intoxication complaints and use of force complaints, although the later includes limited instruction.

In following the recommendation to change the current complaint process so that all complaints are accepted as Inquiries and then classified as to the basis of their allegation. This will expand the complaint categories. The industry classifies complaints as either "service" or "personnel" depending on the issue(s) involved. Service complaints or concerns are those associated with the way police services are provided. A common example is a complaint over police response time. Many of these types of public complaints may be handled in the internal investigative process somewhat differently from those involving personnel action or inaction directly with a member of the public. Even complaints involving misunderstandings may contain information of value to a police agency. This includes, for example, a need for the department to clarify procedures to individual officers or groups of officers, or to provide additional training in communication or other interpersonal skills. Examination of all public complaints allows the police agency to determine if the complaints form a pattern that should be addressed by the department in another appropriate manner.

We recommend including a section that provides a greater range of complaint categories (as described in this section below) and includes the following information:

- Type (e.g. Class 1 being most severe and Class 4 being minor incidents);
- Description of the Allegations;
- Examples; and
- Type of investigator who will generally handle the investigation (e.g. IIU, Unit Commander, supervisor, etc.).

For example:

- Class 1 complaints are typically allegations that have the potential to damage the reputation of the Sheriff's Office or its personnel and include serious allegations of misconduct or criminal misconduct. This type of conduct would include, for example, excessive force, false arrest, bias-based policing, sexual harassment, etc.

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- Class 2 complaints include allegations of a less-serious nature, and include conduct such as: rudeness, discourtesy, and offensive language.
- Class 3 complaints are minor complaints involving a member's conduct, such as rudeness or demeanor, and the member of the public has stated they do not wish to file an official formal complaint.
- Class 4 complaints are minor complaints questioning or informally complaining about policy or a tactic used by a member, such as why handcuffs were used to detain a subject, etc. Class 4 complaints should also cover service complaints such as failure to respond or delay in dispatching.

An example of these categories is as follows:

TYPES	DESCRIPTION	EXAMPLES	GENERALLY HANDLED BY
CLASS 1	Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but are not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct.	• Excessive and/or improper use of force • Brutality • False arrest • Unlawful search and/or seizure • Corruption • Dishonesty and untruthfulness • Gross Insubordination • Violation of civil rights • Bias-based profiling • Sexual harassment • Workplace violence • Violation of criminal statutes	OFFICE OF THE SHERIFF AND/OR PROFESSIONAL STANDARDS DIVISION Formal and Documented with Written Statements and Tape/Video Recorded Interviews
CLASS 2	Allegations that generally include, but are not limited to, allegations of a non-serious nature and violations of Standards of Conduct and other written directives of a non-serious nature.	• Violation of policies, procedures or rules, other than those which constitute a Class I Allegation • Inappropriate conduct and/or behavior of a less-serious nature, such as rudeness, discourtesy, and offensive language • Violation of personnel rules	OFFICE OF THE SHERIFF AND/OR PROFESSIONAL STANDARDS DIVISION Formal and Documented with Written Statements
CLASS 3	Minor complaints by a member of the public desiring to make an informal complaint against an employee, generally involving an	When a member of the public complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint.	FIRST-LINE SUPERVISOR Informal and Documented as Informational Purposes Only

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	employee's conduct and/or behavior.		
CLASS 4	Minor complaints by a member of the public who contacts the Department questioning or informally complaining about a policy, procedure, or tactic used by the Department or an employee.	When a member of the public questions or complains about the <i>procedures or tactics</i> used by the Department or employee, such as on-scene command presence, or why handcuffs were used when detaining a subject, but does not wish to file an official formal complaint.	FIRST-LINE SUPERVISOR Informal and Documented as Informational Purposes Only

The process by which the Sheriff's Office categorizes complaints is discussed more fully below.

5. Use of Force Complaints

The policy includes a short section related to a supervisor's duties when a complaint of excessive use of force is received (3.03.055). The information provided in this section is limited and does not provide adequate guidance for a supervisor's investigation of a use of force incident.

Furthermore, it does not provide adequate post-force guidance to the officers involved in the use of force – those who used force, and those who witnessed it.

Use of force complaints should not be called out separately in Section 3.03.000. There is another policy (6.01.000) that addresses use of force reporting and on-duty supervisor duties, and the two policies are not consistent with one another. We recommend the policies be merged to avoid confusion and any reference to use of force complaints under Section 3.03.000 should instruct persons to refer to Section 6.01.000.

6. Search and Seizures

The policy provides in Section 3.03.125: "Sheriff's Office members shall not be required to disclose any item of his/her property, income, assets, source of income, debts . . . unless volunteered or obtained through proper legal procedure." Section 3.03.130 provides that members "shall not be required to submit to any medical or laboratory examination unless volunteered or obtained by proper legal procedures." Section 3.03.135 provides that "members shall not be required to appear in a line up unless volunteered or obtained by proper legal procedures." Section 3.03.140 provides that members of the employee's immediate family shall not be contacted and/or asked to give statements in administrative investigations except when: 1) a crime is alleged to have been committed against a family member, or 2) the accused member gives permission.

While we understand Washington State law prohibits compelling a member to submit to a polygraph examination, it does not appear that there is a similar law prohibiting the investigatory techniques described in Sections 3.03.125 thru 3.03.140. Common practice in the industry,

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however, recognizes that these four investigatory techniques are an integral part of an administrative investigation and make up a significant part of the investigation. In particular is the importance of interviewing family members of the accused. There is no perceived basis for why the family members of the employee shall not be interviewed if they are a witness and may be able to shed light on an issue. The Sheriff's Office should reconsider the use of the term "shall not" in these areas.

We recommend, if not contrary to law or any collective bargaining agreement, that the Sheriff's office consider adopting the following language:

- The Sheriff's Office may order that the employee undergo a breath, blood, urine, psychological, medical examination, or any other exam, including submission of financial disclosure statements that are not prohibited by law, if it is believed that such an examination is pertinent to the investigation, so long as they do not violate law, or any collective bargaining agreement (CBA).
- An on-duty supervisor may order an officer to submit to a breath, blood, or urine test when there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct, and is required to submit to such tests as the result of either being involved in a traffic accident with a Sheriff's Office vehicle or involved in a discharge of a firearm on or off-duty.
- In addition, the Sheriff's Office may order an employee to participate in a lineup if it is used solely for administrative purposes. This does not in any way affect the requirements of a legal order to participate. This includes photographic identifications if the investigator deems it necessary.

7. Uncooperative Witnesses

Section 3.03.160, paragraph 7, provides: "If the complainant or civilian witness is unavailable, fails to appear, or refuses to be interviewed, the investigator should thoroughly document attempts to conduct the interview and then continue to attempt to complete the investigation." The policy, however, should explicitly provide that *no investigation shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury.*

8. Anonymous Complaints

The policy, Section 3.03.075, provides:

In cases of anonymous complaints, receiving supervisors or IIU investigators will use their discretion in evaluating whether there is sufficient information for follow-up or further investigation.

1. If, after a preliminary investigation and when feasible, the complaint is not supported by some corroborating facts or evidence, the complaint will be entered

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as an inquiry².

2. If the preliminary investigation does develop some corroborating facts or evidence, it will be handled in the same manner as any other complaint.

When reading this policy as a whole, the meaning of the term “evaluating” in the first sentence is unclear. It could be interpreted as either “some level” of investigation will be undertaken or that a decision will be made, without any initial investigation, as to whether the complaint will be further investigated.

Moreover, subsection 1 instructs that no further investigation should occur if there are no corroborating facts of evidence and does not make clear what happens to these complaints once entered as an inquiry. Subsection 2 adds to the confusion because it states if there are corroborating facts or evidence, it will be handled like any other complaint. As a result, the policy appears to imply that complaints falling under subsection 1 are entered into IA-Pro as a NIM. However, a NIM classification could result in the misclassification of a complaint, particularly since it could involve an allegation that, if true, would be an allegation of misconduct.

We recommend the policy simply state that anonymous complaints will be treated like any other complaints.

9. Standards of Proof

Under Section 3.03.180, the policy provides that while the standard of proof for most administrative investigations is “generally a preponderance of evidence,” the policy states that in cases in which criminal or serious misconduct is alleged, and there is a likelihood of suspension, demotion or termination, the standard of proof is “clear and convincing.” The standard of proof, however, for *any* administrative investigation, regardless of the seriousness of the misconduct or the possible discipline, is a “preponderance of the evidence.” The Sheriff's Office should immediately address this policy error for all future administrative investigations, and ensure investigators utilize the correct standard of proof.

10. Credibility Assessments

Section 3.03.155, Investigative Steps, is silent as to any requirement that investigators conduct credibility assessments of all parties involved in the investigation, e.g. subject officer(s), witness officer(s), complainant, witnesses, etc. A review of IIU investigations found limited documentation to support that any credibility assessments were done in the analysis.

The policy should require investigators to conduct credibility assessments and provide that officer statements will not be given an automatic preference over a complainant's statement, nor will a witnesses' statement be disregarded on account that the witness is connected to the complainant. In addition, the policy should require investigators to make every effort to resolve material inconsistencies or discrepancies between statements and other collected evidence.

² The term “inquiry” here is used differently than the definition of “inquiry” under GOM 3.03.010.

With regard to credibility assessments, Section 3.03.160, Interviewing Complainants and Witnesses, provides that investigators will research the individual's background, including whether the complainant has filed complaints in the past. While there is no general prohibition against this practice, concern arises when discovered information – including whether the individual has been charged with a crime or filed past complaints – is used to make conclusory decisions, or if prior dispositions are used as the sole basis for a credibility assessment.

11. Investigation Due Dates

The current policy allows up to 180 days from the matter coming to the attention of the Sheriff's Office to the completion of an administrative investigation (3.03.150). In addition, it provides that this 180-day time period may be suspended when "a complaint involving alleged criminal conduct is being reviewed by a prosecuting attorney or is being prosecuted at the local, state, or federal level," etc. A 180-day timeframe, or six months, for an administrative investigation is excessive. Although the CBA provides this 180-day timeline, the Sheriff's Office should strive to complete administrative investigations as soon as practical and include that in its policy. While some complex investigations may require 180 days, this is an excessive amount of time to assign to all IIU investigations.

Furthermore, this section also provides that investigators may obtain an extension of the 180-day limitation under certain conditions, which may include suspending the administrative investigation until the conclusion of the criminal investigation. We recommend running concurrent criminal and administrative investigations. In order to maintain an effective system of officer accountability, investigations must be timely and thorough. An effective accountability system ensures that problematic conduct is identified and effectively remediated at all levels within a police department, from the actions of an individual officer to department-wide operations. Failure to timely and thoroughly investigate administration matters until the criminal is complete undermines accountability and unnecessarily exposes the community and officers to risk. This is especially true where an officer is involved in multiple complaints. When run concurrently, administrative investigations should be completed and forwarded up the chain of command within sixty (60) days. Administrative Investigations conducted by the IIU shall be a priority and should be expeditiously investigated and reviewed. We recommend that these investigations should be completed and forwarded up the chain of command for review within sixty (60) days. The Sheriff may waive the sixty (60) day requirement for complex investigations and investigations involving extenuating circumstances.

12. Investigative Report

The policy currently provides the format in which the investigator must complete the administrative investigative reports. We recommend including that the investigative findings shall also include whether: (i) the police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm; (ii) the incident involved misconduct by any member; (iii) the use of different tactics should or could have been employed; (iv) the incident indicates a need for additional training, counsel, or other non-disciplinary

corrective measures; and (v) the incident suggests that the Sheriff's Office should revise its policies, training, and tactics.

13. Complainant Notification / Status Updates

Section 3.03.190 of the current policy requires the IIU Commander to ensure that the complainant is notified in writing of the final disposition of the investigation without delay. The policy, however, should provide for additional notifications to the complainant regarding the status of the investigation. The policy should provide that upon receipt of a complaint, the investigating supervisor shall provide a copy of the complaint form to the complainant, acknowledging its receipt. For formal investigations, the investigating supervisor should send a letter to the complainant (if known), under the signature of the Chief of Police, acknowledging its receipt. Furthermore, investigating supervisors should be responsible for providing periodic status reports to complainants on all pending investigations, as far as practical. Such contact may be accomplished by telephone or email, in lieu of a written letter. The periodic status reports are all the more important given the 180-day timeframe currently established for IIU complaint investigations.

14. Investigation Confidentiality

While the policy provides that confidentiality must be maintained throughout the investigation, it is silent on the requirement that, upon completion of the investigation, case files and information related to investigations of complaints or misconduct shall be maintained separately from personnel records. It also does not provide that such information is considered confidential and will remain under secured conditions in a specific location. We recommend the policy address those issues and provide that case files and dispositions may not be released to any source without prior approval of the Sheriff or unless otherwise provided by law.

15. Classifications (Dispositions)

The policy provides five dispositions for complaints: 1) Unfounded, 2) Exonerated, 3) Non-Sustained, 4) Sustained, and 5) Undetermined. (3.03.185.) According to this section, a complaint is given an "Undetermined" disposition if it does not meet the criteria for the "Classifications 1 through 4." The reasons provided for a complaint being given an "Undetermined" category involve: the complainant withdraws the complaint, the complainant cannot be located, the complainant is uncooperative (as defined in the policy 3.03.160), and the accused member separates from the Sheriff's Office before the conclusion of the investigation and the investigator cannot reach another classification. An "Undetermined" classification, however, is not an appropriate disposition for a complaint. A case should not be closed for any of the reasons provided in this section. Rather, the policy should provide that the investigation will continue despite the occurrence of these events and be given a 1 through 4 classifications. We specifically recommend that this heading in the policy also be changed to "Dispositions" to avoid confusion with classifying complaints at the beginning of the process.

16. OLEO Oversight

Agencies across the Country, some under Department of Justice Settlement Agreements, utilize a Civilian Police Oversight organization as does the Sheriff's Office. The purpose of the oversight is to maintain high-level, quality service; to ensure officer safety and accountability; and to promote constitutional, effective policing, and ensure that all allegations of officer misconduct are received and are fully and fairly investigated. The purpose of an effective internal investigations process is to ensure that all administrative investigations are supported by a preponderance of the evidence and that all officers who commit misconduct are held accountable pursuant to a fair and consistent disciplinary system. To achieve these outcomes, the Sheriff's Office and OLEO should work together as a system of checks and balance to ensure the transparency of Sheriff's Office operations.

The Internal Investigations SOP, IIU Intake Procedures (Section II.D.), requires IIU Commanders to notify "OLEO within three business days via email that a complaint/inquiry case has been opened." Our understanding is that only cases classified as an inquiry are provided to OLEO for certification review, and complaints classified as a NIM or a SAL are not provided to OLEO for that review. **When complaints are misclassified as NIM or SAL (see discussion below regarding misclassification), a multitude of complaints would escape review or oversight – complaints that by their very nature should be included in the complaints that are provided to OLEO.** In other words, a well-devised shell game can occur wherein the Sheriff's Office limits the number and type of complaints that are forwarded to OLEO, as per Sheriff's Office policy, resulting in a number of potential misconduct complaints that are not reviewed by OLEO.

In 2016, the Sheriff's Office received 698 complaints that were filed in three categories: NIM, SAL, and Inquiry/IIU Investigation. In IA-Pro, those complaints were divided as follows: 216 NIM, 251 SAL, and 231 Inquiry/IIU investigations. Based our understanding of the Sheriff's Office's internal investigations system, 216 NIM complaints and 251 SAL complaints were not provided to OLEO for scrutiny or certification review. Therefore, even though there were 231 "Inquiries" – the number of those inquiries that were actually forwarded to OLEO for review would be much lower, if classifications change along the way to a SAL or NIM resulting in a "hide the ball" scenario where oversight becomes ineffective.

IV. INTERNAL INVESTIGATIONS OPERATIONS

The review of the Sheriff's Office Complaint process included an evaluation of the Sheriff's Office Internal Investigations operations. Specifically, we viewed allegations and classifications within a set time period, in all categories, to quantify them and provide a summary of findings and recommendations. While the report sections above addressed general areas within Sheriff's Office policy that require the inclusion of additional procedure and information to create more informative policies, the sections listed below pertain to issues with the current complaint intake, screening, and investigative procedures, as they currently exist in both Sheriff's Office policy and the Internal Investigations SOP. Furthermore, as discussed below, inconsistency between

documents, procedures, and definitions results in a convoluted process that may be at the very heart of the breakdown within the Sheriff's Office internal investigations system.

1. Investigative Staffing

As requested, we conducted an analysis of the adequacy of the Sheriff's Office Internal Investigations staffing to handle caseload, along with the qualifications of IA staff. Our opinion regarding the adequacy of the Sheriff's Office Internal Investigations staffing is included below. Due to recent changes in leadership, interviews with prior IIU commanders provided limited knowledge and information of current Sheriff's Office Internal Investigations staffing. At the time of our review, we determined that the Sheriff's Office Internal Investigations currently staffs one Captain, four Sergeants,³ and a civilian. To determine whether this level or number of internal investigations staff is sufficient requires additional information. Our analysis found that in 2016 the Sheriff's Office recorded 698 filed complaints. The Sheriff's Office currently has a staffing level of about 1,000 and serves over 1.9 million people, who reside in unincorporated areas or one of the twelve contract cities. A comparison of other agencies similar in size and structure to the Sheriff's Office revealed that the Sheriff's Office has not provided sufficient staffing in the IIU division. This conclusion is based on the amount of complaints filed, the quality of the internal investigations reviewed, and interviews with command personnel.

For agencies the size of the Sheriff's Office, industry standards recommend that the Internal Investigations Division have multiple disciplines to conduct various investigations, more investigators, and additional command staff. Prior commanders discussed the difficulty of managing the flow of cases within IA-Pro, while also monitoring and supervising IIU investigators. As described below, our review of Internal Investigations and procedures revealed significant issues related to inconsistency. When the commanders do not focus on the inconsistencies clearly obvious in investigation files, it indicates that they are either overwhelmed with the number of investigations or not properly trained on how to handle the complaint.

The Sheriff's Office should ensure that Internal Investigations has a sufficient number of well-trained assigned staff, who are available to complete a review of misconduct investigations in a thorough and timely manner. We recommend that the Sheriff's Office conduct a staffing study to reassess its current staffing of the Internal Investigations Unit to ensure it is providing sufficient resources and equipment to conduct thorough and timely investigations. This study should also include reviewing the number of investigations regularly assigned to the four Sergeants currently staffed in the division and the length of time it takes to complete the investigations. We also recommend that the Sheriff's Office consider dividing up the IIU Division staff into specific investigative areas, such as: misconduct investigators, force investigators, integrity investigators, and inspections.

2. IA Training

Sheriff's Office personnel conducting misconduct investigations, whether assigned to the Internal Investigations Division, an Area Command, or elsewhere, shall receive at least twenty-

³ Our understanding is that in the beginning of 2018, there are only three sergeants.

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four (24) hours of initial training in conducting misconduct investigations, and shall receive at least eight (8) hours of additional training each year. The training shall include instruction on Sheriff's Office policies and protocols for taking compelled statements and conducting parallel administrative and criminal investigations.

3. Force Investigators

The Sheriff's Office should consider adding a classification of and specifically trained use of force investigators to IIU. One area receiving significant attention in the industry is the need for Internal Investigations investigators to be qualified as "force investigators." Due to the significance of use of force incidents, and the need for agencies to ensure thorough and effective review of force incidents, designated force investigators will limit inconsistency in the manner in which investigations are conducted. All use of force reports and all Internal Investigations alleging force should be reviewed and investigated by the IIU Force Investigators. In addition, IIU shall respond to the scene and conduct investigations of serious uses of force, uses of force indicating apparent criminal conduct by an officer, uses of force by the Sheriff's Office personnel of a rank higher than sergeant, or uses of force reassigned to the IIU by the Sheriff.

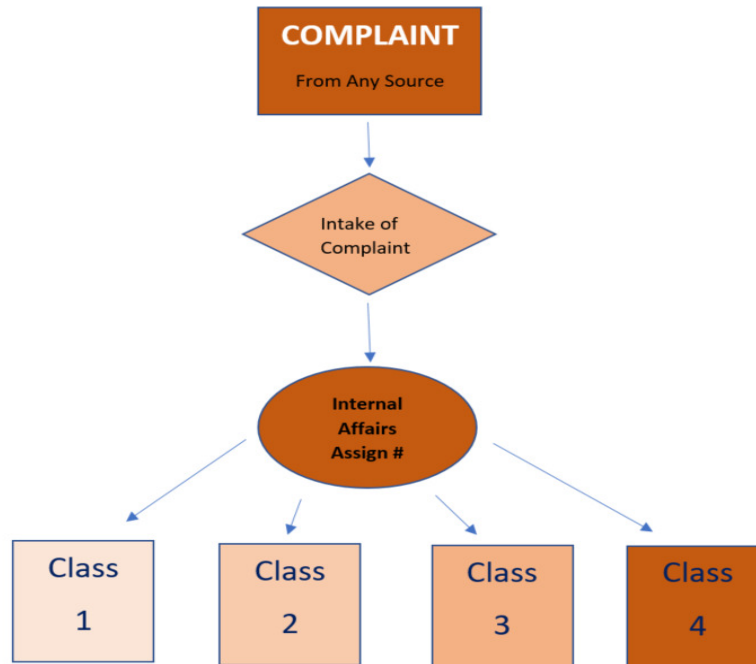
As stated above, before performing force investigations, IIU personnel shall receive force investigation training that includes, at a minimum: force investigation procedures; call-out and investigative protocols; proper roles of on-scene counterparts such as crime scene technicians, the Office of the Medical Examiner, the Prosecuting Attorney's Office and Civilian Police Oversight; and investigative equipment and techniques. IIU personnel shall also receive annual force investigation in-service training.

4. Complaint Classifications

With regards to complaint classifications, it is apparent that Sheriff's Office policy does not provide an accurate understanding of how complaints are handled when they come in the door, and who is involved in that initial categorization process. Policy 3.03.000 provides some guidance regarding procedure when a supervisor receives a complaint (3.03.025) and when it is received in IIU (3.03.030). Both of these sections, however, have "qualifying" language indicating that they apply to complaints of "misconduct," which implies the complaints have already been through some type of screening process. The IIU SOP addresses only those complaints that make their way to IIU for investigation. Neither the policy nor the IIU SOP adequately addresses proper screening of complaints as they are received, which will be discussed more fully below.

As outlined above, we recommend an updated system which will ensure that all complaints that come into the department receive the same attention. The new process will receive the complaint and forward to IIU for assignment of a case number and classification based on the allegations. The process would look like the following flow chart:

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5. Complaint Categories (“Major”/“Minor”)

As stated above, the Sheriff's Office currently only has two categories for received complaints: Major and Minor. It is not clear how these categories are separated as the definitions for these two categories are extremely vague and do not provide adequate guidance to the individual assigning categories to the complaint.

A primary issue with the Sheriff's Office's internal investigation process is the broad definition of “Minor Investigations” and the vague definition of “Major Investigation.” A “Minor Investigation” is simply defined as “alleged violations, if sustained, may lead to discipline up to a written reprimand or may be handled outside the disciplinary system.” However, to add to a convoluted policy, examples of “minor offenses” are found in Section 3.03.025, and a SAL is defined as the documentation of “minor” offenses (3.03.010). The policy also provides some examples of “minor infractions” (see 3.03.030), but the use of the phrases “minor omissions of assigned duties” and “minor regulations concerned with efficiency and safety” is vague, at best. Despite all of these references, we found the policy does not provide adequate guidance, leaving too much discretion on the part of the individual reviewing the complaint or allegation. Our understanding is that anything falling under SAL is outside the disciplinary system. Therefore, despite the definition above, it appears that “minor” offenses would rarely receive a written reprimand – or discipline of any sort. When you follow the bouncing ball, it becomes clear that only the most “serious” offenses – although what constitutes a serious offense remains unclear – receive any type of discipline.

A “Major Investigation” is defined as “alleged violations, if sustained, would likely result in suspension, demotion, termination, or the filing of charges.” There are no examples of what constitutes a “Major” allegation in either the policy (3.03.000) or the Internal Investigations SOP. A result of these definitions is that many viable complaints are unaccounted for.

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As there is no clear definition or examples provided, it is apparent through our review of individual cases that what constitutes a "major" allegation becomes purely a matter of discretion for the individual screening and categorizing complaints. As a result of the lack of guidance provided investigators and commanders on how to use their discretion, the current internal accountability system is wholly ineffective, at best, for identify and addressing misconduct in the Sheriff's Office.

This system does not comply with current industry standards and is contrary to the spirit of early intervention and progressive discipline. **Therefore, appropriate classification of incoming complaints, with clear policy, is imperative.**

V. CONCLUSION

This report summarizes the evaluation and findings from our review of the policies, training, and operations of the Sheriff's Office Internal Investigations process. As detailed above, significant review of policies and operations have led to conclusions reasonably based on the experience of the reviewer. These conclusions include policy revision, operational practices, and revision on how complaints received by the Sheriff's Office are categorized and effectively investigated. These conclusions have resulted in providing 24 recommendations which are detailed below. DLG is willing and available to assist OLEO and the Sheriff's Office with revising the policy and operations to ensure constitutional practices are being followed.

VI. POLICY RECOMMENDATIONS

Recommendation #1 - Accepting Complaints: The policy should include language explicitly providing that complaints may be received in writing or verbally, in person, by mail, telephone, facsimile, electronic mail, or by any other means. Furthermore, the policy should state that the Sheriff's Office will accept third party complaints. (Page 12)

Recommendation #2 - Accepting Complaints: The public must be clear that the Sheriff's Office encourages people to bring forward legitimate complaints regarding possible misconduct. Therefore, the policy should also specifically provide that employees will not discourage any person from making a complaint and will be disciplined for doing so. (Page 12-13)

Recommendation #3 - Intake Process: The policy should explicitly provide that employees shall assist individuals who express the desire to lodge complaints against any employees, which shall include, but is not limited to: (a) Calling a Supervisor to the scene to conduct a preliminary inquiry and document the complaint (for example, summoning the supervisor of the officer against whom the complaint is made); (b) Explaining the Sheriff's Office's complaint procedures; and (c) Providing complaint form(s) and/or complaint brochures, or give instructions as to where form(s) and/or brochures could be obtained. (Page 13)

Recommendation #4- In-Person complaints: If an individual comes into any precinct of the Sheriff's Office seeking to make a complaint, an on-duty Supervisor should be immediately notified. The Supervisor should then respond to the Sheriff's Office to conduct a preliminary inquiry of the complaint. If a supervisor cannot respond to the location within a reasonable

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period, communications and desk personnel should provide the complaint form to the person wishing to file a complaint. (Page 14)

Recommendation #5 - Public Information and Access: The Sheriff's Office must ensure that informational materials about filing a complaint are made available to the public through the Sheriff's Office personnel, internet, libraries, community groups/community centers, and at designated public facilities. (Page 13-14)

Recommendation #6 - Concurrent Investigations: The policy should provide guidance as to the available options and the benefits and issues associated with running concurrent criminal and administrative investigations. (Page 20)

Recommendations #7 - Complaint Categories: The current policy divides complaints as criminal and non-criminal, and investigations are divided by "minor" and "major," depending on the type of discipline that may be received for sustained allegations. We recommend including a section that provides complaint categories that better classify the description of the allegations, examples of the allegations, and what level of supervision will handle the investigation. (Page 15-18)

Recommendation #8 – Complaint Categories: The current policy provides a separate section for intoxication complaints and use of force complaints which includes limited instruction. These sections should refer to a specific policy that covers these categories of complaints as the current policy does not provide adequate guidance or procedure regarding investigations of these complaints. (Page 15-18)

Recommendation #9 – Uncooperative Witnesses: The policy should explicitly provide that no investigation shall be closed or otherwise disregarded simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury. (Page 21)

Recommendation #10 – Standards of Proof: The standard of proof for any administrative investigation, regardless of the seriousness of the misconduct or the possible discipline, is "preponderance of evidence." Unless there is a specific provision in the CBA addressing this issue, the Sheriff's Office should immediately address this policy error for all future administrative investigations, and ensure investigators utilize the correct standard of proof. (Page 19)

Recommendation #11 – Credibility Assessments: The policy is silent as to the requirement that investigators conduct credibility assessments of all parties involved in the investigation, e.g. subject officer(s), witness officer(s), complainant, witnesses, etc. The policy should require investigators to conduct credibility assessments and provide that officer statements will not be given an automatic preference over a complainant's statement, nor will a witness' statement be disregarded on account that the witness is connected to the complainant. In addition, the policy should require investigators to make every effort to resolve material inconsistencies or discrepancies between witness statements and other collected evidence. (Page 19)

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Recommendation #12 – Investigation Due Dates: A 180-day timeframe, or six months, for an administrative investigation is excessive. Generally, the Sheriff's Office should strive to complete administrative investigations as soon as practical. While some investigations of a complex matter may require 180 days, this is an excessive amount of time to assign to all IIU investigations. Recommend a timeline of 60 days with ability to extend with authority from the Sheriff. (Page 20)

Recommendation #13 – Investigative Report: The policy currently provides the format in which the investigator must complete the administrative investigative reports. We recommend including that the investigative findings shall also include whether: (a) the police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm; (b) the incident involved misconduct by any member; (c) the use of different tactics should or could have been employed; (d) the incident indicates a need for additional training, counsel, or other non-disciplinary corrective measures; and (e) the incident suggests that the Sheriff's Office should revise its policies, training, and tactics. An example of a recommended report template is attached as **Appendix A**. (Page 20-21)

Recommendation #14 – Complainant Notification: Section 3.03.190 of the current policy requires the IIU Commander to ensure that the complainant is notified in writing of the final disposition of the investigation without delay. The policy, however, should provide for additional notifications to the complainant regarding the status of the investigation. Notification to the complainant should be made when the complaint is accepted, with status updates every 45 days and at the time of final disposition. (Page 21)

Recommendation #15 – Investigation Confidentiality: While the policy provides that confidentiality must be maintained throughout the investigation, it is silent on the requirement that, upon completion of the investigation, case files, and information related to investigations of complaints or misconduct shall be maintained separately from personnel records. The files must also be secured at all times, and not released to any source without prior approval of the Sheriff, unless otherwise provided by law. (Page 21)

VII. INTERNAL INVESTIGATIONS OPERATIONS

Recommendation #16 – Staffing: The Sheriff's Office should consider increasing staffing size in the IIU to ensure timely and effective investigations. This increase in staffing should include additional investigators, including command personnel, to relieve the Commander of classification duties, and to allow force investigators to properly handle use of force incidents. (Page 23)

Recommendation #17 – Administrative Investigation Training: Sheriff's Office personnel conducting misconduct investigations, whether assigned to the Internal Investigations Division, an Area Command, or elsewhere, should receive at least twenty-four (24) hours of initial training in conducting misconduct investigations and shall receive at least eight (8) hours of training each year. The training shall include instruction on Sheriff's Office policies and protocols on taking compelled statements and conducting parallel administrative and criminal investigations (Page 23-24)

Recommendation #18 – Force Investigation: The Sheriff's Office should consider adding "Force Investigators" to the IA Unit. Due to the significance of Use of Force incidents, and the need for agencies to ensure thorough and effective review of force incidents, designated force investigators will limit inconsistency in the manner in which these investigations are conducted. Before performing force investigations, IIU personnel shall receive use of force investigation training. (Page 24)

Recommendation #19 – Classification of Complaints: The Sheriff's Office currently only has two classifications for received complaints: Major and Minor. The definitions for these two categories are extremely vague and do not provide adequate guidance to the individual assigning categories to the complaint. It is clear from our review that only "major" investigations receive any type of discipline and there is no clear definition or example of what constitutes a Major violation. The Sheriff's Office should establish a new classification system that limits discretion and increases the range for discipline across all complaints. (Page 24-25)

Recommendation #20 - Consistency of IA-Pro files: In Section E.3 above, we addressed multiple areas of concern regarding consistency. These areas included the following recommendations:

- Clarification on how the complaint was filed and who the complainant was, with accurate contact information;
- Consistency with data placed in the IA-Pro system may require additional training to supervisors;
- Consider an independent Internal Investigations Report to ensure all necessary information is contained in the files;
- Ensure completion and proper completion of the Preliminary Complaint Form and Commanders Oversight Forms;
- Consider additional training on how to utilize all available investigative steps and identify expectations regarding thorough and complete investigations;
- Require consistency with regard to communication with the complainant;
- Require better consistency on how the complaints are categorized; and
- Consider using a Conflict of Interest form.

Recommendation #21 – Consider removing NIM Category: Our analysis of the current Sheriff's Office policy identified that an allegation classified as a NIM does not require any investigation, nor is it part of the disciplinary system. The review of the 2016 sample revealed that of the 120 complaints reviewed 38 - or 31% - had no preliminary investigation and appear to be classified based on perception of the complaint or complainant. It is understandable that service related complaints can be handled with a more streamlined approach, but there still is the possibility that these complaints can lead to a violation of policy. NIM complaints appear to be the catch all of complaints that are handled inconsistently. Some of the NIM complaints had detailed investigations by the supervisors and some had none at all. It was unclear how the decision to make it a NIM was made. The Sheriff's Office should consider different categories including service complaints for a more streamlined investigation that may lead to a sustained finding and discipline. There must be some clarity that the classification of the complaint is based on the offense alleged when the complaint is received.

King County Sheriff's Office Complaint Classification Process Review

Recommend #22- SAL should better define "minor infraction": While a SAL may be an effective means within IA-Pro to document "minor infractions," the classification must be based on the seriousness of the complaint at the time it is received, not after it is investigated. The Sheriff's Office must abide by the definition of a SAL when determining the category of the complaint, which will ensure that consistency of classifications.

Recommendation #23 – Internal Investigations template report should be used for consistency: The Sheriff's Office should consider the use of an IA Report template to ensure consistency throughout all investigations. The use of programs like IA-Pro, without an effective reporting system, results in incomplete and inconsistent files. In all categories – and more importantly in IIU files - there should be a detailed report where the case is outlined. An Example of a recommended report template is attached as **Appendix A**.

Recommendation #24 – Consider using a conflict form discussed in the report also called a Recusal Form. This will force the investigator to identify any conflict before they begin the investigation. An Example of a recommended report template is attached as **Appendix B**.

APPENDIX A

**XYZ POLICE DEPARTMENT
INTERNAL AFFAIRS DIVISION
REPORT OF INTERNAL INVESTIGATION
FILE NO. 11-**

*****Items in red are for information only and should be deleted before the report is submitted.*****

COMPLAINANT:

ABSTRACT OF ALLEGATION:

The complainant alleged that Officer X and Officer Y hit him with a baton. He also alleged the officers were rude.

APPLICABLE RULE(S):

Include "-1" or "-2"

Policy 3-2: General Conduct
Policy 27-1: Use of Physical Force – Level 2

**DISCOVERY OF ADDITIONAL RULE(S)
VIOLATION(S):**

None

SUBJECT OF COMPLAINT:

Officer X, 1234
Officer Y, 1235

DATE/TIME OF INCIDENT:

LOCATION OF INCIDENT:

DATE COMPLAINT RECEIVED:

ASSIGNED INVESTIGATOR:

Sergeant

(CG Times or Times New Roman, 12 or 13 font)

(It is acceptable to write in first person)

BACKGROUND

Please include the following:

- *General dates and circumstances (i.e. On 1 Jan 08, officers x, y, & z responded to..., officers observed..., officers were part of a buy/bust operation).*
- *Name of the complainant. How and when the complaint was reported. (i.e. On 1 Jan 08, Smith made a complaint with Sergeant Jones..., On 8 Jan 08, Smith called the IAD..., On 1 Feb 08, Smith came into the IAD...)*
- *Nature of complaint. (i.e. Smith alleged that the force used was excessive..., Smith alleged that the officers were rude...)*

(Two blank lines between sections)

COMPLAINANT STATEMENT(S)

John Smith (Recorded statement taken by phone by Officer J. Anderson, 7738A, on 22 Sep 06, 1429-1455 hours. No one else was present.)

Explain, in narrative format, what happened according to the complainant.

WITNESS STATEMENT(S)

Ima Witness (Recorded statement taken by Sgt. J. Smith on 15 Oct 01 from 1500-1600 hours. No one else was present.)

Explain, in narrative format, what happened according to the witness.

Officer John Jack 2222P (Recorded statement taken by Sgt. J. Smith on 4 Nov 01 from 1600-1700 hours. Smith was advised of his Acknowledgement of Rights and Obligations. No one else was present.)

Explain, in narrative format, what happened according to the witness.

SUBJECT STATEMENT(S)

PCD John Doe 0000CO (Recorded statement taken by Sgt. J. Smith on 10 Jul 02 from 1300-1600 hours. Also present was PCD Doe's representative, Judge Judy. PCD Doe was advised of his Acknowledgement of Rights and Obligations.)

Explain, in narrative format, what happened according to the subject.

Follow-up interview with PCD Doe (Statement taken by Sgt. J. Smith on 25 Aug 02 from 0900-0930 hours. Also present was PCD Doe's representative, Judge Judy. PCD Doe was advised of his Acknowledgement of Rights and Obligations.)

Doe added that he...

DISPUTED FACTS

- Did Officer X and Officer Y hit the complainant with a baton?
- Were Officer X and Officer Y rude to the complainant?

EVIDENCE

- General Order X-0 pages 4-7
- Radio Purge
- Communications Division Memo date 5 Apr 01
- XYZ Special Order XXXX dated 22 Dec 00
- Cassette tape of the 911 call and radio transmissions
- CD containing
 - Digital recordings of statements taken
 - Photographs of complainant and scene

OTHER RELEVANT INFORMATION

Provide any important information regarding the investigation that helped you with the analysis and conclusion. Some examples include:

- *Results of a canvass. Canvasses are required except when the alleged complaints occurred inside an enclosed location (i.e. house, business).*
- *Inability to obtain evidence, i.e., There was no recording because the computer system was not working; the complainant refused to sign a medical release, etc.*
- *Attempts to identify unknown witnesses, i.e., I was unable to locate the complainant's friend, "Joe." The complainant had no contact information for him and I did not locate him during the canvass.*
- *Inability to contact known complainants. The following attempts shall be made:*
 - *Phone call*
 - *In-person visit to residence (within XYZ)*
 - *Certified contact letter (letters can be left with the IAD Administrative sections for mailing)*
 - *If contact is made, but the person is unresponsive (i.e. misses an interview appointment or does not return phone calls) the above steps are not required.*
- *Inability to contact known witnesses. The following attempts shall be made:*
 - *Phone call*
 - *Contact letter*
 - *If contact is made, but the person is unresponsive (i.e. misses an interview appointment or does not return phone calls) the above steps are not required.*

DISCUSSION & CONCLUSION

Credibility assessments are required by policy

- ***An investigator may consider, in determining the credibility of a witness, any matter that has any tendency in reason to prove or disprove the truthfulness of a statement during an interview, including but not limited to any of the following:***
 - (a) The demeanor of the witness while giving testimony and the manner in which he/she testifies;***
 - (b) The extent of the witness's capacity to perceive, to recollect, or to communicate details;***
 - (c) The extent of the witness's opportunity or location to perceive the incident;***
 - (d) His/her character for honesty or sincerity;***
 - (e) The existence of bias, interest, or other motive;***
 - (f) Consistency of statements given;***
 - (g) Verification of facts; and***
 - (h) Admission of untruthfulness.***

Credibility Assessment – Complainant

Doe was found to be not credible. She gave contradictory statements, failed to provide video of the incident she claimed to have, and during her second recorded interview denied things she stated during her first recorded statement. Doe appeared to be using the IAD process to affect her criminal case when she said she would drop her complaint if charges were dropped against her.

Credibility Assessment – Subject Officers

Officer X and Officer Y appeared truthful when interviewed. Their statements were consistent with the physical evidence, reports, and witnesses. They have no prior complaints of untruthfulness. They do not have a pattern of similar misconduct.

Officer Z appeared truthful when interviewed. He had a vague recollection of events, but this was understandable considering he was interviewed over six months after the incident and had a minimal amount of involvement as a wagon officer.

Did Officer X and Officer Y hit the complainant with a baton?

This is the “heart” of your investigation. Do not simply recount the statements made by the principles in the investigation. Provide your analysis and conclusions. Did the employee violate the rule(s) cited? If so, how? If not, how did you reach this conclusion? What conclusions do you draw from your investigation?

For any sustained findings, add the following paragraph for each sustained MOR violation:

By his actions, Doe violated Manual of Rules Section 314.39; Performance of Duty. This section states in part, “Members or employees shall... “

Were Officer X and Officer Y rude to the complainant?

Repeat for each allegation. These can be grouped together if appropriate. (i.e. Did Officer X hit the complainant with a baton? Did Officer X use OC on the complainant? Did Officer X use a takedown on the complainant?)

Member/Employee Accountability

No sustained allegations.

or

While investigating this case, I did not find instances where a member or employee of the Department should have reported the misconduct.

For Sustained allegations, an analysis must be conducted to determine if a member or employee knew about or should have known about and reported the misconduct discovered in the investigation. The analysis must include the subject member's/employee's immediate supervisor/commander. If additional rules violations are discovered during this analysis, add the member/employee as a subject and address the violations in the Report of Internal Investigation.

Training & Policy Recommendations

There were no training or policy issues identified in this case.

Discuss identified training issues and policy change recommendations.

RECOMMENDED FINDINGS

General Conduct

MOR 314.03-2

SUSTAINED

The investigation disclosed a preponderance of evidence to prove ***cite specific complaint (i.e. that the officer was rude to the complainant)*** in violation of law and/or XYZ rules, regulations, or policies.

(If more than one subject uses the following format)

As to Officer X:

Use of Physical Force – Level 4

MOR 370.27-1

UNFOUNDED

The investigation disclosed sufficient evidence to determine that ***cite specific complaint (i.e. the officer hit the complainant with a baton).***

Not Sustained: The investigation did not disclose sufficient evidence to determine whether or

not the alleged conduct occurred.

Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all XYZ rules, regulations, or policies.

Prepared by:

(4 lines)

John Doe

Sergeant of Police

Internal Affairs Division *(or assigned division of investigator if DLI)*

Approved by:

(4 lines)

IIU Commander

(4 lines)

Chief of Police

APPENDIX B

Recusal Form

This recusal Form shall be completed and forwarded to IAD
prior to the start of the Investigation

Investigator's Name (printed)	First-Level Supervisor (printed)
ID No.	ID No.
Case Number:	
Requirement: In accordance with the provisions of Department General Order ____ an investigator shall disclose any relationship where it is clear that the nature of the relationship could be perceived to compromise the investigative process and document the circumstances. Upon completion of the Recusal Form, the appropriate first-level superior shall meet with the investigator to jointly review this form. The first-level superior shall determine whether it is clear that the nature of the relationship could be perceived to compromise the investigative process. Document the decision in the Declaration Narrative. An investigation may be reassigned if any of the following conditions exist, such as: • Family relationship; • Outside business relationship; • Romantic relationship; • Personal friendship; or • Close work relationship (to be determined on a case-by-case basis).	
Declaration: I have checked the appropriate response. ○ I was directly involved in the incident. (Describe in Declaration Narrative) ○ I have a relationship with one or more of the involved parties which could be perceived to compromise the investigative process. (Describe in Declaration Narrative) ○ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.	
Investigator's Signature	Date:
Declaration Narrative:	
First-Line Supervisor Review: I have met with the investigator and made the following determination: ☐ Reassigned (Detail reason below) ☐ Not Reassigned	
Reviewer Narrative:	
First-Line Supervisor's Signature:	Date: