



DEPARTMENTAL
GENERAL
ORDER

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M-4.1

Evaluation Coordinator:
CID Commander

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NSA Task:28 & 29

Criminal Investigations Involving:
Active Law Enforcement, or
Member of the Department

Automatic Revision Cycle:
3 Years

CRIMINAL INVESTIGATIONS INVOLVING ACTIVE LAW ENFORCEMENT, OR A MEMBER OF THE DEPARTMENT

The purpose of this order is to set forth Departmental policy and procedures for conducting and coordinating criminal investigations when there is reasonable suspicion that active law enforcement personnel, or a member of the Department (hereafter collectively referred to as personnel) are involved in criminal conduct, rising to the level of a felony or serious misdemeanor. Additionally, this order shall ensure the investigative process is fair, timely, thorough, and that personnel are held accountable when their conduct violates a rule of law.

I. DEFINITIONS

A. Reasonable Suspicion

From the totality of the circumstances, there is a specific, articulable, and objective basis for suspecting personnel of criminal activity. There must be specific facts beyond the mere allegation of criminal misconduct.

B. Serious Misdemeanors

Any misdemeanor crime that, if convicted, could preclude personnel from successfully fulfilling the responsibilities of their job classification.

Examples include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, violations of

California Penal Code Section 12021(c) (1), and those crimes where bias is a motivating factor.

II. NOTIFICATION

- A. When any member has a reasonable suspicion that any personnel is involved in criminal misconduct, rising to the level of a felony or serious misdemeanor, he/she shall make the appropriate notification as soon as practical, but no later than two (2) hours, in the following manner:
1. Members and employees assigned to the Criminal Investigation Division (CID) shall notify the CID Commander or, if unavailable, an Area Commander.
 2. Members and employees assigned to the Internal Affairs Division (IAD) shall notify the IAD Commander or, if unavailable, an Area Commander or CID Commander.
 3. All other members and employees shall notify an Area Commander or, if unavailable, the CID Commander.
- B. When a commander/manager is notified, or otherwise becomes aware, of an allegation of criminal misconduct by personnel, he/she shall direct a supervisor or commander to conduct a preliminary investigation into the validity and the extent of the suspicion or allegation as soon as practical but no longer than 24 hours.

III. PRELIMINARY INVESTIGATIVE CONCLUSIONS

The investigating supervisor/commander shall notify and advise the commander/manager, who directed the assessment, within two (2) hours of completing the preliminary investigation regarding the allegation rising to the level of reasonable suspicion and the merit of conducting a criminal investigation.

A preliminary investigation which results in the:

- A. Allegation **RISING** to the level of reasonable suspicion of criminal misconduct **INVOLVING** a felony or serious misdemeanor shall be processed and investigated in accordance with the provisions of this order.

- B. Allegation RISING to the level of reasonable suspicion of criminal misconduct NOT INVOLVING a felony or serious misdemeanor shall be reported to the Criminal Investigations Division or, if outside of Oakland, to the appropriate jurisdiction, and administratively (internally) investigated in accordance with DGO M-3.
- C. Allegation NOT RISING to the level of reasonable suspicion of criminal misconduct shall be reported to the IAD and administratively (internally) investigated in accordance with Departmental General Order (DGO) M-3, COMPLAINTS AGAINST DEPARTMENTAL PERSONNEL OR PROCEDURES.

IV. COORDINATION AND CONTROL

- A. The notified commander/manager shall confer with the BOI Deputy Chief immediately following the preliminary investigation during business hours or no later than the next business day of the results of the preliminary investigation to determine the merit of conducting a criminal investigation.
- B. The BOI Deputy Chief shall review and evaluate the preliminary investigation regarding the nature and severity of the allegation to determine the need for immediate investigative call-out, and take the following actions:

If there is reasonable suspicion of criminal misconduct, involving a felony or serious misdemeanor by any member of the Oakland Police Department, the BOI Deputy Chief shall:

- Log the incident
- Confer with the Chief of Police
- Identify the best course of action, including whether another agency is to conduct the investigation
- Notify the Alameda County District Attorney's Office if the conduct occurred in Oakland
- Notify local police agency and district attorney's office if the conduct occurred in another jurisdiction.

This includes misconduct committed whether or not it occurs during the course of employment. This continues to include officer involved shootings and in custody deaths.

1. If the Department is going to conduct the investigation, confer with the CID Commander to discuss the proposed investigative plan

which may include but is not limited to the following determinations:

- a. If there is probable cause for an arrest;
 - b. Whether to assign a Department investigator(s) to conduct an internal investigation;
 - c. The need for a joint investigation; and
 - d. Whether to make an immediate call-out of IAD investigators, and/or the District Attorney's standby team. The following criteria shall be considered when making a call-out:
 - 1) The potential danger to the public and/or members and employees;
 - 2) The severity of injuries;
 - 3) The potential risk of flight; and
 - 4) The potential loss or destruction of evidence.
 - e. If there is reasonable suspicion of criminal misconduct, involving a felony or serious misdemeanor, prepare and forward a summary of the allegation(s) via e-mail, with "Criminal Misconduct Allegation" in the subject line, to the District Attorney's Office, Office of the City Attorney, Assistant Chief of Police, IAD, and the Chief of Police.
 - f. If there is reasonable suspicion of criminal misconduct, involving a felony or serious misdemeanor, ensure the CID Commander notifies the Chief of Inspectors of the District Attorney's Office within 24 hours of conferring with the BOI Deputy Chief.
2. If the Department is not going to conduct the investigation, the BOI Deputy Chief shall direct the CID Commander to:
- a. Make notification to the appropriate outside agency of the circumstances surrounding the criminal activity.
 - b. Forward supporting documentation.
 - c. Act as the liaison with the outside agency.

- C. If there is reasonable suspicion of criminal misconduct not involving a felony or serious misdemeanor, the BOI Deputy Chief shall log the incident and determine the best course of action.

V. INVESTIGATIVE PROCEDURES

A. Criminal Investigation by OPD

1. The CID Commander shall direct the criminal investigation as outlined in the investigative plan.
2. Departmental investigators shall conduct the criminal investigation in a manner consistent with Department policy and procedures and ensure the confidentiality of all investigations.
3. The BOI Deputy Chief shall direct the criminal investigator to consult with a representative from the Office of the City Attorney and coordinate with the District Attorney's Office to ensure the criminal and internal investigations are kept appropriately separate in order to protect the member/employee's rights and not to compromise either investigation.
4. Investigators shall provide the CID Commander with weekly written updates on the investigation.
5. Criminal investigations shall be completed within 30 days unless otherwise extended in writing by the BOI Deputy Chief.

B. Internal Investigation by IAD or DLI

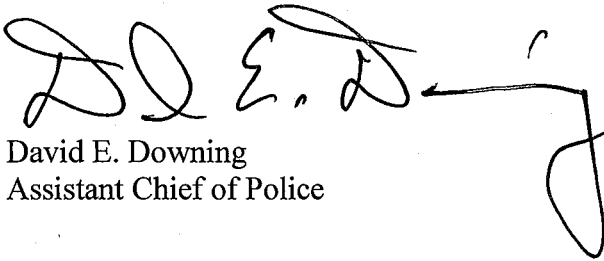
Lybarger – If there is reasonable suspicion that criminal conduct has occurred, the subject officer (sworn personnel) shall be given a Lybarger Advisement.

VI. MANAGERIAL OVERSIGHT AND REPORTING

- A. The CID Commander shall ensure the investigation is proceeding in accordance with Departmental policy and provide oversight, guidance, and resources necessary for the timely completion of the investigation.
- B. The investigation shall be reviewed by the CID Commander and BOI Deputy Chief before submission to the District Attorney's Office for charging consideration.

- C. The CID Commander shall brief the BOI Deputy Chief regarding the status and progress of all investigations on a weekly basis.
- D. The Records Division Manger shall maintain secure files of completed investigations involving members and employees of the Department.
- E. The BOI Deputy Chief shall notify the Assistant Chief of Police and the Chief of Police on the status and resolution of all investigations.

By Order of



David E. Downing
Assistant Chief of Police

Date Signed: 9/7/16