
Policy Number: 103.218
Title: Office of Professional Accountability
Effective Date: 12/15/20

PURPOSE: To outline the scope of the office of professional accountability (OPA); to establish procedures for the impartial, thorough, and efficient investigation of complaints of employee misconduct; and to build a culture of professional accountability across the department.

APPLICABILITY: Department-wide.

DEFINITIONS:

Appointing authority – for the purposes of this policy, a warden or manager delegated the authority for personnel transactions by the commissioner of corrections.

Complainant – any party who provides a complaint. The complainant may include such examples as: a department employee, student worker, volunteer, contractor, offender, or a member of the general public.

Complaint – a verbal or written report of misconduct alleged to have been committed by a department employee, student worker, volunteer, or contractor.

Inquiry – a thorough but informal examination of a complaint and any evidence that forms the basis for the complaint to determine if a formal investigation is warranted or if the complaint must be referred to the office of special investigations (OSI) due to conduct that may violate criminal law.

Misconduct – conduct that violates the law, administrative rules, department policies, norms of behavior, or reflects unfavorably on the department.

OPA director – the director of the office of professional accountability or designee.

Staff person – any department employee, student worker, volunteer, or contractor.

Work incident review committee (WIRC) – the committee that meets to review employee misconduct/performance issues and recommends an appropriate level of action to the appointing authority who makes the final determination of discipline when the discipline level is expected to be a suspension or greater, or for non-certification or termination of trainees.

PROCEDURES:

A. Scope

1. The office of professional accountability is responsible for investigations into allegations of employee, volunteer, student worker, or contractor misconduct.
 - a) Criminal investigations are handled by the office of special investigations (OSI). See Policy 107.005, “Office of Special Investigations.”
 - b) Investigations of licensed department peace officers are conducted in accordance with Policy 107.105, “Allegations of Fugitive Apprehension Unit Employee Misconduct.”

2. Investigations are conducted in compliance with collective bargaining agreements, compensation plans, and policies, as well as any applicable state or federal law.

B. Reporting

Any staff person who witnesses, experiences, or has knowledge of potential misconduct by staff must take immediate action.

1. The staff person must report criminal behavior in accordance with the procedures of Policy 107.100, “Internal Affairs – Office of Special Investigations.”
2. The staff person must forward non-criminal misconduct complaints to the appointing authority/designee or OPA director.
3. Notwithstanding the above, staff must still follow mandated reporting procedures in any other policy (e.g., specific reporting requirements under Policy 103.220, “Personal Code of Conduct of Employees”). **A report to the OPA does not fulfill a specific or mandated reporting requirement.**
4. In cases where safety and security is not at issue, if staff believe the report of misconduct is too sensitive to follow specific reporting requirements, they may first discuss their obligations with the OPA director or a human resources (HR) director, who may determine that staff do not need to follow the typical procedure for reporting.

C. Responsibilities of the Appointing Authority – Inquiries

An appointing authority/designee must conduct an inquiry into any report of alleged misconduct to assess its severity, and to screen out reports that may be better dealt with through performance management. The inquiry must be an informal gathering of relevant information and does not necessarily include an interview with staff.

1. Depending on the sensitivity or severity, the appointing authority/designee may immediately refer a complaint to the OPA director without an inquiry.
2. After an inquiry, the appointing authority must categorize the alleged misconduct into Category 1 or 2, to determine if a complaint should be referred to the OPA.
3. Category 1 typically includes infractions such as absenteeism/tardiness, failure to carry out a job duty, failure to complete count properly, failure to follow procedures, sick leave abuse, misuse of state property, violation of respectful workplace rules, etc.
 - a) If the Category 1 allegations of misconduct would likely result in disciplinary action of a suspension or greater if they were later substantiated in an investigation, the appointing authority must forward the Category 1 complaint to the OPA.
 - b) For Category 1 complaints that do not rise to the level of a suspension, the appointing authority must retain and investigate the complaint or manage the staff person’s performance.
4. Category 2 typically includes serious infractions such as alcohol/drug use on-the-job, ethics violations, conflicts of interest, discrimination, sexual harassment, retaliation, off-duty misconduct, assault, theft, negligence, boundary issues, threatening behavior, data practices violations, etc. The appointing authority must refer Category 2 complaints to the OPA regardless of the possible level of discipline.

D. Responsibilities of the OPA

1. OPA Director Responsibilities

- a) When a complaint comes directly to the OPA, the OPA director may decide whether to conduct an inquiry, refer the complaint to an appointing authority, or conduct a formal investigation.
- b) If a complaint suggests that the safety or security of a facility, division, or person may be at risk, the OPA director or investigator must immediately discuss with the appointing authority and/or OSI what remedial measures to take.
- c) The OPA director, after consulting with the appointing authority and either the regional human resource director (RHRD) or assistant human resource director (AHRD), is responsible for determining if a reasonable basis exists for placing an employee on paid investigatory leave in accordance with the applicable contract/compensation plan.
 - (1) The OPA director must consider the following factors to determine if a reasonable basis exists:
 - (a) Does the subject's presence in the workplace pose a clear or imminent threat to safety and security of the facility, other staff, or the subject?
 - (b) Does the subject's presence in the workplace threaten the integrity of the investigation?
 - (c) Is the subject likely to try to influence the testimony of other staff, engage in retaliatory acts, or destroy or tamper with evidence?
 - (2) If the OPA director decides to place the employee on investigatory leave, the OPA Director must notify the RHRD/AHRD who must ensure the employee is provided with:
 - (a) Preliminary information concerning the nature of the allegations; and
 - (b) Expectations of the employee while on investigatory leave.
 - (3) The decision to place an employee on investigatory leave may be made at any time during the investigative process.
- d) The OPA director must process and track all complaints referred to the OPA and categorize the misconduct into Category 1 or 2 based on the alleged severity of the misconduct.
- e) After discussion with the appointing authority, the OPA director may assign an OPA investigator to a Category 1 complaint if the sensitivity or severity of the alleged offense warrants.
- f) If a Category 1 complaint is made directly to the OPA, the OPA director must decide whether to retain the complaint for an inquiry/investigation or to refer the complaint back to the applicable appointing authority for investigation or performance management.
- g) Category 2 complaints must be retained by the OPA and assigned to an OPA investigator.
- h) The OPA director must meet with the OSI director or designee to discuss the assignment of complaints that may involve criminal implications.

- i) Resignations submitted by employees under active investigation must not be accepted without review and support by the OPA director, agency HR director, and the appropriate deputy/assistant commissioners.
- j) The OPA director must refer a completed investigation to the appointing authority and RHRD/AHRD. The RHRD/AHRD is responsible to convene the work incident review committee (WIRC), if necessary (See Policy 103.225 “Fact-Finding Process and Discipline Administration.”)
- k) Prior to submitting an investigation to the RHRD/AHRD, the OPA director must review all OPA investigation reports for accuracy and completeness and sign the OPA Director Review Acknowledgement Form (attached).
- l) If requested, the OPA director or investigator must make themselves available to participate in a WIRC meeting.
- m) The OPA director must review investigative and other data to ensure policies, procedures, trainings, and performance management practices support building a culture of professional accountability across the department.
- n) The OPA director, in conjunction with other necessary divisions, may conduct compliance audits to assess compliance with this policy, or others, and to assess the culture of professional accountability across the department.

2. OPA Investigator Responsibilities

- a) Once a complaint is assigned, the investigator must enter and track the investigation in the investigation and discipline tracking system.
- b) The investigator must give notice to the staff member, in accordance with applicable bargaining agreements and plans, that the staff member is the subject of an investigation and the identity of the investigator or other department contact.
- c) For correctional officers, the place of their formal statement must be either at a facility or at a place agreed to by the investigator and the investigated officer.
- d) Unless directed otherwise by the OPA director, the investigator must notify the appointing authority and RHRD/AHRD of an investigation that concerns their staff, and provide information necessary for continued efficient operations.
- e) The investigator must make every effort that inquiries and investigations are afforded the highest level of confidentiality reasonable under the circumstances.
- f) The investigator must provide all staff interviewed with the appropriate Tennessee Warning Notice (links attached).
- g) The investigator gathers all available material and relevant evidence that supports or disproves the allegations.
- h) If information regarding other potential employee misconduct emerges through the investigation, the investigator reviews the additional information and consults with the OPA director. The investigator and the OPA director determine whether to expand the scope of the investigation, conduct a separate inquiry into the other

potential employee misconduct, or address the additional issues through a different process or different personnel.

- i) The investigator must reflect all pertinent information gathered during the investigation in the investigation report.
 - j) The entire investigation process from the time of assignment to issuing of disciplinary action must be completed within 30 days.
 - (1) The OPA director may specify a shorter or longer investigation period or weekly update requirement.
 - (2) The investigator must notify the OPA director if an investigation will exceed 30 days (or the specified period), and must provide specific reasons for the delay.
 - k) With the OPA director's approval, the investigator may discontinue an investigation if it becomes apparent that further investigation is unwarranted.
 - l) If an investigation is discontinued, the investigator must close out the file in the investigation and discipline tracking system, and notify the appointing authority and RHRD/AHRD.
 - m) If the complaint reports misconduct involving offender association/boundary issues, use of force, assault, significant time theft, or other misconduct which has the likelihood of criminal implications, the OPA investigator must communicate and work with facility OSI.
 - n) When an OPA investigation uncovers criminal implications, the investigator must immediately discuss the newly discovered evidence with the OPA director.
 - (1) If the inquiry reveals any conduct that may violate criminal law, the complaint must be referred to the office of special investigations (OSI).
 - (2) The OPA and OSI directors/designees must determine whether the investigation must continue as planned, be transferred to OSI, or become a joint OPA/OSI investigation.
3. HR retains investigation documentation, in compliance with retention schedules.

E. Responsibilities of Staff

- 1. Staff must cooperate in the investigation process. Any staff person who does not cooperate with the investigation process or this policy may be subject to discipline, up to and including discharge.
- 2. Any individual making false allegations or statements during an investigation may be subject to discipline, up to and including discharge.
- 3. Staff must not discuss any aspect of an ongoing investigation with any person, other than their union representative or HR without prior approval from the OPA director and their appointing authority.
- 4. Staff must also follow mandated reporting procedures in any other policy (see Procedures B.3 and B4, above).

INTERNAL CONTROLS:

- A. Investigations are entered, tracked, and retained in the investigation and discipline tracking system.
- B. Investigation documentation is retained by Human Resources, in compliance with retention schedules.

ACA STANDARDS: None

REFERENCES: [Minn. Stat. Chap. 179A, Public Employment Labor Relations](#)
[Minn. Stat. § 241.026, Correctional Officers Discipline Procedures](#)
[Minn. Stat. Chap. 13, Minnesota Government Data Practices Act](#)
[Prison Rape Elimination Act \(PREA\), 28 C.F.R. §115 \(2012\)](#)
[Policy 107.005, "Office of Special Investigations"](#)
[Policy 107.105, "Allegations of Fugitive Apprehension Unit Employee Misconduct."](#)
[Policy 103.225 "Fact-Finding Process and Discipline Administration"](#)
[Policy 103.300, "Sexual Harassment Prohibited"](#)
[Policy 103.302, "Harassment and Discrimination Prohibited"](#)
[Policy 107.100, "Internal Affairs – Office of Special Investigations"](#)
[Policy 106.210, "Providing Access to and Protecting Government Data"](#)
[Policy 106.230, "Data Protection for Human Resource Systems and Personnel Files"](#)
[Policy 103.220, "Personal Code of Conduct of Employees"](#)
[Policy 202.057, "Sexual Abuse/Harassment Prevention, Reporting and Response"](#)
[Applicable collective bargaining agreements and plans](#)

REPLACES: Policy 103.218, "Office of Professional Accountability," 2/18/20.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: [OPA Director Review Acknowledgment Form](#) (103.218A)
Tennessee Advisory, "Not Subject of Investigation" (103.218B, [external link to HR iShare site](#))
Tennessee Advisory, "Subject of Fact-Finding" (103.218C, [external link to HR iShare site](#))
[Union Representation Waiver/Acceptance](#) (103.218D)
Potential Misconduct Report Form (103.302A, [external iShare link to OPA](#))

APPROVALS:

Deputy Commissioner, Reintegration and Restorative Services
Deputy Commissioner, Facility Safety and Security
Assistant Commissioner, Organizational and Regulatory Services
Assistant Commissioner, Research, Policy, and Organizational Performance
Assistant Commissioner, Health, Recovery, and Programming
Assistant Commissioner, Orientation, Assessment, and Program Planning