DEPARTMENT OF CORRECTIONS

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| **Policy Number:** | **107.105** |
| **Title:** | **Allegation of Fugitive Apprehension Unit Employee Misconduct** |
| **Effective Date:** | **1/7/20** |

**PURPOSE:** To provide written procedures for the investigation and resolution of allegations of misconduct against Peace Officers Standards and Training (POST) licensed employees of the department.

**APPLICABILITY:** Office of special investigations (OSI), fugitive apprehension unit members (FAUMs).

**DEFINITIONS:**

Complaint – a statement made in writing, by e-mail, inter-office mail, or external mail, alleging possible misconduct.

Complainant – an individual who alleges misconduct by a FAUM, or the OSI director who accepts believable facts relating to alleged misconduct by a FAUM from an anonymous person.

Discontinued – an investigation that is discontinued because a complainant fails to follow through with available information, or there is a lack of cooperation from the complainant or supporting persons which is essential to the investigation.

Exonerated – a particular allegation is true, but the actions do not constitute misconduct.

Formal statement – recorded or stenographic transcription of an employee's response to questions, which is taken as part of an internal investigation, and which may be evidence in a disciplinary proceeding against the employee being questioned.

Fugitive apprehension unit member (FAUM) – a sworn, POST-licensed peace officer employed by the Minnesota Department of Corrections (DOC) OSI unit.

Misconduct – any act that is in violation of legal statute, written law, departmental policy, or any conduct which by its nature reflects unfavorably on the department. Any act which can be the basis for a criminal, civil, or disciplinary action.

Not sustained – insufficient evidence to prove or disprove the particular allegation of misconduct.

Outside investigative agency – entity outside of the department of corrections that the director of OSI deems appropriate to conduct an investigation should a conflict of interest arise.

Performance matter – specific issues or methods related to the provisions of police services by a FAUM that are not classified as misconduct due to the following factors:

1. The inquiry relates to minor rule violations;
2. The inquiry is likely to be resolved by training and counseling, even if the alleged facts are true;
3. There is no known pattern of similar conduct by the employee; and
4. There is no evidence of bad faith or intent to do wrong.

5. Issues such as attitude, demeanor, courtesy, tardiness, and attendance may frequently be classified in this category.

Policy deficiency – misconduct results in whole or in part from adherence to an inadequate policy.

Supervisory deficiency – misconduct was directed by or tolerated by a direct supervisor.

Sustained – particular allegation of misconduct is supported by the evidence.

Training deficiency – misconduct stems in whole or in part from a deficiency in training.

Unfounded – particular allegation of misconduct is false.

**PROCEDURES:**

A. Reporting of FAUM misconduct

1. The OSI assistant director – investigations or designee handles complaints alleging misconduct.

2. Any director, supervisor, manager, or designee of the department who receives a complaint indicating a FAUM has engaged in misconduct or who witnesses FAUM misconduct must promptly forward the information to the OSI assistant director – investigations.

3. The OSI assistant director – investigations or designee receiving a complaint must elicit basic identifying information and details sufficient to determine whether the complaint is about misconduct, or a performance concern.

4. The OSI assistant director – investigations or designee requests the complainant submit a completed DOC Fugitive Apprehension Unit Allegation of Misconduct form (attached) via mail or e-mail.

5. If the director of OSI deems that a conflict of interest exists, the director may reach out to an outside investigative agency to conduct the investigation.

B. Performance concern resolution

If it is apparent the complaint involves a performance concern, the OSI assistant director – investigations must attempt to immediately resolve the concern in a manner consistent with the appropriate work or collective bargaining agreement; and as follows:

1. The OSI assistant director – investigations or designee discusses the incident with the officer(s) involved in the incident.

2. The focus of the discussion with the FAUM(s) involved must be to discuss alternatives that might have led to a more positive outcome.

3. The OSI assistant director – investigations or designee submits a report to the director of OSI outlining the following information:
   a) Name of the FAUM;
   b) Details of the incident;
   c) Action taken; and
   d) Recommendations for further counseling or training.

e) Note: there is no intent to make specific findings on any such incident, but to encourage meaningful discussion between the OSI assistant director – investigations and the FAUM on how a situation might be handled differently, if appropriate.

4. The OSI assistant director – investigations or designee places the report in the FAUM's supervisory file for a pre-determined period indicating, if no further similar training or counseling issues occur as of that date, the report is removed or destroyed.

5. The OSI assistant director – investigations or designee conducts additional counseling or instruction with the FAUM or refers the FAUM to any other formal training that might be appropriate.

C. Complaint investigation

1. If the OSI assistant director – investigations or designee determines the documented complaint is classified as misconduct, the OSI deputy director – investigations or designee
   a) Notifies the director of OSI;
   b) Receives a case number for the complaint; and
   c) Notifies the complainant that an investigation will be conducted and by whom.

2. The OSI assistant director – investigations or designee must not meet with a FAUM to question the FAUM during an investigation that may lead to discipline without first offering the employee an opportunity for a union representative.
   a) Any FAUM waiving the right to such representation must do so in writing.
   b) A copy of the waiver must be forwarded to the employee upon request. The employee may then share the waiver with any appropriate party if the employee chooses to do so.

3. The OSI assistant director – investigations or designee prepares an investigative plan including witnesses to be interviewed, and information and evidence to be sought and considered during the investigation. This planning process includes consideration of the appropriate warnings and *Garrity* advisories to be used during the investigation.

4. The OSI assistant director – investigations or designee requests copies of all prepared documents relating to the incident and the subject of the complaint.

5. At least 48 hours advance notice of a formal statement must be given to an officer whose formal statement must be taken, and in all cases a summary of the allegations must be provided to a FAUM prior to taking a formal statement.
   a) The summary of allegations includes the date, time, and place of the alleged misconduct.
   b) Based on the information available at the time, this summary must also include the laws, rules, policies, or procedures allegedly violated.

6. The OSI assistant director – investigations or designee must immediately advise the director of OSI if any additional misconduct is discovered during the investigation.

7. The OSI assistant director – investigations or designee must interview known witnesses or persons with information relevant to the complaint and investigation.

8. The OSI assistant director – investigations or designee obtains and secures all evidence.

9. The OSI assistant director – investigations or designee ensures that all provisions comply with the Peace Officer Discipline Procedures Act (Minn. Stat. § 626.89) including:
   a) Ensure that the complaint has been signed and the FAUM has been provided a summary of allegations before taking any formal statement.
   b) Attempt to conduct a formal interview during an officer's regular duty hours at a department facility unless another location is mutually agreed upon.
   c) Reasonable rest periods are provided and the duration of the interview must be a reasonable time period.
   d) A FAUM may have an attorney or union representative present during a formal interview, as provided for in the appropriate work or collective bargaining agreements. When the presence of an attorney or union representative is requested, no formal statement may be taken unless the FAUM has had a reasonable opportunity to obtain a representative.
   e) The entire session at which a formal statement is taken must be tape recorded. Upon written request, the FAUM is provided the transcript or copy of the tape recording within a reasonable time.
   f) FAUMs are not expected to produce personal financial records, unless required by a valid search warrant or subpoena.
   g) FAUMs' photographs may be displayed to a witness as part of an investigation, but may not be otherwise released to the public without the FAUM's written permission.

10. The OSI assistant director – investigations or designee, when questioning FAUMs during investigations, must relate the questions to:
    a) The matters or subjects being investigated;
    b) The FAUMs' performance of official duties or fitness for office; or
    c) Another of the FAUM's official duties or fitness for office.

11. The OSI assistant director – investigations or designee must order FAUMs to answer all questions relevant to the investigation through the administration of an appropriate *Garrity* warning.

12. No FAUM is asked, required, or encouraged to submit to a polygraph investigation.

D. <u>Investigation integrity</u>

1. FAUMs must not impede or interfere with an investigation, solicit information regarding an investigation, or discuss any aspects of a complaint or investigation with other FAUMs, employees, or individuals.

2. FAUMs must not destroy any evidence, documents, logs, photos, recordings, or other information or property that may relate to the investigation.

3. Until the completion of the investigation, all FAUMs involved in an investigation either as a subject or a witness, must not discuss the details of the incident, investigation, statement, complaint, or allegation with anyone other than the OSI assistant director – investigations, their attorney, or union representative.

E. <u>Complaint report preparation</u>

1. The OSI assistant director – investigations or designee prepares an investigative report which includes:
   a) A summary of the allegations against the FAUM identifying the rules, procedures, policies, statutes, or constitutional provisions likely violated if the allegations are true;
   b) A written evaluation, based on an analysis of the evidence, on whether each allegation is supported by evidence;
   c) Any mitigating circumstances relevant to the complaint, allegation, or investigation; and
   d) Any statements, reports, documents, photos, or other matters of evidentiary nature.

2. The OSI assistant director – investigations or designee presents the completed report to the director of OSI for review and approval.

F. Complaint resolution

1. Upon completing the investigation, the director of OSI makes one of the following findings:
   a) Sustained;
   b) Not sustained;
   c) Exonerated;
   d) Unfounded; or
   e) Mitigating circumstances:
      (1) Training deficiency;
      (2) Policy deficiency; and/or
      (3) Supervisory deficiency.

2. If a complaint is sustained, the director of OSI, in consultation with the department human resource management unit, may make one or more of these recommendations or sanctions:
   a) Training or counseling;
   b) Oral reprimand;
   c) Written reprimand;
   d) Suspension;
   e) Demotion; and/or
   f) Discharge.

3. Prior to imposing a disciplinary action involving suspension without pay, demotion, or discharge, the FAUM must:
   a) Be provided with a summary of the information, findings from the investigation, and disciplinary action considered, excluding evidence that identifies confidential sources; and
   b) Have an opportunity to respond to the evidence and appropriateness of any disciplinary action being considered.

4. If imposed, disciplinary action is determined according to the appropriate work or collective bargaining agreements.
   a) The FAUM's entire work record, prior findings, determinations of misconduct, other aggravating factors, and any mitigating factors may be considered in determining level or extent of discipline.

b) No disciplinary letter or reprimand may be placed in a FAUM's personnel or supervisory record unless the FAUM has been given a copy of the letter or reprimand.

G. Disciplinary action appeal

A FAUM who is the subject of disciplinary action may appeal the action as provided by the work or collective bargaining agreements, plans, policies, or statutory provisions governing the FAUM's employment.

H. Post-investigation notification

1. The FAUM alleged to have engaged in misconduct receives notification of the adjudication of a complaint by the director of OSI.

2. All complainants receive notification when the review or investigation of a complaint has been completed. The content of these notifications are governed and restricted by the Minnesota Government Data Practices Act (Minn. Stat. §13.43).

3. No disciplinary action
   a) In cases where the complaint does not result in disciplinary action, the complainant is provided with written notification that the director of OSI's review of the complaint has been completed and no disciplinary action has been taken.
   b) The complainant is not provided with the reasons or circumstances for the determination unless an appropriate informed consent or a court order allowing disclosure has been obtained.

4. Disciplinary action imposed
   a) When the complaint has resulted in disciplinary action, the complainant must be provided with written notification of those allegations sustained and that action has been imposed.
   b) If the complainant requests additional information, it may be provided only within the limits of the Minnesota Government Data Practices Act.
   c) No notification regarding imposing disciplinary action may be made until the disciplinary action has reached a "final disposition" within the meaning of Minn. Stat. §13.43.

I. Records and retention

1. Performance concern data
   a) According to departmental records retention requirements, and consistent with the collective bargaining unit, performance concern data is stored separately from investigative files and personnel records.
   b) Performance concern data is maintained in its existing form for three years, after which time the data is periodically reduced to summary data in a form in which the individual data subjects are not identifiable.

2. Misconduct
   a) Complaints that involve allegations of misconduct must be logged immediately by the OSI assistant director – investigations or designee.
   b) The log includes date, date of the alleged misconduct, the FAUM who is the subject of the complaint, the nature of the alleged misconduct, the complainant, and the disposition.

3. Confidential document control
Regardless of the outcome related to the complaint/investigation, the OSI assistant director – investigations files all necessary paperwork and evidence, including confidential incident reports, in a secured file area maintained by the OSI assistant director – investigations.

4. Minnesota Peace Officers Standards and Training (POST) Board
   a) The Minnesota POST Board may request data related to allegations of FAUM misconduct and the resulting decisions of the chief law enforcement officer of the agency.
   b) Any reports submitted to the Minnesota POST Board must be retained by the director of OSI.

5. Notices or information about disciplinary actions may be included in personnel files as provided by work or collective bargaining agreements and as provided by the Minnesota Government Data Practices Act.

6. Records of misconduct investigations of which a FAUM is a subject must be retained for seven years following the year in which the FAUM's employment with the OSI has ceased.

7 Records must be reviewed semi-annually for the removal of records according to the records retention schedule.

**INTERNAL CONTROLS:**

A. Confidential incident reports of misconduct and any resulting investigatory documents are retained by the OSI assistant director – investigations according to retention schedules.

B. Reports submitted to the Minnesota POST Board (when requested by the Minnesota POST Board) are retained by the director of OSI.

**ACA STANDARDS:** None

**REFERENCES:** Minn. Stat. Chapter 13 (Minnesota Government Data Practices Act)
Minn. Stat. §§ 13.04, "Rights of Subjects of Data;" 13.39; 13.43, "Personnel Data;" 241.025, "Fugitive Apprehension Unit;" and § 626.89, "Peace Officer Discipline Procedures Act" ("Peace Officer Bill of Rights")
Minn. Rules parts 6700.2200, 6700.2500 and Chapter 3900
*Garrity v. New Jersey*, 385 U.S. 93 (1967)
Minnesota Management and Budget collective bargaining agreements

**REPLACES:** Policy 107.105, "Allegation of Fugitive Apprehension Unit Employee Misconduct," 11/19/18.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

**ATTACHMENTS:** Fugitive Apprehension Unit Allegation of Misconduct form (107.105A)

**APPROVALS:**

Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations Support
Assistant Commissioner, Facility Services