



DUTY TO REPORT ABUSE, EXCESSIVE FORCE OR MISCONDUCT BY LAW ENFORCEMENT PERSONNEL

General Order Number: 50

Effective Date: 04/09/2024

POLICY:

I. PURPOSE

Pursuant to 550 CMR 6.07; M.G.L c. 6E §15 (c), all "[l]aw enforcement agencies *shall develop and implement a policy and procedure* for law enforcement personnel, including but not limited to law enforcement officers, to *report abuse by other law enforcement personnel*, including but not limited to law enforcement officers, *without fear of retaliation or actual retaliation.* "

In the interest of maintaining a harmonious workplace environment, it shall be both the purpose and intention of this policy to complement the high level of departmental integrity, transparency and accountability that exists. Further, such policy shall serve to continue to avoid any potential hostile or harassing treatment of fellow employees/officers by requiring the mandatory reporting of all serious infractions of departmental policy, procedure, or rules as well as the violation of any local, state or federal laws allegedly committed by any law enforcement officer and by prohibiting any type of retaliatory conduct or action against any employees who make such reports pertaining to allegations of misconduct or illegal activity.

II. POLICY

The Brookline Police Department strictly prohibits any type of retaliatory conduct against or interference with any employee who either reports, assists, or seeks to report breaches of department policy, procedures, or rules and/or violations of local, state or federal law allegedly committed by a law enforcement officer. In addition, such employees who report abuse, misconduct, excessive force, or violations of the law, allegedly committed by other law enforcement personnel, shall do so without fear of retaliation or actual retaliation.

III. DEFINITIONS

Affirmative Duty: The personal responsibility and obligation of an employee to report wrongdoing or prohibited conduct - rather than to provide such information only when requested to do so.

False Report: A report that is not made in good faith and is based on information that is known or reasonably likely to be inaccurate; intentionally or negligently ignores

exculpatory or mitigating information; or is made with the purpose of harassing or wrongly incriminating another employee.

Good Faith Report: A report that provides allegations concerning an employee who is reasonably believed to have purposely committed a serious violation of departmental policy, procedures, rules, or laws.

Public Disclosures: Statements made to the media or information entered in any forum that is available to the public-such as social media websites-that provides information that is critical of this department, its personnel, or both.

Retaliatory Conduct: Conduct or action designed to serve as retribution against an employee who, in good faith, has reported or otherwise provided information regarding misconduct against another employee.

- In the context of this policy, retaliatory conduct includes any deliberate, purposeful actions or failures to act directed against employees that cause or that could reasonably be expected to cause physical harm, property damage, significant emotional stress, or other serious negative effect on another employee; designed to ridicule or embarrass; or could seriously impair the efficiency, safety, or effectiveness of that employee, this department, or both.
- Such conduct may take many forms, including but not limited to bullying; persistent offensive comments, threats, or intimidation; false accusations; isolation; ostracism; posting of secure or personal information on the Internet; or acts that malign or disparage an individual's reputation.

Serious Acts of Misconduct: A deliberate act or failure to act that could reasonably form the basis for significant disciplinary action against an employee. Such disciplinary action is usually in the form of suspension, reduction in rank, reassignment/transfer, termination or other separation from employment.

IV. DUTY TO: INTERVENE / REPORT / WRITTEN REPORT

(a) An officer present and observing another officer using or attempting to use physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the observed officer's use of unnecessary or unreasonable force, regardless of the rank of the officer so observed, unless intervening would result in imminent harm to the officer or another identifiable individual¹.

(b) An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based

¹ M.G.L. Chapter 6E Section 15 (a); 550 CMR 6.06
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on the totality of the circumstances **shall report the incident to an appropriate supervisor** as soon as reasonably possible but not later than the end of the officer's shift. The officer **shall prepare a detailed written statement describing the incident** consistent with uniform protocols. The officer's written statement shall be included in the supervisor's report.²

(c) A law enforcement agency shall develop and implement a policy and procedure for law enforcement personnel to report abuse by other law enforcement personnel without fear of retaliation or actual retaliation.³

(d) The failure of a law enforcement officer to intervene as set forth herein may subject the officer to disciplinary action, civil liability and/or criminal prosecution. The law enforcement officer may have their certification revoked or be ordered to be retrained after a hearing by the POST Commission for failing to intervene.

V. PROCEDURES

A. Duty to Report Misconduct:

1. All employees of this department have an affirmative duty to report all serious acts of misconduct both verbally to a Supervisor and in writing. Failure to report shall result in corrective or disciplinary action.
2. Serious acts of misconduct should be reported to the complaining employee's immediate supervisor. If the supervisor is suspected of involvement in the misconduct, the report should be made to the next higher-ranking employee in the department's chain of command.
3. In situations involving highly egregious offenses or illegality that may have serious or broader implications, a complaint may be made directly to the chief executive officer. Examples include, but are not limited to, broad-based corruption, conspiracy among employees, or offenses involving or including high-ranking officers or members of government.
4. All employees have an affirmative duty to cooperate fully during the investigation of any allegation of employee misconduct whether conducted by this department or another authorized authority.

B. Retaliatory Conduct:

1. Retaliatory actions against employees who make good faith complaints or disclosures of misconduct against another employee are strictly prohibited. Such acts will form the basis for charges of misconduct, resulting in serious

² M.G.L. Chapter 6E Section 15 (b)

³ M.G.L. Chapter 6E Section 15 (c); 550 CMR 6.06
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disciplinary action. Any complaint of retaliatory conduct shall be submitted to the complaining employee's supervisor. If the supervisor is the subject of, or is involved in the complaint, an employee shall submit the complaint to the next higher-ranking employee in the chain of command. Such complaints shall thereafter be submitted to the Office of Professional Responsibility.

2. Additionally, any employees who has been subjected to any form of retaliatory conduct by fellow employees are strongly encouraged to seek assistance through peer counseling or other services, as available from this department's employee assistance program or additional services offered by the Town of Brookline's Human Resources Department.

3. The Department prohibits retaliation against any employee who observes and reports an instance of using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances to include the discharge of the employee, any change to their official rank, grade or compensation, deny a promotion or take any other adverse action against an officer or employee or threaten to take any such action for providing information to the agency, the POST commission or testifying in any agency or POST commission proceeding or at any court proceeding.

C. Public Disclosures and Legal Remedies:

1. This policy does not limit an employee's right to make public disclosures that are deemed to be of public concern and are thus protected by the First Amendment. Please remember that protection of speech regarding employment has certain limitations, so employees are encouraged to consult with the Brookline Police Union Legal Counsel and/or the Chief of Police on work-related speech and dissemination of information prior to making such public disclosures.
2. This policy in no way limits the right of employees to file complaints or grievances, both within or outside governmental authorities or to initiate appropriate legal action. Individuals taking such actions are afforded the same protections against retaliatory conduct as other employees.

D. Prevention of Misconduct:

1. Prevention of serious employee misconduct and promotion of a principled and effective work environment free of harassment and hostility requires that all employees abide by this policy.
2. First-line supervisors bear an important responsibility to ensure that all employees under their supervision fully understand the importance of adherence to all departmental policies, procedures, and rules and that they understand the department's commitment to ensuring employee compliance with the provisions

of Chapter 253 of the Acts of 2020 (e.g., Police Reform Legislation). First-line supervisors shall also monitor their officers and provide any support to those who are directly impacted by any such potential retaliatory conduct.

E. Filing a False Report:

1. Filing a false report as described in the above definition- is a report that is not made in good faith and is based on information that is known or reasonably likely to be inaccurate; intentionally or negligently ignores exculpatory or mitigating information; or is made with the purpose of harassing or wrongly incriminating another employee. Any employee who files a false report will be subject to disciplinary action by the Chief of Police or their designee.

F. Training:

All Officers will receive pre-service training on the duty to intervene. Pre-service training refers to initial training / entry level training upon hire. All officers will receive annual refresher training on the duty to intervene.