



# Colorado Springs Police Department Standard Operating Procedure

## DL-600-10 IA Findings Notifications

### Section 600 – Complaints & Internal Investigations

Effective Date: 10/19/2023

Supersedes Date: 8/8/2022

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#### **.01 Purpose**

The purpose of this directive is to outline reporting requirements for certain misconduct allegations and substantiated policy violation findings, in accordance with applicable Colorado statutes, municipal ordinances, and local jurisdictional requirements.

#### **.02 Cross-Reference**

[GO 121 Fair and Impartial Policing](#)

[GO 400 Employee Conduct \(Sworn and Civilian\)](#)

[GO 500 Use of Force](#)

[GO 502 Use of Sedatives Prohibited](#)

[GO 504 Body Worn Camera](#)

[GO 510 Reportable Force](#)

[GO 600 Complaints and Internal Investigations](#)

#### **.03 Definitions**

*Civilly Liable:* A finding utilized in accordance with CRS §24-31-904, meaning: a final judgment of civil liability entered against a Peace Officer Standards & Training (POST) certificate holder, or any finding of fact by a judge or jury that the certificate holder is civilly liable, in a court of competent jurisdiction, for a revocable event occurring after July 6, 2021.

*Clear and Convincing Evidence:* An evidentiary standard used in a burden of proof analysis in which the evidence is highly and substantially more likely to be true than untrue.

*Credibility Disclosure Notification:* A notification made by Internal Affairs (IA) to the Fourth Judicial District Attorney's Office (DAO) regarding exculpatory or impeaching information that may impact the credibility of a peace officer, in accordance with CRS § 16-2.5-502 and in compliance with the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963).

*Dishonesty or Untruthfulness:* Conduct that involves a knowing misrepresentation, including but not limited to knowingly or intentionally untruthful statements, knowing omissions of material information, and knowingly providing or withholding information with an intent to deceive or mislead.

*Discovery Notification List:* A list maintained by the DAO containing of the names of all employees for whom there is exculpatory, **impeaching**, or bias information which is required by law and Colorado Rules of Criminal Procedure Rule 16 to be provided to defense counsel or other entities.

## **.04 Procedure**

### **Credibility Disclosure Notifications to the DAO**

To facilitate effective communication, the Internal Affairs Section lieutenant will select an investigator within Internal Affairs as the point of contact for notifying the DAO of credibility disclosure notifications and other potential discovery notification issues.

All sworn personnel assigned to the Internal Affairs Section will be knowledgeable of and able to complete the disclosure notification process outlined in this policy.

Internal Affairs will notify the DAO, in writing, of any sustained finding of any sworn officer who on or after January 1, 2022, has:

- Knowingly made an untruthful statement concerning a material fact, knowingly omitted a material fact in an official criminal justice record, or knowingly omitted a material fact while testifying under oath or during an internal affairs investigation or administrative investigation and disciplinary process; or
- Demonstrated a bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class; or
- Tampered with or fabricated evidence; or
- Been convicted of any crime involving dishonesty, been charged with any felony or any crime involving dishonesty; or
- Sustained violations of any CSPD policy regarding dishonesty or untruthfulness.

This notification will be made promptly, and no longer than three (3) business days after the sustained finding is provided to IA by the chain of command. The notification shall be made via the CSPD Peace Officer Credibility Disclosure Notification form maintained by Internal Affairs. A copy of the notification will also be provided to the employee via e-mail.

### *Additional DA Notifications*

In addition to the credibility disclosure notification, IA will also notify the DAO within three (3) business days, when the department receives notification that:

- A peace officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged; and
- The peace officer is under a concurrent criminal or administrative investigation regarding an allegation related to the peace officer's involvement in the defendant's pending criminal case; and
- The result of the concurrent criminal or administrative investigation, if sustained, would require disclosure.

For disclosures made pursuant to this section where the internal investigation determines no reportable criminal or administrative violations have occurred, IA will promptly notify the DAO within three (3) business days of the outcome of the criminal investigation and/or administrative insight process being completed and sent to IA by the chain of command. The notification shall be made via the CSPD Peace Officer Credibility Disclosure Notification form maintained by Internal Affairs and will specifically request removal of the credibility disclosure notification from DAO records. A copy of the notification will also be provided to the employee via e-mail.

### **Brady Notifications (Sworn & Civilian)**

In addition to credibility disclosure notifications required by CRS §16-2.5-502, CSPD has an affirmative duty to report the following issues to the DAO in accordance with *Brady v. Maryland* as potential exculpatory or impeachment materials that may contain evidence material to the guilt or innocence or punishment of the defendant:

- If a department member is charged with any misdemeanor traffic offense, petty offense, or criminal misdemeanor not related to dishonesty which is under the jurisdiction of the El Paso or Teller County Courts; or
- If a department member is charged with a petty offense or misdemeanor offense not related to dishonesty in any jurisdiction; or
- If a department member is found by a judge to have testified falsely under oath; or
- If the department member has a sustained administrative finding for a criminal offense for which the POST board may deny certification (per CRS §24-31-305), or a sustained violation for the use of excessive force; or
- If a department member has a previous conviction for any misdemeanor traffic offense, petty offense, criminal misdemeanor, or felony offense; or
- If CSPD receives an allegation related to excessive or inappropriate use of force or the failure to intervene in an excessive or inappropriate use of force; or

- If CSPD receives a report of misconduct as described in this document that may otherwise be considered impeachment or exculpatory information pertaining to a specific pending case.

Internal Affairs will promptly notify the DAO, in writing, of any Brady Notification information within three (3) business days of CSPD becoming aware of the incident, situation, or information.

The notification will be made via the Credibility Disclosure Notification form, with a copy provided to the employee via e-mail. The Internal Affairs investigator tasked with making credibility notifications will be responsible for notifying the DAO and employee of this information and any placement on the Discovery Notification List.

### **Credibility Disclosure Notification Letter**

As previously outlined, credibility disclosure notifications will be made via the CSPD Peace Officer Credibility Disclosure Notification form maintained by Internal Affairs. At a minimum, the Credibility Disclosure Notification form will contain the following information:

- The sworn officer's name; and
- The name of the law enforcement agency that employs or employed the sworn officer at the time of the sustained findings or at the time of the criminal or administrative investigation; and
- The following statement:
  - "This notification is to inform you that there is information in the law enforcement agency's possession regarding [*name of peace officer*] that may affect the department member's credibility in court."
- The applicable statutory provision identifying the basis for the credibility disclosure notification, including whether the notification is based on an administrative sustained finding or whether the notification relates to an open criminal or administrative investigation or relates to other potential *Brady* material.

The completed credibility disclosure notification letters will be submitted in writing, either electronically or by mail, to the contacts designated by the DAO. A copy of the notification letter will be retained in the IA investigative file related to disclosure and provided to the affected employee via e-mail.

### ***Credibility Disclosure Notification Removal***

If the department determines, through its administrative process, that the criminal or administrative allegations are not sustained (e.g., unfounded, exonerated, not sustained), Internal Affairs will promptly notify the DAO, in writing, of the investigative findings, no later than three (3) business

days after obtaining the completed investigation from the chain of command. The notification will be made via the Credibility Disclosure Notification form. In making such a notification, IA will request the DAO remove the Credibility Disclosure Notification Letter from its records. The involved peace officer will receive a copy of the removal request from IA, and a copy will be placed in the related investigative file.

The DAO will remove credibility disclosure notification records from their records under the following circumstances:

- After submission of an initial IA disclosure notification of an open criminal or administrative investigation (see *Additional DA Notifications* above), and a subsequent written notification from CSPD to the DAO office that allegations were not sustained and a request the notification be removed from DAO records; or
- When the DAO makes an independent determination, based upon a review of the underlying records (if granted by CSPD, the sworn officer, or by court order) that removal is appropriate or lawful.

## **Notifications to POST**

In addition to the notifications outlined above, CSPD has a statutory requirement to report certain allegations, findings, and/or convictions to the Colorado Peace Officer Standards & Training (POST) board. These notifications will be made within three (3) business days of Internal Affairs being notified of the reportable information. POST will utilize these notifications for their administrative processes to determine whether a particular peace officer's certification is to be suspended or revoked, in accordance with statute requirements.

The IA Lieutenant is responsible for ensuring completed POST notification forms are provided (digital or otherwise) to the involved officer's commander, each deputy chief, the chief of police, and the POST board. All POST notifications will be signed by the chief or designee and notarized prior to submission. A copy will be retained in the IA investigative file related to disclosure.

The following notifications will be made to POST by Internal Affairs:

### *Disqualifying Incident Notifications*

CSPD is required to notify POST on actions by a peace officer that may impact the officer's certification. These actions include:

- Disqualifying Criminal History
- Findings of Untruthfulness
- Unlawful Use of Physical Force, or Failure to Intervene
- Unlawful Use of Body Worn / Dash Camera

- Use or Direction or Administration of Ketamine

#### *Notification of Disqualifying Criminal Incidents*

CSPD will notify POST, via the applicable form, of any applicable felony or misdemeanor conviction for certification revocation in accordance with the provisions of CRS § 24-31-305(2)(a). This notification will also include sentencing information in accordance with the statute.

#### *Notification of Finding of Untruthfulness*

CSPD will notify POST, via the applicable form, in accordance with CRS § 24-31-305(2.5), when a currently employed or previously employed (within six months of the department becoming aware) peace officer has:

- Knowingly made an untruthful statement pertaining to a material fact or omitted a material fact:
  - On an official criminal justice record; or
  - While testifying under oath; or
  - During an IA investigation; or
  - During an internal affairs investigation, administrative investigation, and/or disciplinary process.

Additionally, IA will include that:

- CSPD completed an administrative process in accordance with the policy in effect at the time of the untruthful statement or omission; and
- Through that administrative process, CSPD determined by a clear and convincing standard of evidence that the peace officer knowingly made an untruthful statement or knowingly omitted a material fact on an official criminal justice record, while testifying under oath, or during an internal affairs investigation or other comparable administrative investigation; and
- Certify the affected peace officer has elected not to exercise, or has exhausted, the internal disciplinary appeals rights provided by CSPD.

If a peace officer is the subject of an untruthfulness investigation and they resign or refuse to cooperate with the investigation, CSPD will complete the investigation with or without the peace officer's cooperation.

#### *Untruthfulness Standard of Proof Review*

Colorado POST standard of proof for a sustained finding of untruthfulness is *clear and convincing evidence*, which is higher than the department's typical standard of preponderance of the evidence.

As a result, the department will conduct an additional review prior to notifying POST to determine whether the evidence meets this higher standard, for cases on or after August 2, 2019, involving the peace officer knowingly making an untruthful statement or omission.

This additional review will take place after all appeals have been exhausted and the peace officer is notified of and receives a final sustained finding of untruthfulness.

The clear and convincing evidence standard review includes the officer's deputy chief submitting a recommendation to the chief of police, within fourteen (14) days from the date of the final investigative determination, regarding whether the sustained finding meets this higher evidence standard.

The chief of police will determine whether the higher burden of proof has been met. If the standard of proof has been met, the IA Lieutenant or designee will be responsible for notifying POST by utilizing the appropriate form to be signed by the chief and notarized. The original will be scanned and emailed in addition to being mailed to POST. A copy of the determination form will be included in the IA investigative file.

#### *Notification of Unlawful Use of Physical Force or Failure to Intervene*

CSPD will notify POST, via the applicable form, when a peace officer receives a court, administrative, or criminal finding related to use of force as outlined in CRS § 24-31-904. This includes when a peace officer:

- Is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use of physical force or a crime involving the failure to intervene in the use of unlawful force; or
- Is found civilly liable for the use of unlawful physical force, or is found civilly liable for failure to intervene in the use of unlawful force;
- Has a finding by an administrative law judge, hearing officer, or internal investigation that a peace officer used unlawful physical force, failed to intervene, or violated CRS § 18-1-707; or
- Has a finding by an administrative law judge, hearing officer, or internal investigation that a peace officer failed to intervene pursuant to CRS §18-8-805 (5); or
- Has a finding by an administrative law judge, hearing officer, or internal investigation that a peace officer violated CRS § 18-8-805 (1) or (2)(a)(I).

For purposes of this section, unlawful physical force or a violation of CRS § 18-1-707 require an employee be charged with a criminal offense related to use of force.

#### *Notification of Unlawful Use of BWC or Dash Camera*

Pursuant to CRS § 24-31-902(1)(a)(IV)(B), CSPD will notify POST via the applicable form, when any officer is found, by an internal investigation, a court, or an administrative law judge/hearing officer, to have intentionally failed to activate a body-worn camera or dash camera or tampered with any body-worn or dash camera with the intent to conceal unlawful or inappropriate actions or obstruct justice.

#### *Notification of Use or Direction or Administration of Ketamine*

Notifications of findings associated with a peace officer using, directing, or influencing another to administer ketamine and failure to intervene in the administration of ketamine will be provided to POST to determine the certification status in accordance with applicable statute requirements.

CSPD will make ketamine-related finding notifications through the Benchmark records management system.

#### *Notification of Criminal Investigation*

Inclusive of all felonies and certain misdemeanors pursuant to disqualifying incidents as listed in POST Rule 1, CSPD will notify POST via the applicable form of any investigation or the filing of criminal charges, as soon as practicable, so long as the notification is unlikely to disrupt or impede the investigation, in accordance with CRS § 24-31-303(1)(r)(I)(G).

### **Peace Officer Database**

Pursuant to CRS § 24-31-303(1)(r), CSPD will notify POST of any incidents that contain information related to any of the following actions, for potential inclusion into a public-facing database:

- Untruthfulness;
- Three or more failures to follow POST board training requirements within ten consecutive years;
- Any time a peace officer is the subject of a criminal investigation for a crime that could result in revocation or suspension of certification pursuant to CRS § 24-31-305 or CRS § 24-31-904, or the filing of criminal charges for such a crime;
- Any time a peace officer is terminated for cause, unless the termination is overturned or reversed by an appellate process;
- Any time a peace officer resigns or retires while under investigation by CSPD, a district attorney, or the attorney general, for an incident or crime that could result in the peace officer being entered into the public database;
- Any time a peace officer resigns or retires following an incident or crime that leads to the opening of an investigation within six (6) months following the peace officer's resignation



or retirement, and that incident or crime could result in the peace officer being entered into the public database;

- Actions outlined for credibility disclosure notification in CRS § 16-2.5-502(2)(c)(I).

## **Notifications File Retention**

### *District Attorney Notifications*

Any IA investigation pertaining to any department member being placed on the discovery notification list must be retained by CSPD IA indefinitely and not transferred in whole or in part to the DAO without approval from the Chief of Police.

### *POST Notifications*

In accordance with CRS § 24-31-305(2.5)(a)(III)(D), all materials related to IA investigations remain the property of CSPD. These materials are not subject to release by POST, except that they may be provided to the certificate holder's legal counsel as part of the discovery process.

## **Review of District Attorney Files**

On a quarterly basis, the lieutenant of Internal Affairs will meet with the appropriate representatives from the DAO to review the credibility disclosure, Brady, and other related notification lists in the possession of DAO. The lieutenant will ensure all lists are in compliance with CSPD records and bring any discrepancies or disagreements between CSPD and DAO to the commander of the Professional Standards Division.

Also on a quarterly basis, the Internal Affairs Unit will review the Colorado POST Peace Officer Database to confirm all CSPD employees entered into the database are correct. Confirmation emails from Colorado POST will be attached to the appropriate BlueTeam to confirm any requests to remove an employee was received and received appropriate action.

## **Release of Internal Affairs Files & Information**

It is common for CSPD, Internal Affairs, the City Attorney, and other related city and police department entities to receive records requests related to an employee's Internal Affairs records or specific internal investigations. All such requests will be reviewed by the City Attorney prior to release. If the City Attorney determines the files or information will be released, the Internal Affairs lieutenant will typically notify the affected employee and their commander via e-mail but may, if appropriate, make the notifications in person or via telephone.

## **Attachments**

[DA Credibility Disclosure Notification](#)  
[POST Notification Forms](#)