



DEPARTMENTAL GENERAL ORDER

M-04.1: Criminal Investigation of Department Members and Outside Sworn Law Enforcement Personnel

Effective Date: 30 NOV 23

Coordinator: Criminal Investigation Division

The purpose of this policy is to mandate and set guidelines and requirements for reporting criminal misconduct involving Department members and outside sworn law enforcement personnel as well as conducting and coordinating criminal investigations involving members of the Oakland Police Department.

COMMAND INTENT

It is the policy of the Oakland Police Department to investigate allegations of criminal activity involving members of the Department and sworn law enforcement personnel employed by outside agencies. For criminal misconduct that occurred in the City of Oakland, the Oakland Police Department shall investigate and prepare criminal cases for appropriate clearance or submission to a prosecutor. Additionally, the Department shall ensure that personnel are held accountable through an investigative process that is fair, timely, and thorough.

A. DEFINITIONS

A - 1. Member

As provided in Policy 103, a member is any person employed or appointed by the Oakland Police Department, including full-time officers, reserve officers, professional staff, and volunteers.

A - 2. Reasonable Suspicion

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

B. NOTIFICATION REQUIREMENTS

B - 1. Notification Requirements of All Members

Notifications shall be made whether on-duty or off-duty. When any member other than the Chief of Police¹ has reasonable suspicion that any member of the Department is involved in a felony or misdemeanor, they shall, as soon as practical, and in all cases within 24 hours, make the following notifications via phone or email as specified in the following sections.

¹ The Chief of Police may become aware of criminal misconduct committed by a member of the Oakland Police Department executive team (which includes the BOI Deputy Chief and IAD Commander), CID Commander, or other Department member that may require alternate avenues of reporting and/or investigation (e.g., directly to the District Attorney) to ensure the integrity of the investigation. The timeline requirement, however, still applies.

B-2. Members Assigned to the Internal Affairs Division

Members assigned to the Internal Affairs Division (IAD) shall contact the IAD Commander. If the IAD Commander cannot be reached, the member shall contact an IAD Lieutenant.

B-3. Members Assigned to the Criminal Investigation Division

Members assigned to Criminal Investigation Division (CID) shall contact the CID Commander. If the CID Commander cannot be reached, the member shall contact the Bureau of Investigations (BOI) Deputy Chief.

B-4. All Other Members

All other members shall contact an on-duty Watch Commander. If an on-duty Watch Commander cannot be reached by phone, the Communications Division Supervisor shall be called at 510-777-8801 to request a return call from an on-duty Watch Commander.

Exemption: If notifications to the CID and IAD Commanders have already been completed by the member (i.e., Lieutenant, Captain, and/or Deputy Chief made the notification), the member is exempted from the Watch Commander notification requirement.

B-5. Misconduct Allegations Not Rising to the Level of Criminal Misconduct

Allegations not rising to the level of reasonable suspicion of criminal misconduct shall be reported to IAD and administratively investigated in accordance with Departmental General Order (DGO) M-03.

C. INITIAL RESPONSIBILITIES OF NOTIFIED PERSONNEL

C - 1. Watch Commander Responsibilities

Upon awareness that any member of the Department is allegedly involved in criminal misconduct, the Watch Commander shall attempt to determine the identity of the member and the jurisdiction of the alleged criminal misconduct. The Watch Commander shall provide such information to the CID Commander:

1. Determine the identity of the member;
2. Obtain details of the alleged criminal misconduct;
 - Do not interview the subject or witness members.
 - Avoid engaging in conversations with subject members that could pose potential violations of their protected rights.

- Do not take overt action that could interfere with, or undermine the integrity of, the investigation.
- 3. Determine jurisdiction of the alleged criminal misconduct;
- 4. Contact Communications Division to make confidential and non-specific entry onto the IAD Daily Incident Log which includes obtaining an IAD Computer Aided Dispatch (CAD) incident number;
- 5. Provide all obtained information via phone and email to the CID and IAD Commander;
- 6. Maintain a strict confidentiality at all times.²

C - 2. IAD Commander and Lieutenant Responsibilities

Upon awareness that any member of the Department is allegedly involved in criminal misconduct, the IAD Commander or IAD Lieutenant shall attempt to determine the identity of the member and the jurisdiction of the alleged criminal misconduct. The IAD Commander or IAD Lieutenant shall ensure the information is shared with the CID Commander and shall maintain strict confidentiality at all times.

- 1. Ensure a preliminary inquiry is initiated regardless of whether the criminal conduct occurred within Oakland;
- 2. Determine the necessity for an investigative callout;
- 3. Confer with the Bureau of Risk Management (BRM) Deputy Chief; and
- 4. Confer with CID Commander for all criminal matters both within the City of Oakland and outside jurisdictions.

C - 3. CID Commander Responsibilities³

Upon awareness that any member of the Department is allegedly involved in criminal misconduct, the CID Commander shall immediately:

- 1. Determine if the alleged criminal misconduct occurred within the City of Oakland;
- 2. Assign an investigator and direct a preliminary investigation if the alleged criminal misconduct occurred within the City of Oakland;
- 3. Determine the necessity for an investigative callout;
- 4. Confer with the Bureau of Investigations (BOI) Deputy Chief;
- 5. Contact the appropriate jurisdiction if the alleged criminal misconduct occurred outside the City of Oakland; and

² The Watch Commander may become aware of criminal misconduct committed by a member of the Oakland Police Department executive team, CID Commander, or other Department member that may require alternate avenues of reporting and/or investigation to ensure the integrity of the investigation. The Watch Commander should remain conscientious about not notifying a known involved member in the alleged criminal misconduct.

³ Additional detailed requirements for CID Commander responsibilities are codified in CID P&P 19-01.

6. Contact the Internal Affairs Division (IAD) Commander.

D. RESPONSIBILITIES OF THE BOI DEPUTY CHIEF

D - 1. Initial Responsibilities

Within 24 hours of being briefed on the alleged criminal misconduct by a member, the BOI Deputy Chief or designee shall prepare and forward a summary of the allegation(s) via email⁴ to the Chief of Police, Assistant Chief of Police, Chief of Inspectors of the Alameda County District Attorney's Office, Office of the City Attorney, Chair of the Police Commission, Police Commission Inspector General, Executive Director of the Community Police Review Agency (CPRA), BRM Deputy Chief and IAD Commander. If the alleged criminal misconduct occurred in another jurisdiction, the BOI Deputy Chief or designee shall additionally contact the appropriate law enforcement agency and/or district attorney's office that has jurisdiction for that agency.

Notifications from the BOI Deputy Chief should include the following information, when known:

1. The date(s) of the alleged criminal activity;
2. The date of arrest, if any;
3. Whether the alleged criminal activity occurred in Oakland or in another jurisdiction;
4. The criminal investigating or reporting agency, if other than OPD;
5. A brief description of the criminal activity and/or statute(s) allegedly violated (e.g., DUI, VC 23152); and
6. The rank of the member (e.g., "officer" or "lieutenant").

Such notifications shall be made whether or not the alleged misconduct occurred during the course and scope of employment. e.g., On March 1, 2023, OPD was notified that an OPD Lieutenant was arrested on February 28, 2023, by ACSO for auto burglary, 459 PC in Hayward that allegedly occurred on February 25, 2023.

D - 2. Post Preliminary Investigation Responsibilities

The BOI Deputy Chief shall review and evaluate the preliminary investigation, and if there is reasonable suspicion of criminal misconduct involving a felony or misdemeanor, take the additional following actions:

1. Ensure the incident is logged in the Tracking Sheet;
2. Confer with the Chief of Police;
3. Identify the best course of action, including whether another agency is to conduct the investigation; and

⁴ The email notification shall be documented in the Investigation Action Report (IAR) and Tracking Sheet. A copy of the email shall be uploaded and kept on the CID confidential server.

4. Evaluate each circumstance as a case-by-case basis to decide whether additional notifications are required. The initial notification may be sufficient.

D - 3. Criminal Investigation Responsibilities

If the Department is going to conduct the criminal investigation, the BOI Deputy Chief shall confer with the CID Commander to discuss the proposed investigative plan which may include, but is not limited to, the following determinations:

1. If there is probable cause for an arrest;
2. Whether to assign Department investigators to conduct a criminal investigation; and
3. The need for a joint criminal investigation with an outside agency.
4. Ensure the recusal process is followed per Bureau of Investigation Policy and Procedures 23-02.

If the Department is **not** going to conduct the criminal investigation, the BOI Deputy Chief shall direct the CID Commander to:

1. Make a notification to the appropriate law enforcement agency and/or district attorney's office that has jurisdiction for that agency of the circumstances surrounding the criminal activity unless the initial notification comes from another law enforcement agency with jurisdiction over the alleged criminal activity. Document this notification in the Tracking Sheet;
2. Forward supporting documentation and document this forwarding in the Tracking Sheet; and
3. Act as the liaison with the outside agencies.

D - 4. High Profile Case Updates

Officer-involved shootings, in-custody deaths, and any criminal investigation into a Department member is considered a high-profile case and updates shall be provided to the Assistant Chief and Chief of Police at least once a month, at a routinely scheduled meeting.

In cases including other allegations of on duty officer use of force or misconduct, a briefing is not required unless there is reasonable suspicion that such acts were committed and constitute a felony or misdemeanor. The Chief of Police can request regular high-profile updates on any case.

The meetings shall consist of a presentation of criminal investigation updates by the BOI Deputy Chief. If the BRM Deputy Chief will be presenting updates for IAD high profile cases at the same routinely scheduled monthly meeting, the BOI Deputy Chief and any other CID personnel will leave the meeting prior to the BRM Deputy Chief presenting updates for IAD high profile cases.

The BOI Deputy Chief or designee is responsible for providing verbal updates relevant to the progress of the criminal process to the Assistant Chief and Chief of Police. The BOI Deputy Chief will ensure that high profile case updates are updated on the Tracking Sheet. The CID Commander and BOI Deputy Chief shall ensure that any substantive directives are documented on the Investigative Action Report (IAR).

E. CID INTERNAL INVESTIGATIVE PROCEDURES

E - 1. CID Investigation Command

The CID Commander shall direct the criminal investigation.

E - 2. Fairness and Confidentiality of Investigations

Departmental investigators shall conduct the criminal investigation in a manner consistent with Department policy and procedures and ensure the confidentiality of all investigations.

E - 3. Separation of CID / IAD Investigations

The criminal investigation and administrative investigation are separate investigations. All evidence and products from the criminal investigations are available for use in the administrative IAD investigation. However, to protect members' rights, the criminal investigator shall not obtain or use information obtained by IAD.

E - 4. Updates on Investigation Progress

The investigator shall update the CID Commander on a bi-weekly basis with the progress of the investigation.

E - 5. Timeline for Investigations

Criminal investigations shall be completed within 90 days unless otherwise extended up to 30 days in writing by the BOI Deputy Chief. If an extension is approved, it shall be documented in the IAR and Tracking Sheet. There is no limit on the number of extensions.

E - 6. Closure of Investigations

The Chief of Police shall approve the disposition of any CID investigation of member criminal misconduct. The CID Commander shall ensure such approval is documented in the IAR and the Tracking Sheet.

E - 7. Notifications of Investigation Closures

The CID Commander shall provide email notification of the closure of the CID investigation to the Assistant Chief of Police, Chief of Police, BOI Deputy Chief, BRM Deputy Chief, Chief of Inspectors of the Alameda County District Attorney's Office, Office of the City Attorney, Chair of the Police Commission, Police Commission Inspector General, Executive Director of the Community Police Review Agency (CPRA), and IAD

Commander. This email notification shall be documented in the IAR and the Tracking Sheet.

F. ADDITIONAL OVERSIGHT AND REPORTING FOR CID INVESTIGATION

F - 1. CID Commander Oversight Responsibilities

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.

F - 2. Briefing of the BOI Deputy Chief

The CID Commander shall brief the BOI Deputy Chief regarding the status and progress of all investigations on a bi-weekly basis.

F - 3. Review of Investigations

The CID Commander and BOI Deputy Chief shall review the investigation before submission to the District Attorney's Office for charging consideration.

F - 4. Briefing of the Assistant Chief and Chief of Police

The BOI Deputy Chief shall notify the Assistant Chief of Police and the Chief of Police on the status and resolution of all investigations every 30 days.

F - 5. Maintenance of Secure Investigation Files

The Records Division Manager shall maintain secure files of completed investigations involving members of the Department. These files are stored in a secured location and are only accessible by the Records Division Manager.

G. CRIMINAL MISCONDUCT BY OUTSIDE SWORN LAW ENFORCEMENT PERSONNEL

G - 1. Notification Requirements of Members

When any member has reasonable suspicion that a sworn law enforcement officer employed by another agency is involved in a felony or misdemeanor, the member shall immediately notify an on-duty Watch Commander via phone and email unless the member possesses information that reasonably suggests that the law enforcement officer's agency is already aware of the criminal activity. If an on-duty Watch Commander cannot be reached by phone, the Communications Division Supervisor shall be called at 510-777-8801 to request a return call from an on-duty Watch Commander.

G - 2. Watch Commander Responsibilities

If the alleged criminal misconduct occurred within the City of Oakland, the Watch Commander shall:

1. Attempt to determine the identity of the outside sworn law enforcement officer, the details of the alleged criminal misconduct, and contact information for the reporting entity.

2. Ensure steps are taken by on-duty personnel to identify a crime scene and assess the immediate necessity to preserve it and related evidence.
3. Notify the CID Commander.

If the criminal misconduct occurred in another jurisdiction, the Watch Commander shall:

1. Attempt to determine the identity of the outside sworn law enforcement officer, the details of the alleged criminal misconduct, and contact information for the reporting entity.
2. Notify the law enforcement agency where the conduct occurred and the employing agency of the outside sworn law enforcement officer.
3. Notify the Oakland Police Department Chief of Police through the chain of command.

G - 3. CID Commander Responsibilities

If the criminal misconduct occurred within the City of Oakland, the CID Commander shall:

1. Direct, or designate a CID Section Commander (Lieutenant), to oversee a preliminary criminal investigation;
2. Determine the necessity for an investigative callout;
3. Confer with the Bureau of Investigations (BOI) Deputy Chief;
4. Notify the officer's employer of any ongoing investigation or arrest;
5. Within 24 hours, provide email notification of the CID investigation to the Assistant Chief of Police, Chief of Police, BOI Deputy Chief, Chief of Inspectors of the Alameda County District Attorney's Office, and Office of the City Attorney. This email notification shall be documented in the IAR and Tracking Sheet, and a copy of the email shall be kept on the CID confidential server.

By order of,


Darren Allison
Acting Chief of Police

Date Signed: 11/30/23