

Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the Olympia Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment, or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.1.1 DEFINITIONS

Complaint – A communication, verbal or written, conveying dissatisfaction with the performance or conduct of the Department or one or more of its members. Complaints are classified in one of the below categories:

- (a) **Inquiry** – A matter in which there is a question regarding conduct or performance. Such inquiries generally include clarification regarding policy, procedures, or the response to specific incidents handled by the Department.
- (b) **Personnel complaints** - Include any allegation of misconduct, or improper job performance against an employee of the police department that, if true, would constitute a violation of department policy or of applicable federal, state, or local law, policy, or rule, or CJTC decertification/suspension/revocation criteria found in section 1010.16 of this policy. Personnel complaints may be generated internally or by the public.
- (c) **Informal complaint** - A matter in which there is no expectation, from the complainant, that an investigation will occur, and the supervisor is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.
- (d) **Formal complaint** - A matter in which a supervisor or manager determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or the Professional Standards Unit, depending on the seriousness and complexity of the investigation.

Wrongdoing – (As defined in RCW 10.93.190 – Officer's Duty to Intervene) means conduct that is contrary to law or contrary to the policies of the witnessing officer's agency, provided that the conduct is not de minimis or technical in nature. "Wrongdoing" – even if true - may or may not be determined to be misconduct pursuant to City of Olympia policies if such "wrongdoing" involves allegations that a City of Olympia officer violated the policy of a witnessing officer's agency.

Preliminary Investigation – A cursory fact-finding activity where the Office of Professional Standards investigator or a supervisor seeks to determine if sufficient information exists before deciding whether or not an investigation is feasible or warranted.

1010.2 POLICY

The Olympia Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

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The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local law, municipal and county rules, and the requirements of any memorandum of understanding or collective bargaining agreements.

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

The Chief of Police is responsible for the professional conduct review system and delegates the responsibility for administration of that system to the Office of Professional Standards. The Professional Standards Lieutenant reports directly to the Chief of Police.

1010.3 SOURCES OF COMPLAINTS

The following applies to the source of complaints (as referenced in the Standards of Conduct policy):

- (a) Individuals from the public may make complaints to the Olympia Police Department in writing by mail, by email, in person, or by telephone.
- (b) Any department member who has a good faith, reasonable belief that another member committed misconduct shall immediately notify a supervisor or appropriate authority.
- (c) Supervisors may initiate a complaint based upon observed or reported misconduct.
- (d) Anonymous and third-party complaints (including complaints from other agency personnel) of misconduct or wrongdoing shall be accepted and a preliminary investigation will be conducted.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1010.4.1 COMPLAINT FORMS

Complaint forms are available at the police department and are accessible through the department website.

Complaint forms in languages other than English should be provided by the City Communications Department to reflect languages spoken in the community.

1010.4.2 ACCEPTANCE

Complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person, or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

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Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs, or physical evidence may be obtained, as necessary.

When a personnel complaint is received, it is forwarded to the Office of Professional Standards for review. Depending on the nature of the complaint, the Office of Professional Standards may retain the investigation or assign the investigation to a first level supervisor.

Inquiries not specifically reported to a supervisor, non-personnel complaints, and/or complaints about the Department policies or practices are generally referred to the Police Chief's Office for consideration of response.

1010.5 DOCUMENTATION

Supervisors shall ensure that personnel and formal complaints are documented appropriately. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

Formal and personnel complaints should be documented in the Department's Records Management System. Informal complaints may also be tracked in the same manner. The Records Management System entry should include the nature of the complaint and the actions taken to address the complaint. On a periodic basis, the Department should audit the Records Management System and send an audit report to the Chief of Police or authorized designee.

In cases of anonymous or third-party complaints, the Professional Standards Office or a supervisor will use their discretion in evaluating whether there is sufficient information for follow-up or further investigation. If, after a preliminary investigation, the complaint is not supported by some corroborating facts or evidence, the anonymous complaint will not be entered against any member's record as a complaint, but will be entered as a general inquiry. If the preliminary investigation reveals corroborating facts or evidence, it will be handled in the same manner as any other complaint. A finding of sustained will not be used as the final disposition of an anonymous complaint unless the finding is supported by facts or evidence independent of the anonymous complaint.

Complaints may be investigated in a number of ways. Some investigation types include After Action Review Reports, Officer-Involved Shooting Review Board Findings, Use of Force Checklist Investigations, etc. The extent of the investigation to resolve a complaint is at the discretion of the Police Chief, the Office of Professional Standards Lieutenant and/or the Police Chief's designee. Complaint dispositions will follow those outlined in this policy. Not all complaints will initiate an Internal Affairs Investigation.

Personnel Complaints that require an investigation will initiate an Internal Affairs Investigation.

1010.6 INTERNAL AFFAIRS INVESTIGATIONS

When an Internal Affairs Investigation is initiated, allegations of personnel misconduct will be administratively investigated as follows.

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1010.6.1 SUPERVISOR RESPONSIBILITIES

Any supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent, mitigate or deescalate the situation whenever possible. The Chief of Police or the authorized designee may direct any supervisor to investigate any complaint.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, the appropriate documentation process is completed.
 - 1. The complaint will be directed to the supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the Chief of Police, who will initiate appropriate action.
- (b) Resolving those personnel complaints that can be resolved immediately.
 - 1. Contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 - 2. When an informal complaint is resolved, and no further action is required, the supervisor will document, if necessary.
 - 3. When a formal complaint is resolved, the supervisor will document the resolution and notify the Professional Standards Lieutenant.
- (c) Ensuring that upon receipt of a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the member's chain of command will be notified as soon as practicable,
- (d) Investigating a complaint as follows:
 - 1. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries are taken.
 - 2. Making reasonable efforts to obtain names, addresses, and telephone numbers of witnesses.
- (e) Ensuring that the procedural rights of the accused member are followed.
- (f) Ensuring interviews of the complainant are conducted during reasonable hours for those involved.

1010.6.2 INTERNAL AFFAIRS INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Professional Standards Unit, the following applies to employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, they shall be compensated.

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- (b) Interviews of an accused employee should be at the Olympia Police Department or other reasonable and appropriate place.
- (c) Prior to any interview, an employee should be informed of the nature of the investigation.
- (d) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (e) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (f) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to answer questions.
 - 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 - 2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (g) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview.
- (h) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (i) All employees shall provide complete and truthful responses to questions posed during interviews.
- (j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation.
- (k) The employee shall be provided a written statement of all accusations 48 hours prior to the interview.
- (l) If a complaint is regarding the Lieutenant of the Office of Professional Standards, the Deputy Chief will investigate the matter. If the complaint is regarding the Deputy Chief or the Chief of Police, the City Manager will be informed and determine the appropriate investigator.

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- (m) Investigative findings for personnel complaints are based on the preponderance of the evidence for each allegation.

1010.6.3 INTERNAL INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete, and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further investigative action, when necessary for a disposition for each alleged violation should be provided.

Disposition – A resolution to the investigation shall be applied in accordance with the complaint dispositions set forth in this policy.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.6.4 COMPLAINT DISPOSITIONS

Each complaint shall be classified with one of the following dispositions:

No Finding – When the investigation shows one of the two following conditions to be present:

- (a) The complainant failed/declined to disclose information to further the investigation.
- (b) The allegations relate exclusively to another agency, and the complaint and/or the complainant has been referred to that agency.

Unfounded - When the investigation shows that the alleged behavior did not occur or was patently false.

Exonerated - When the investigation shows that the alleged behavior occurred, but also shows such acts to be justified, lawful, and/or proper.

Not sustained - When the investigation fails to disclose sufficient facts to prove or disprove the alleged behavior occurred.

Sustained - When the investigation discloses sufficient facts to prove the alleged behavior occurred.

Resolved – Resolved may be used as a disposition for inquiries and informal complaints only.

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W i t h o u t M e r i t – The Professional Standards Lieutenant, with approval of the Chief of Police or designee, may close an investigation if one of the following conditions are demonstrated:

- (a) Positive proof (photos, video, audio tape, etc.) clearly establishes that the allegation is untrue.
- (b) The facts indicate that the allegation is clearly inconsequential or frivolous and no tangible harm can be reasonably associated with the behavior.
- (c) The facts indicate that the allegation was made maliciously and with wanton disregard for the truth.
- (d) The complaint does not involve the Olympia Police Department or its employees.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall recommend appropriate action with regard to any additional allegations.

1010.6.5 COMPLETION OF INVESTIGATIONS

Investigators assigned to complaint investigations shall complete their work in a timely manner and according to the following times lines, except where there are extenuating circumstances:

- (a) Investigations assigned to first level supervisors – Sixty (60) days from the date the case is received by the department.
- (b) Investigations that would typically be assigned to first level supervisors that are retained by the Office of Professional Standards due to their complexity - Sixty (60) days from the date the case is received by the department.
- (c) Investigations retained by the Office of Professional Standards due to the nature of the complaint - Ninety (90) days from the date the case is received by the department.

In cases where extenuating circumstances exist, or in cases involving extremely complex or sensitive investigations, the completion due date may be extended by the Professional Standards Lieutenant, with approval of the Chief of Police.

- (a) If the investigation is extended beyond the standard investigative period, the assigned investigator will contact the involved employee(s) at least once a week to provide them with an update and projected completion date of the investigation.

In 2021, the Washington State Legislature passed a bill requiring investigations be completed even if the focus of the investigation were to resign, retire, or be laid off prior to the completion of the investigation. The citation is as follows:

(RCW 43.101.135).

1010.6.6 WITHDRAWAL OF COMPLAINTS

The cooperation of the complainant is important and desired, but it is not mandatory. At times, the complainant may wish to withdraw their complaint. This request cannot be refused; however, the Chief of Police or the Professional Standards Lieutenant may elect to continue the investigation to the extent possible even without the assistance of the complainant. This protects the agency

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from later allegations of intimidation, bureaucratic inertia, and allegations which can no longer be satisfactorily investigated or explained due to the passage of time.

When adjudicating complaints which are withdrawn by the complainant, the agency will make a distinct notation of that fact beside the final adjudication.

1010.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

All department policies and the current labor contracts will be adhered to when conducting internal affairs investigations. Employees asked to provide a recorded statement will be provided a copy of the complaint if written or a written summary if the written complaint is not available, as well as any additional known information, assuming the complaint does not involve illegal activity, which outlines the issues to be investigated prior to being questioned. Members will be given written notice of the internal investigation that includes reference to alleged policy violations. The form will normally be delivered by a supervisor or designee.

1010.7 ADMINISTRATIVE LEAVE

When a complaint is retained by the Office of Professional Standards due to the nature of the complaint, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons, and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1010.8 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, an independent agency shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation in which they are accused of criminal conduct.

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The Chief of police or designee may release information concerning the criminal citation, arrest, or booking of any member, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1010.9 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal internal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review the report.

1010.9.1 MANAGER RESPONSIBILITIES UPON RECEIPT OF COMPLETED INVESTIGATION

Upon receipt of any completed personnel investigation, the Department Manager of the involved member shall review the entire investigative file, the member's personnel file, and any other relevant materials.

The Manager may make recommendations regarding the amount of discipline, if any, to be imposed.

The Manager will then forward a written recommendation to the Chief of Police. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1010.9.2 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may return the file for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine whether to discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 - 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 - 2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed their response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall determine the amount of discipline, if any, that should be

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imposed and shall render a timely written decision to the member, specifying the grounds for discipline and its effective date.

1010.9.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition of the complaint.

1010.10 LOUDERMILL PROCESS

The Loudermill process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted, or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on any further investigative findings.

1010.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1010.12 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal the discipline in accordance with an applicable collective bargaining agreement, civil service rules, or applicable law.

In the event of punitive action against an employee who chooses to appeal through civil service, the appeal process shall be as outlined in the civil service rules, which are required to substantially accomplish the purpose of RCW 41.12.

1010.13 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule, and as described in the Personnel Records Policy, as well as CJTC requirements for maintaining such records.

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1010.14 NOTIFICATION TO CRIMINAL JUSTICE TRAINING COMMISSION (CJTC) CERTIFICATION BOARD

Upon separation of a peace officer for any reason, including termination, resignation, or retirement, the Department shall, within 15 days of the separation, notify the CJTC. The Department shall, upon request of the CJTC, provide such additional documentation or information as the commission deems necessary to determine whether the separation provides grounds for revocation of the peace officer's certification (RCW 43.101.135).

If the employer accepts an officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the CJTC, including the findings from any internal or external investigations into alleged misconduct.

In addition to those circumstances listed above, the employing agency shall:

- (a) Notify the CJTC within 15 days of learning of the occurrence of any death or serious injury caused by the use of force by an officer or any time an officer has been charged with a crime. Employing agencies must have a policy requiring officers to report any pending criminal charges and any conviction, plea, or other case disposition immediately to their agency (See Policy 320).
- (b) Notify the CJTC within 15 days of an initial disciplinary decision by an employing agency for alleged behavior or conduct by an officer that is noncriminal and may result in revocation of certification pursuant to RCW 43.101.105. To better enable the CJTC to act swiftly and comprehensively when misconduct has occurred that may undermine public trust and confidence in law enforcement or the correctional system, if the totality of the circumstances support a conclusion that the officer resigned or retired in anticipation of discipline, whether or not the misconduct was discovered at the time, and when such discipline, if carried forward, would more likely than not have led to discharge, or if the officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the officer's suspension or discharge, the employing agency shall conduct and complete the investigation and provide all relevant information to the CJTC as if the officer were still employed by the agency.

The CJTC may deny, suspend, or revoke certification or require remedial training of an applicant or officer if the applicant or officer (RCW 43.101.105):

- (a) Failed to timely meet all requirements for obtaining a certificate of basic law enforcement or corrections training, a certificate of basic law enforcement or corrections training equivalency, or a certificate of exemption from the training.
- (b) Was previously issued a certificate through administrative error on the part of the CJTC.
- (c) Knowingly falsified or omitted material information on an application to the employer or for training or certification to the CJTC.
- (d) Interfered with an investigation or action for denial or revocation of certification by:
 - 1. Knowingly making a materially false statement to the CJTC.

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2. Failing to timely and accurately report information to the CJTC as required by law or policy.
 3. In any matter under review or investigation by or otherwise before the CJTC, tampering with evidence or tampering with or intimidating any witness.
- (e) Engaged in a use of force that could reasonably be expected to cause physical injury, and the use of force violated the law or policy of the officer's employer.
- (f) Committed sexual harassment as defined by state law.
- (g) Through fraud or misrepresentation, has used the position of peace officer or corrections officer for personal gain.
- (h) Engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religion, creed, color, national origin, immigration status, disability, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- (i) Has affiliation with one or more extremist organizations.
- (j) Whether occurring on- or off-duty, has:
1. Been found to have committed a felony, without regard to conviction.
 2. Engaged in a pattern of acts showing an intentional or reckless disregard for the rights of others, including but not limited to violation of an individual's constitutional rights under the state or federal constitution or a violation of RCW 10.93.160.
 3. Engaged in unsafe practices involving firearms, weapons, or vehicles which indicate either a willful or wanton disregard for the safety of persons or property.
 4. Engaged in any conduct or pattern of conduct that: Fails to meet the ethical and professional standards required of a peace officer or corrections officer; disrupts, diminishes, or otherwise jeopardizes public trust or confidence in the law enforcement profession and correctional system; or demonstrates an inability or unwillingness to uphold the officer's sworn oath to enforce the constitution and laws of the United States and the state of Washington.
- (k) Has been suspended or discharged, has resigned, or retired in lieu of discharge, or has separated from the agency after the alleged misconduct occurred, for any conduct listed in this section.
- (l) Has voluntarily surrendered the person's certification as a peace officer or corrections officer.

In addition to the penalties set forth above, the CJTC may require mandatory retraining or placement on probation for up to two years, or both. In determining the appropriate penalty or sanction, the CJTC shall consider: The findings and conclusions, and the basis for the findings and conclusions, of any due process hearing or disciplinary appeals hearing following an investigation by a law enforcement agency regarding the alleged misconduct, if such hearing has occurred prior to the CJTC's action; any sanctions or training ordered by the employing agency regarding the

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alleged misconduct; and whether the employing agency bears any responsibility for the situation (RCW 43.101.105).