

# GENERAL ORDER



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|--------------------|--|--------------------------|
| Title              | <b>Serious Misconduct Investigations</b>   |                          |
| Series / Number    | <b>GO – PER – 120.23</b>   |                          |
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| Replaces/ rescinds | <b>General Order 1202.3 (Investigative Responsibilities Where Sworn Members of This Department Are Arrested or Are Suspected of Criminal Misconduct)</b> |                          |

## DISTRICT OF COLUMBIA

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### I. BACKGROUND

Sworn members of the Metropolitan Police Department are expected to maintain the highest standards of conduct. Members should conduct themselves properly and professionally, on or off duty. When a member is accused of misconduct, a thorough investigation will be conducted. The purpose of this directive is to establish responsibilities and procedures for reporting and conducting investigations of serious misconduct (administrative and/or criminal) that may result in disciplinary action.

### II. POLICY

The policy of the Metropolitan Police Department (MPD) is to investigate every instance of alleged misconduct against a member of this Department (whether criminal or administrative in nature), in accordance with the laws of the District of Columbia and the policies and procedures of MPD. Investigations shall be conducted in a fair and consistent manner. (CALEA 52.1.1)

The Office of Internal Affairs (OIA) within the Office of Professional Responsibility (OPR) shall be responsible for the investigation of all allegations of serious misconduct by members of the Department. (CALEA 52.1.1 b-c)

The Force Investigation Team (FIT) within the Office of Professional Responsibility shall be responsible for investigating force-related misconduct pursuant to General Order RAR – 901.08 (Use of Force Investigations). (CALEA 52.1.1 b-c)

Other administrative or policy misconduct shall be investigated at the command level pursuant to General Order PER – 120.20 (Chain-of-Command Misconduct Investigations). (CALEA 52.1.1 a)

Where applicable and pursuant to General Order PER – 120.25 (Processing Citizen Complaints), certain use-of-force misconduct, serious misconduct, and other administrative or policy misconduct cases will be investigated by the Office of Citizen Complaint Review through the Citizen Complaint process. (CALEA 52.1.1)

### III. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated:

1. **Agent** – positions held by Sergeants and Detective Grades I and II, assigned to the Office of Internal Affairs (OIA). While engaged in official duties, an OIA agent may assert authority over a higher-ranking member involved in the investigation.
2. **Officer/Member** – interchangeable terms referring to sworn law enforcement personnel of the Department. The terms do not include civilian employees of the Department.
3. **Serious Misconduct** – suspected criminal misconduct and the following specific forms of misconduct listed below (except that for the purposes of this directive, serious misconduct involving a use of force within the jurisdiction of the Force Investigation Team pursuant to GO RAR-901.08 shall be investigated by the Force Investigation Team):
  - a. all civil suits alleging any misconduct by an officer while acting in an official capacity;
  - b. all civil suits against an officer for off-duty conduct (while not acting in an official capacity) alleging physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
  - c. all criminal arrests or filing of criminal charges against an officer;
  - d. all allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;
  - e. all allegations of an unlawful search and seizure;
  - f. all allegations of an unlawful stop;
  - g. all allegations of false arrests or filing of false charges;
  - h. any act of retaliation or retribution against an officer or person;
  - i. any act of retaliation or retribution against a person for filing a complaint against a member;

- j. all allegations of excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose);
  - k. any intentional failure to complete use of force reports required by MPD policies and in accordance with procedures;
  - l. any intentional provision of false information in an MPD or an Office of Citizen Complaint Review (OCCR) investigation or in any official report, log, or electronic transmittal of information;
  - m. all incidents in which (1) a person is charged by an officer with assault on a police officer or resisting arrest or disorderly conduct, and (2) the United States Attorney's Office (USAO) or the Office of the Corporation Counsel (OCC) notifies MPD that it is dismissing the charge based upon officer credibility or a judge dismissed the charge based upon officer credibility;
  - n. all incidents in which MPD has received written notification from a prosecuting agency in a criminal case that there has been (1) an order suppressing evidence because of any constitutional violation involving potential misconduct by an MPD officer, or (2) any other judicial finding of officer misconduct made in the course of a judicial proceeding or any request by a federal or District of Columbia judge or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. MPD shall request that all prosecuting agencies provide them with written notification whenever the prosecuting agency has determined that any of the above has occurred; or
  - o. all referrals pursuant to Sections IV-A and IV-B (Regulations) of this General Order.
4. **Underlying Matter** – an incident which would require appropriate police action and during which a responding or involved officer is charged with misconduct. This directive focuses on the handling of the alleged misconduct while recognizing that the “underlying matter” is a police responsibility that must also be processed to completion.
5. **Probable Cause** – whether a reasonably prudent police officer, considering the total circumstances confronting him/her and drawing from his/her experience, would be warranted in the belief that an offense has been or is being committed. (CALEA 1.3.2)

#### IV. REGULATIONS

- A. All officers shall promptly notify OPR or a supervisor (who shall report the information to OPR) of the following:
1. the officer is arrested or criminally charged for any conduct;
  2. the officer is named as a party in any civil suit involving his or her conduct while on duty (or otherwise while acting in an official capacity); or
  3. the officer is named as a party in any civil suit regarding off-duty conduct (while not acting in an official capacity) that alleges any of the following:
    - a. physical violence,
    - b. threats of physical violence,
    - c. racial bias,
    - d. dishonesty, or
    - e. fraud by the officer.
- B. All officers (including supervisors and managers who learn of evidence of possible misconduct through their review of an officer's work) shall promptly notify OPR of any conduct by other officers that reasonably appears to constitute any of the following:
1. an excessive use of force or improper threat of force;
  2. a false arrest or filing of false charges;
  3. an unlawful search or seizure;
  4. unlawful discrimination;
  5. an intentional failure to complete use of force reports required by MPD policies and in accordance with procedures;
  6. an act of retaliation for complying with any MPD policy or procedure;  
or
  7. an intentional provision of false information in an MPD or OCCR investigation or in any official report, log, or electronic transmittal of information.
- C. Failure to voluntarily report officer conduct as described in Sections A and B above shall be an offense subject to discipline if sustained.

- D. Any member who has reason to believe that reporting misconduct to an element official may compromise the investigation may report the information to OPR directly.
- E. MPD shall notify and consult with the USAO immediately, in no case later than the next business day, following the receipt or discovery of any allegations of criminal misconduct referred to in Section III-3 (Serious Misconduct) above. In every such incident involving allegations of criminal misconduct, the USAO will notify and consult with the appropriate OPR official whenever possible, unless doing so would compromise the investigation, or is otherwise prohibited by law, rule, or regulation.
- F. Failure to voluntarily make a timely and proper notification of possible misconduct shall be an offense subject to discipline, if sustained, up to and including removal from the Department.
- G. Members of this Department shall take appropriate police action in any situation involving serious allegations of misconduct against another member. Appropriate action may include, but is not limited to, arrest based on probable cause.
- H. Any member who has a potential conflict of interest related to a pending misconduct investigation shall not be allowed to participate in any way in the conduct or review of that investigation.
- I. No member shall interfere with the process of a lawful arrest of another member, whether on or off duty.
- J. Investigative responsibility is assigned to the Office of Professional Responsibility for all incidents of serious misconduct as defined by Section III-3 of this order. OPR shall review all misconduct complaints as they are received and shall determine whether a misconduct complaint meets the criteria for being assigned for investigation outside of the District Chain of Command, except that whenever an incident of serious misconduct involves a use of force within the jurisdiction of the Force Investigation Team pursuant to General Order RAR – 901.08 (Use of Force Investigations), the Force Investigation Team shall conduct the investigation. (CALEA 52.1.1-b)
- K. Where applicable and pursuant to General Order PER – 120.25 (Processing Citizen Complaints), certain use-of-force misconduct, serious misconduct, and other administrative or policy misconduct cases within the concurrent jurisdiction of MPD and OCCR will be investigated by the Office of Citizen Complaint Review through the Citizen Complaint process. (CALEA 52.1.1)

## V. PROCEDURAL GUIDELINES

### A. Initial Duties at the Scene of an Allegation of Serious Misconduct

1. When a member is handling a police matter and an act of misconduct is alleged, the initial responsibility of the member shall be to ensure that the scene is safe, render first aid if applicable, and secure the scene's integrity.
2. If an arrest or other police action is required in the underlying matter, the officer shall complete all necessary and appropriate police duties unless otherwise directed by an official.
3. A member who is involved in an alleged act of misconduct shall not be compelled to provide a statement when the alleged incident indicates potential criminal misconduct in accordance with Section V-E-2 of this order.

### B. Duties of Members

Members of the Department shall immediately notify an official when any member:

- a. is accused of misconduct or an allegation of misconduct is made;
- b. is arrested and/or criminally charged for any misconduct in any jurisdiction;
- c. has knowledge of any serious or criminal misconduct by another member;
- d. is named as a party in any civil suit involving his or her conduct while on duty or otherwise acting in an official capacity;
- e. is named as a party in any civil suit regarding off-duty conduct while not acting in an official capacity that alleges:
  - (1) physical violence,
  - (2) threats of physical violence,
  - (3) racial bias,
  - (4) dishonesty, or
  - (5) fraud;

- f. learns of an existing warrant, summons or protection order for himself/herself or another member, regardless of jurisdiction;
- g. has knowledge of an alleged use of force, excessive force or improper threat of force by another member;
- h. has knowledge of a false arrest or filing of false charges by another member;
- i. has knowledge of an unlawful stop, search and/or seizure by another member;
- j. has knowledge of any conduct by another member that reasonably appears to constitute unlawful discrimination;
- k. has knowledge of an act of retaliation or retribution toward any person for complying with any MPD policy or procedure;
- l. has knowledge of another member's intentional failure to complete a Use of Force Incident Report (PD Form 901-e) when required; or
- m. has knowledge that another member intentionally provided false information in an MPD or an Office of Citizen Complaint Review (OCCR) investigation or in any official report, log or electronic transmittal of information.

C. Obtaining Complaint System (CS) Tracking Numbers

Officials of the Department shall notify the Office of Professional Responsibility and obtain Complaint System tracking numbers within one (1) hour of learning of an incident of alleged serious misconduct –

- a. During normal weekday business hours (from 0700 – 1900), notify the Office of Professional Responsibility directly at 727-4385, or
- b. During non-business hours (from 1900 – 0700), notify the on-call OPR Agent. The agent may be contacted through the Synchronized Operations Command Center (SOCC).

D. Investigation of Underlying Matter or Offense Related to the Allegation of Serious Misconduct

- 1. The Office of Internal Affairs is responsible for investigating all allegations of serious misconduct except those incidents within the jurisdiction of FIT or OCCR.

2. The Office of the Superintendent of Detectives (OSD) is responsible for conducting the investigation of the underlying offense related to the allegation of serious misconduct.
3. The OSD shall immediately respond to begin their investigation and secure evidence, witnesses, and other information related to the crime that led up to the alleged misconduct. An OSD official shall designate a lead investigator for the crime that led up to the allegation of misconduct.
4. The OSD lead investigator shall coordinate all investigative information with the Office of Internal Affairs.
5. The OSD is responsible for handling the arrest and processing of any individual charged as a result of the underlying offense related to the alleged misconduct.
6. Members from the Forensic Science Services Division shall respond and be responsible for evidentiary crime scene processing.
7. The Forensic Science Services Division Technician handling the scene shall be required to coordinate all evidentiary information with the Office of Internal Affairs.

E. Investigation of Serious Misconduct Incidents  
Within the District of Columbia

1. Interviewing Subjects, Members and Witnesses (General)

In conducting serious misconduct investigations, the Office of Internal Affairs or other appropriate investigators shall include, subject to and in conformance with applicable law and MPD directives, the following measures:

- a. If, during the course of an investigation, the investigator has reason to believe that misconduct occurred other than that alleged, the investigator also shall investigate the additional potential misconduct to its logical conclusion.
- b. In investigations involving a serious use of force or serious physical injury, MPD investigators shall tape record or videotape interviews of complainants, involved officers, and material witnesses (if a complainant or non-officer witness refuses to be tape-recorded or videotaped, then MPD shall prepare a written narrative of the statement to be signed by the complainant or non-officer witness)
- c. Whenever practicable and appropriate, complainants and witnesses shall be interviewed at sites and times convenient for them, including at their residences or places of business.



- d. Officers involved in a serious misconduct incident shall be sequestered until interviewed by a member of OIA or by appropriate supervisory personnel.
  - e. Group interviews are prohibited.
  - f. Supervisors of the involved members subject to the investigation shall be notified, as appropriate.
  - g. All appropriate MPD members, including supervisors, shall be interviewed.
  - h. Investigators shall ensure that all appropriate evidence is collected, preserved, and analyzed, including canvassing the scene to locate witnesses and obtaining complainant medical records, where appropriate.
  - i. Any inconsistencies in officer and witness interview statements gathered during the investigation shall be identified and reported in writing.
2. Duties of Officials When Notified of Alleged Serious Misconduct Indicating Potential Criminal Charges or Arrest in the District of Columbia
- a. In all cases of serious misconduct involving potential criminal charges or the arrest of an officer, the subject officer shall not be compelled or ordered to make a statement (which includes interview by video or tape-recording) until the USAO has issued a written declination and an authorized Reverse-Garrity warning has been issued; or criminal prosecution of the officer has been completed. (Refer to Section V-D-1 of General Order RAR-901.08 regarding use of force incidents required to be investigated by the Force Investigation Team.)
  - b. All situations in which the "Reverse-Garrity Warning" is used shall be authorized by an official of the rank of captain or above.
  - c. Questions concerning the use of "Garrity Warning" or the "Reverse-Garrity Warning" should be addressed to the Office of the General Counsel.
  - d. In those instances in the District of Columbia when a member, either on or off duty, is arrested or suspected of criminal misconduct, the Assistant District Commander or Watch Commander of the district of occurrence shall:
    - (1) Immediately respond to the scene and determine if the member shall be summarily arrested; and

- (2) Whether or not an arrest is made, the potential crime scene shall be protected and the responding official shall ensure that all evidence is preserved.
  - (3) Ensure that the Office of Professional Responsibility has been notified as prescribed by Section V-D of this general order.
  - (4) Ensure that the USAO has been timely notified, pursuant to Section IV-E (Regulations) of this general order.
- e. Upon receiving notification that a member has been arrested or suspected of criminal misconduct, a member from OPR shall respond to the scene.
- f. The official responding to the scene of an arrested member or a member suspected of criminal misconduct shall:
- (1) Ensure that the Office of Professional Responsibility has been notified as prescribed by Section V-C of this general order;
  - (2) Turn over all pertinent information to the investigating official of the OPR;
  - (3) Take possession of appropriate Department property not seized as evidence; and
  - (4) Interview those present to verify the essential aspects of the incident and gather all pertinent information needed until such time as a member of OPR responds to handle the investigation, if applicable.

3. Responsibilities of Officials when Notified of Alleged Serious Misconduct

The official or supervisor receiving notification of serious misconduct by a member shall:

- a. Notify his/her commanding officer or the Assistant District Commander through the chain of command;
- b. Modify the member's duty status, if applicable, and cause the appropriate entries to be made in the Patrol Signal System (PSS) Book of the arrested member's element. (CALEA 1.3.8)
- c. Cause the applicable preliminary report, PD Form 99 (Citizen Complaint Report) and/or OCCR complaint form to be transmitted either by facsimile or hand-carried to the OPR prior to being relieved from duty.
- d. Immediately notify (no later than the next business day) the USAO regarding the misconduct.

F. Duties and Responsibilities of the Office of Professional Responsibility

1. The Office of Professional Responsibility shall maintain responsibility for conducting the administrative investigation, in conjunction with any other investigative component that is involved, in all situations where a member:
  - a. is arrested;
  - b. is the subject of an arrest warrant; criminal information or criminal indictment; or
  - c. is the subject of a protection order.
2. Members of the Office of Internal Affairs have the authority and responsibility to conduct investigations assigned by the Assistant Chief of the Office of Professional Responsibility or the Chief of Police. As such, they have the following authority, as required by their position:
  - a. Conduct activities in the furtherance of an investigation;
  - b. Request and receive all Department records and/or information to facilitate an investigation;
  - c. Direct a member of this Department to appear at designated locations for interviews;
  - d. Require members to provide truthful statements for use in an investigation (subject to "Reverse-Garrity" requirements, after a criminal declination by the USAO, or after any criminal prosecution of the officer has been completed).
  - e. Cause the police powers of a sworn member to be revoked in connection with an investigation being conducted by the Office of Internal Affairs. (CALEA 52.1.8)
  - f. Assert authority over a higher-ranking member involved in the investigation while engaged in official duties.
3. The Director, Office of Internal Affairs, or the Director, Civil Rights and Force Investigations Division, when applicable, shall be responsible for:
  - a. Completing any administrative investigations of serious misconduct, absent special circumstances, within 90 calendar days of receiving the complaint, criminal declination, or conclusion of a criminal prosecution where applicable (Special circumstances causing any delay in an administrative

investigation shall be documented and the investigating member shall submit a written status report of the investigation at least every thirty days thereafter.); (CALEA 52.1.4)

- b. Investigating all incidents of serious misconduct as defined in this order, (CALEA 52.1.1-b);
- c. Monitoring each related case in the judicial process;
- d. Designating members to serve in an "on-call" capacity;
- e. Tracking all allegations of misconduct against MPD members; (CALEA 52.1.10)
- f. Ensuring that, in those cases where members of OPR are required to investigate a case in conjunction with another investigative unit, copies of all statements taken from involved parties and witnesses, along with any tapes, are kept on file at the OPR; and
- g. Approving requests from other involved investigative units for records and copies of statements taken by OPR personnel.

G. Handling of Arrests of Members

When a member is arrested by MPD personnel, the arresting officer shall:

- a. Upon learning that an arrested person is a member of MPD, immediately notify his/her Assistant District Commander or Watch Commander. The notified official shall follow the procedures outlined in Section V-E of this general order.
- b. Handle the arrest in an appropriate manner, consistent with the requirements of this order;
- c. Transport the arrested member to the appropriate element for processing;
- d. Where multiple members are arrested, sequester them from each other during processing;
- e. Be responsible for processing the case and meeting all court obligations; (a member of OPR shall assist the arresting officer in meeting these obligations);
- f. Turn in all Department equipment, not held as evidence, to the arrested member's immediate supervisor or, if not available, to the official who responds from the arrested member's element.

#### H. Responsibilities of Commanding Officer After Arrest of a Member

Upon learning that a sworn member of the Department is involved in criminal misconduct requiring arrest, the arresting officer's commanding officer shall:

1. Notify the arrested member's commanding officer, if the arrested member is from another district or unit;
2. Ensure that the member's duty status is appropriately modified, if applicable;
3. Ensure that an official from the arrested member's unit responds to the location of the arrest to assist with the investigation and take possession of any department property not seized as evidence; and
4. Ensure that the proper entries are made in the PSS Book and the Time and Attendance Court Information System (TACIS).

#### I. Responsibility of Synchronized Operations Command Center (SOCC)

The official in charge of SOCC shall be responsible for:

1. Notifying an official of the OPR immediately upon receiving all notifications in Section V-B of these procedural guidelines:
  - a. During normal weekday business hours, from 0700 – 1900, notify OPR, or
  - b. During non-business hours, from 1900 – 0700, notify the on-call OPR Agent through SOCC;
2. Maintaining an on-call duty schedule of all OPR members and their assigned pager numbers; and
3. Notifying the Chief of Police or official then in command of the Department, in all cases where a sworn member of this Department has been arrested. (CALEA 52.1.3)

#### J. Processing Serious Misconduct Involving MPD Members Outside of the District of Columbia

When a member is involved in serious misconduct *outside* of the District of Columbia, whether on or off duty:

1. The member shall immediately notify the Watch Commander of his/her element through the Communications Division or SOCC.
2. The Communications Division or SOCC shall notify the Office of Professional Responsibility.

3. The Office of Professional Responsibility shall respond as may be appropriate under the particular circumstances.
4. The appropriate law enforcement authority of the jurisdiction of occurrence will maintain primary responsibility for conducting a criminal investigation of the incident or the underlying matter.
5. The Office of Internal Affairs shall initiate a concurrent administrative investigation, and shall work closely with the investigator/official from the originating police jurisdiction investigating the primary criminal offense. In cases where the United States Attorney's Office or the competent prosecutorial authority has not yet issued a written declination, OIA shall not compel or order a subject officer to make a statement.

K. Investigative Report Contents and Completion Schedules

1. In instances of serious misconduct by an officer, the OIA Investigators shall complete a final investigative report with conclusions and recommendations within ninety (90) days as prescribed in Section V-G-3a of this general order.
2. The final investigative report shall include a description of the serious misconduct identified during the course of the investigation; a summary and analysis of all relevant evidence gathered during the investigation, and proposed findings and analysis supporting those findings.
3. To ensure comprehensive and timely completion of investigations by OIA, all MPD special units, whether located at the district level or operating from a centralized location, shall liaison and provide full cooperation with members of OIA.
4. A duplicate copy of all reports, records, communications, and information related to the enumerated misconduct incident shall be provided immediately to the OIA Agent by any support unit having any such related materials.
5. The standard of review in a criminal investigation is *probable cause*. The standard of review in a policy review (administrative) investigation is a *preponderance of the evidence*.
6. When allegations of serious misconduct are made, the Office of Internal Affairs, shall make one of the following dispositions:
  - a. **Unfounded:** Where the investigation determined that there are no facts to support the incident complained of actually occurred.

- b. **Sustained:** Where the person's allegation is supported by a preponderance of the evidence to determine that the incident occurred and the actions of the officer were improper.
- c. **Insufficient Facts:** Where there are insufficient facts to decide whether the alleged misconduct occurred.
- d. **Exonerated:** Where a preponderance of the evidence shows that the alleged conduct did occur, but did not violate MPD policies, procedures, or training.

## VI. CROSS REFERENCES

### A. Related Directives

- 1. GO OPS-304.10 (Police-Citizen Contacts, Stops and Frisks)
- 2. GO PCA-502.07 (Medical Treatment and Hospitalization of Prisoners)
- 3. GO RAR-901.01 (Handling of Service Weapons)
- 4. GO RAR-901.04 (Aerosol Oleoresin Capsicum Spray Dispensers)
- 5. GO RAR-901.07 (Use of Force)
- 6. GO RAR-901.08 (Use of Force Investigations)
- 7. GO PER-120.20 (Chain-of-Command Misconduct Investigations)
- 8. GO PER-120.25 (Processing Citizen Complaints)
- 9. GO PER-201.26 (Duties, Responsibilities and Conduct of Members)

### B. Court Opinions

- 1. Tennessee v. Garner, 471 U.S. 1, 11-12 (1985)
- 2. Graham v. Connor, 490 U.S. 386 (1989), 104 L. Ed 2d 443, 447
- 3. Garrity v. New Jersey, 385 U.S. 493 (1967)
- 4. Saucier v. Katz, 533 U.S. 194 (June 18, 2001)

### C. Laws and Regulations

- 1. D.C. Official Code § 5-1101, *et seq.* (Review of Citizen Complaints Involving Police)
- 2. D.C. Municipal Regulations, Title 6A, §200 (Performance of Duty) and §202 (Standards of Conduct)

//SIGNED//  
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Chief of Police

CHR:NMJ:JAE:MAR:LN:AFA:afa