



Internal Affairs Manual

Commitment

Integrity

Professionalism

June 2010

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June 1, 2010

Supervisory Staff of the Garner Police Department:

The Garner Police Department values Commitment, Integrity, and Professionalism. All three of these values are routinely demonstrated by our employees in their day-to-day performance. However, there are isolated incidents when employee actions will result in complaints. It is the policy of the Garner Police Department to receive, document, investigate and promptly resolve all complaints made against the Department or any of its members. It is critical that we do so in a fair and consistent manner regardless of who makes the complaint (including anonymous complaints), the nature of the complaint or the manner in which the complaint is received. This approach is necessary to instill public trust in our organization, to ensure ethical behavior by all Department employees and to identify training needs.

As the result of our role in the community, we are faced with situations where our employees may be required to use varying degrees of force in the performance of their duties. The Department has an obligation to investigate all incidents that involve the use of force by our employees.

This manual is designed to provide an overview of Department policy and general guidelines for conducting internal investigations in a consistent and professional manner. The manual includes case law and theory related to internal affairs, an overview of the complaint investigation and resolution process, an overview of use of force and vehicle pursuit investigation and a review of documentation for all internal affairs investigations.

Each of you is required to be familiar with our policy for internal investigations and disciplinary actions so that you are prepared to investigate incidents involving use of force or vehicle pursuit and to address instances of real or perceived misconduct by a Department employee. I expect each of you to take the time necessary to ensure that you are prepared to support and encourage adherence to professional standards and to our Department values of Commitment, Integrity and Professionalism.

Sincerely,

A handwritten signature in black ink, appearing to be 'BZ' with a long horizontal stroke extending to the right.

Chief Brandon V. Zuidema

DEFINITIONS RELEVANT TO INTERNAL INVESTIGATIONS

Administrative Review – in the Early Intervention System (EIS), the process by which the Internal Affairs Administrator evaluates an EIS alert to determine if a full supervisory review is appropriate.

Alert – in the EIS, when a Department employee has a sufficient number and type of triggering events within a prescribed timeframe to meet a set of pre-determined criteria and require an administrative review.

Allegation of Serious Misconduct – A complaint against an employee that alleges an act or failure to act that constitutes any of the following:

1. A breach of civil rights, brutality, corruption, criminal misconduct, excessive or inappropriate use of force, or a similar serious allegation.
2. Conduct Unbecoming a Police Officer – defined as any conduct or omission, while on or off duty, that:
 - a. Tends to bring the Department into disrepute;
 - b. Reflects discredit upon the employee or the Department; or
 - c. Tends to impair the operation and/or efficiency of the employee or the Department.
3. “Detrimental Personal Conduct” as defined in Part IX, Section 8 of the Town of Garner Personnel Policies and Procedures Manual.
4. A violation of criminal law.

Note: It is not necessary for an employee to be convicted in court of a criminal violation in order for those same circumstances to constitute a sustained allegation. An accepted pleading of “Prayer for Judgment” also does not exclude a sustained allegation.

Complaint – a statement by a member of the public or a Department employee, regardless of who the individual is (including anonymous statements) or how the statement is communicated (i.e. in person, by telephone, via e-mail, in writing, etc.), that alleges a violation of law or Department policy.

Concern – information received from a member of the public regarding an employee’s performance that does not rise to the level of a complaint. This is typically related to the clarification of a policy or a law.

Counseling – advice, guidance, instruction, and/or informal training provided to an employee by a supervisor that is intended to educate and/or train the employee in regard to Department policy or procedure, Town policy or procedure, and/or the law. This is typically done in response to an employee's action (or inaction) that resulted in a performance complaint. Counseling can be disciplinary (non-punitive by Town policy) or non-disciplinary in nature:

1. Disciplinary (non-punitive) counseling – used only in conjunction with a “sustained” finding in a performance complaint or allegation of misconduct investigation.
2. Non-disciplinary counseling – counseling provided to an employee, typically in conjunction with a finding other than a “sustained” finding in a performance complaint or allegation of misconduct investigation.

Domestic Animal – any of various animals that have been tamed and made fit for a human environment; for the purposes of this manual this will normally include a family pet or other animal that has been tamed and is accustomed to a human environment.

Early Intervention System (EIS) – a structured, non-disciplinary system that is intended to identify employees who may need assistance outside the scope of normal supervision and training. The assistance provided is typically related to employee behavior and performance and is intended to avoid the need for disciplinary action.

Emergency Relief from Duty – the removal of an employee from active duty (including the temporary suspension of their sworn authority) by a supervisor, on an emergency basis, when it is judged to be in the best interests of the Department and/or the employee.

“Garrity” Warnings – In accordance with the United States Supreme Court case *Garrity vs. New Jersey*, warnings read to an employee ordering them to make a statement in an administrative investigation and limiting the use of all information provided during the administrative investigation (ensuring the employee's constitutional rights against self-incrimination in a criminal matter).

There are two prongs under the *Garrity* case. First, if an employee is compelled to answer questions as a condition of employment, the officer's answers and the fruits of those answers may not be used against the officer in a subsequent criminal prosecution. Second, if the Department compels those answers, the Department is limited as to what may be asked. Any questions must be specifically, narrowly, and directly tailored to the officer's job.

Internal Affairs Administrator – A member of the command staff assigned by the Chief of Police to coordinate internal affairs tracking, training, and annual reporting.

Internal Affairs Investigator – A member of the Department's supervisory staff assigned by the Chief of Police to investigate a performance complaint or an allegation of serious misconduct.

Internal Investigation – An investigation of the action (or inaction) of an employee conducted by a supervisory employee of the Department.

1. **Administrative Investigation** – An investigation conducted by Department supervisory staff for internal administrative purposes and related to citizen concerns, performance complaints, and allegations of serious misconduct.
2. **Criminal Investigation** – An investigation conducted by Department supervisory staff and/or another appropriate investigative agency for the purpose of determining if probable cause exists that an employee's actions constitute a criminal violation.

Investigative Summary – a summary completed by an investigating supervisor that documents the nature of the investigation, a statement as to the facts of the incident, summaries of interviews conducted, evidentiary items identified, and findings as to actions taken by officers. In some investigations, the summary will include a disciplinary recommendation.

Modified Duty – the temporary re-assignment of an officer from active duty to non-enforcement duties during the course of an internal investigation.

Non-Punitive Disciplinary Action – Disciplinary action taken against an employee that does not involve suspension, demotion or termination. This includes counseling, remedial training, and/or written warnings as established by Town policy.

Performance Complaint - A complaint against an employee that alleges an act or failure to act that constitutes a violation of a Town or Department policy that does not rise to the level of an allegation of misconduct. This typically involves a complaint regarding demeanor, improper conduct, improper police action, policy violations, or a similar non-serious allegation. The Chief of Police has the final authority for determining if a complaint is a performance complaint or an allegation of serious misconduct.

Punitive Disciplinary Action – Disciplinary action taken against an employee that involves suspension, demotion, or termination.

Reportable Use of Force Incident – actions by an officer that involve any of the following:

1. Any use of force that causes an injury and/or a complaint of injury to an officer or any other person;
2. Any use of force that results in property damage to non-department owned property;
3. The use of a baton, impact munitions, OC spray, a physical strike, or a strike with any other object;
4. The release of a police canine for the purpose of apprehending a suspect (regardless of whether or not the canine makes physical contact with the suspect(s));
5. The discharge of a firearm or Taser for any lawful purpose other than training or by negligence; and/or
6. The intentional pointing of a firearm or Taser towards a person (this does NOT include the drawing or display of a firearm or Taser – only the intentional pointing).

Serious Injury – any bodily injury that:

1. Creates a substantial risk of death, *or*
2. Causes or is likely to cause serious, permanent disfigurement, *or*
3. Results in or is likely to result in the long-term loss or impairment of any bodily member or organ.

Supervisory Review – in the EIS, the process by which a Department supervisor gathers and evaluates information related to an individual employee's behavior and performance with the intent of providing assistance and avoiding future disciplinary action.

Triggering Event – a pre-defined event or incident in the internal affairs tracking system that contributes to an individual employee meeting the criteria for an EIS alert.

TRUTHFULNESS

"We are committed to the highest standards of honesty and ethical conduct, which are the cornerstones of our profession." (GPD Mission Statement)

Integrity is at the core of who we are and what we do as law enforcement professionals; truthfulness is at the core of our integrity. The Garner Police Department does not tolerate dishonesty or deceit in any fashion. It is imperative that Department employees be honest in all that they say and do in the performance of their duties; this is especially true when an employee is subjected to an internal investigation. Dishonesty by public officials, especially law enforcement officers, is the easiest way to lose the public trust. This is especially detrimental to law enforcement agencies as our authority is derived from the citizens we serve; a lack of trust among the citizens can quickly result in a lack of community support.

All officers involved in an internal investigation, whether as the accused officer or as a witness, have an obligation to be honest not just to comply with policy but also to maintain their individual integrity and the integrity of the Department. Dishonesty by officers will be admissible in court and will be used to impeach officers, rendering the officer unable to perform their duties involving court testimony (see below). Dishonesty by officers can also result in penalties for the individual officers – including but not limited to civil penalties, criminal prosecution, and loss of North Carolina law enforcement certification.

Since the 1960s, the United States Supreme Court has made a series of decisions that have clarified the requirement for truthfulness by law enforcement officers. These decisions have established a requirement for the prosecution to disclose on any occasion that they intend to use a law enforcement officer who has been shown to be dishonest as a witness at trial. This requirement has resulted in "Brady officers," law enforcement officers who lack credibility in the courtroom due to their prior act(s) of dishonesty. The following cases are the most significant in this regard and summarize the current requirement:

Brady v. Maryland (373 U.S. 83 – 1963)

In 1963, the United States Supreme Court heard the case of *Brady v. Maryland* and ruled as follows: "*Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.*" Although this case did not directly involve a law enforcement officer, it laid the groundwork for two later cases that had a more direct impact on officers as witnesses.

Giglio v. United States (405 U.S. 150 – 1972)

In 1972, the United States Supreme Court heard the case of *Giglio v. United States* and ruled that if the duty of the prosecution to present all material evidence to the jury is not fulfilled, it constitutes a violation of due process and requires a new trial. Again, this case did not directly involve a law enforcement officer as the witness in question, but did directly address the issue of the prosecution having an obligation to present information regarding the credibility of witnesses, including police officers. The Court also established that ignorance of such information is not an excuse, thereby requiring the prosecution to seek out information regarding the credibility of witnesses.

United States v. Agurs (427 U.S. 97 – 1976)

In 1976, the United States Supreme Court heard the case of *United States v. Agurs* and ruled that the prosecution has an obligation to provide the defense with all material evidence regardless of whether or not the defense specifically requests it or has knowledge of it. The impact for law enforcement is that it puts a burden on the prosecution to learn of and disclose any officer who is dishonest.

Pennsylvania v. Ritchie (480 U.S. 39 – 1987)

In 1986, the United States Supreme Court heard the case of *Pennsylvania v. Ritchie* and ruled that although a defendant's right to discover exculpatory evidence does not include the unsupervised authority to search through confidential files, they would allow the trial court to view the confidential files "in camera" to determine if exculpatory evidence regarding a witness exists. The relevance for law enforcement is that although a defense attorney cannot gain full access to review confidential files such as internal affairs files, the "confidential" files can be reviewed by the court. If the court finds that an internal affairs investigation includes a finding of dishonesty by an officer, that information can be presented in open court.

Kyles v. Whitley (514 U.S. 419 – 1995)

In 1995, the United States Supreme Court heard the case of *Kyles v. Whitley* and ruled that the prosecutor is responsible for providing all evidence favorable to the defense, regardless of any failure by the police to bring favorable evidence to the prosecutor's attention. Thus, the Court put the burden on the prosecutor to learn of and disclose information that could impeach witnesses – including dishonesty by law enforcement officers.

“Brady” Officers

As the result of these rulings and guidance by the United States Supreme Court, there have unfortunately been a number of law enforcement officers referred to as “Brady” officers – that is, officers who cannot be involved in enforcement because of their inability to offer credible testimony in court due to one or more incidents of dishonesty.

In addition to criminal implications related to impeachment at trial, officers who fail to disclose exculpatory information such as a history of dishonesty can face civil implications:

Jean v. Collins (4th Circuit Court of Appeals – No. 95-7695 – 1998)

In 1998, the 4th Circuit Court of Appeals heard the case of *Jean v. Collins* and ruled that police officers (the court’s term) should not be expected to evaluate evidence for its material nature for exculpatory or impeachment purposes in the same context as a prosecutor. However, the Court also ruled that police officers can be subject to monetary damages for failing to disclose exculpatory information so that it is made available to the defense.

Therefore, should a Garner police officer become a law enforcement officer for whom the department must, by law, report to the Office of the District Attorney that the officer has a credibility issue for purposes of discovery with the defense in a criminal trial (or with any attorney in a civil trial or administrative hearing), that fact shall be cause for proposed termination from employment for that officer with the Town of Garner.

The International Association of Chiefs of Police’s “Law Enforcement Oath of Honor”

On my honor, I will never betray my badge, my integrity, my character or the public trust.

I will always have the courage to hold myself and others accountable for our actions.

I will always uphold the constitution, my community and the agency I serve, so help me God.



INVESTIGATIVE ASSIGNMENTS

Employee-Involved Motor Vehicle Crashes (Excluding Crashes in Pursuits)

Motor vehicle crashes that occur in the Town of Garner involving on-duty employees or off-duty employees operating Department vehicles will normally be investigated by Department personnel in the following order of preference:

1. An on-duty Crash Reconstructionist; or
2. The Traffic Safety Unit Sergeant or a Traffic Safety Unit Officer; or
3. The on-duty patrol supervisor.

If the crash involves a fatality, an injury, \$1,000 or more in property damage, is of a controversial nature, or may result in civil liability for the Town, a Crash Reconstructionist should investigate the crash (to include calling an off-duty Reconstructionist if necessary).

In the event an employee is involved in a motor vehicle crash outside of the Town while on-duty or while operating a Department vehicle, an on-duty supervisor will respond to the scene if practical based on distance; if the supervisor responds, he or she will conduct an independent investigation of the crash for Department purposes. If a crash report is completed by the investigating agency, the supervisor will request a copy of the report when completed. If it is not practical for the supervisor to respond, he or she will contact the investigating agency to request that a DMV-349 be completed and that a copy be provided when complete.

The following criteria will be used to determine whether the motor vehicle crash is “documentable” for Department purposes (all “documentable” crashes will be entered into AIM for tracking purposes):

1. If the crash is “reportable” by current North Carolina G.S. 20-166 reporting guidelines; or
2. If the crash involves a collision with another vehicle not owned by the Town of Garner or the crash involves damage to property not owned by the Town of Garner; or
3. If the collision is with an object that causes vehicle damage extensive enough to require body work or chassis repair.

Supervisors should complete a DMV-349 and include photographs on all documentable crashes in the appropriate AIM module.

If the investigation determines that the involved employee was at fault and one of the above criteria is met, the crash will be entered as an employee-involved crash and a performance complaint will be initiated for the involved employee. The performance complaint investigation will be assigned to the employee's immediate supervisor as outlined in this manual. Crashes where the employee is not at fault do not require a summary memo.

Use of Force Incidents

Use of force incidents involving patrol officers will normally be investigated by the on-duty patrol supervisor (Sergeant or Platoon Leader). If a supervisor uses force in the incident to be investigated or witnesses the use of force, he or she cannot investigate the use of force as they cannot serve as an unbiased fact-finder. In those instances, another on-duty supervisor must be called to the scene to conduct the use of force investigation. If there is not another supervisor on duty at the time, the Patrol Division Lieutenant will be contacted to either respond and conduct the use of force investigation or to direct another Department supervisor to respond.

If a Lieutenant conducts a use of force investigation involving an employee in their chain-of-command, the investigation will be forwarded to another Division Lieutenant for review and approval when completed.

Use of force incidents involving officers outside the Patrol Division will normally be investigated by the involved officer's immediate supervisor. If that supervisor is not on-duty or not available, an on-duty patrol supervisor will respond to investigate the use of force incident.

Performance Complaints

By policy, performance complaints can be investigated and resolved by any supervisor within the Department. In most cases, performance complaints will be investigated and resolved by the immediate supervisor of the employee subject to the complaint. The employee's immediate supervisor is most familiar with the employee's day-to-day work and is best situated to conduct such an investigation. However, the Chief of Police, the Internal Affairs Administrator, or the employee's lieutenant may elect to have a supervisor other than employee's immediate supervisor investigate the performance complaint due to unique or exigent circumstances.

Allegations of Serious Misconduct

Allegations of serious misconduct will be investigated by a member of the command staff assigned by the Chief of Police. The Chief of Police will assign one member of the command staff to serve as the Department's Internal Affairs Administrator. The Internal Affairs Administrator will normally be assigned to investigate an allegation of serious misconduct.

However, the Chief of Police may appoint any member of the command staff to serve as an Internal Affairs Investigator for the Department. During an internal affairs investigation, the assigned Internal Affairs Investigator(s) will report directly to the Chief of Police in matters related to the investigation.

Due to the nature of these allegations, it is more appropriate that a member of the command staff who is not in the employee's chain-of-command be assigned to investigate. Members of the command staff receive additional training designed to ensure a thorough investigation is conducted.

Criminal Allegations

In the event that a complaint alleges criminal behavior, the Chief of Police will assign an internal affairs investigator from the Department to conduct the administrative investigation related to the violation of Department and/or Town policy. The Chief of Police will either assign a separate internal affairs investigator from the Department to conduct the criminal investigation or he/she will request that an outside investigative agency, typically the North Carolina State Bureau of Investigation, conduct the criminal investigation on behalf of the Department.

In either case, both investigations will be conducted separate from one another. The investigator(s) conducting the administrative investigation may not share information with the criminal investigation as that information is protected by *Garrity*. However, the investigator(s) conducting the criminal investigation may share information with the administrative investigation. Because of the critical nature of these investigations, you as supervisors must avoid any action (or inaction) that could result in the perception that either or both investigations are not being conducted in accordance with Department policy and the law.

The Chief of Police may elect to conduct both investigations simultaneously or may elect to delay the administrative investigation until the criminal investigation is completed. The advantages to delaying the administrative investigation are that there is less likelihood of confusion on the part of the involved employee(s) as to which investigation they are answering

to at any given time and any information that is gathered as a part of the criminal investigation can be used as a part of the administrative investigation. The disadvantage to delaying the administrative investigation is that closure of the incident for both the involved employee(s) and the Department is likely delayed for a significant period of time.

Investigation Timeframes

All internal investigations should be completed within thirty (30) days of the receipt of the performance complaint or allegation of serious misconduct or the date that the employee-involved motor vehicle crash, the use of force, or the vehicle pursuit incident occurs. The only exception to this is if the nature and complexity of the investigation requires the Chief of Police to issue an extension. If the assigned internal investigator does not expect to complete an internal investigation in thirty (30) days, he or she should contact the Internal Affairs Administrator to discuss an extension.

Any request to extend a thirty (30) day investigation period and any decision to grant an extension will be made in writing and will be included as part of the internal investigation documentation.

USE OF FORCE INVESTIGATIONS

The Department is committed to investigating reportable use of force incidents in order to ensure that the use of force was necessary, that the officer(s) only used that amount of force reasonable for the circumstances at hand, to identify training issues, and to protect employees from allegations of excessive or inappropriate use of force. The investigation of a reportable use of force incident is defined as an internal affairs investigation because it relates to employee performance and involves information to be gathered for Departmental purposes. It should be noted that a use of force investigation is different from a performance complaint investigation or an allegation of serious misconduct investigation in that a use of force investigation is initiated based on specific actions by an employee rather than a complaint against an employee.

Department policy defines as a reportable use of force as when any of the following occur:

- Any use of force that causes an injury and/or a complaint of injury to an officer or any other person;
- Any use of force that results in property damage to non-department owned property;
- The use of a baton, impact munitions, OC spray, a physical strike, or a strike with any other object;
- The release of a police canine for the purpose of apprehending a suspect (regardless of whether or not the canine makes physical contact with the suspect(s));
- The discharge of a firearm or Taser for any lawful purpose other than training or by negligence; and/or
- The intentional pointing of a firearm or Taser towards a person (this does NOT include the drawing or display of a firearm or Taser – only the intentional pointing).

The initial responsibility for initiating a use of force investigation lies with the officer(s) involved; any officer who uses force as defined above or who witnesses a reportable use of force has an obligation to report the use of force to an on-duty supervisor. This notification is required to be made as soon as is practical and prior to the involved officer(s) leaving the scene of the use of force.

Supervisory Responsibilities – Use of Force (Excluding “Intentional Pointing” Incidents)

Upon receiving notification of a reportable use of force incident not involving an intentional pointing of a firearm or Taser the supervisor has the following responsibilities:

- Respond to the scene – a supervisor will investigate every reportable use of force incident at the scene where the use of force occurs whenever possible. If it is necessary for the suspect and/or an officer (or officers) to be transported from the scene for medical treatment, the supervisor should still respond to the scene first to begin the investigation there (if an officer is injured and another supervisor is available to assist, the second supervisor should respond to wherever the injured officer is being treated).
- Request EMS if they are needed and have not already been requested to respond – policy requires that EMS respond in the following situations:
 - A subject involved in the use of force requests EMS assistance;
 - A subject involved in the use of force has an apparent injury or complains of injury (unless the subject refuses medical treatment and the injury does not appear life threatening and does not involve a risk of contamination by body fluids – the refusal must be documented by the responding supervisor);
 - The officer utilized a baton strike, impact munitions, OC spray, and/or Taser.
- Evaluate the physical and emotional state of the officer(s) involved and determine if they are able to continue with the arrest process. The complete and accurate completion of the arrest processing and the use of force documentation are reliant upon the officer being clear-minded and focused on the incident at hand.
 - If the supervisor determines that the officer is not able to continue, the supervisor will assign another officer to complete the arrest process.
 - If the officer is unable to complete a *Use of Force Report* due to injury or other reason but is able to answer the questions and give an oral narrative, the investigating supervisor may complete the form for the injured officer and indicate such on the report.
 - If the officer is unable to complete a *Use of Force Report* and cannot talk with the investigating supervisor due to injury or other reason, the investigating supervisor may complete a *Use of Force Report* absent the narrative and indicate the circumstances on the report.

- Speak with the involved officer(s) to get a basic overview of the use of force incident to guide the on-scene investigation. Any involved officer(s) and any witness officers will be required to provide basic incident details relevant to clarifying if there are any exigent circumstances such as injured persons, suspects who have fled, what direction shots were fired in, the location of weapons, and/or other similar details related to immediate public safety and/or evidentiary issues.

Any such statement is not subject to Garrity warnings; the Supreme Court has ruled that a supervisor questioning officers on the scene of a use of force with no implied threat of job loss does not require Garrity protections (*United States v. Camacho*).

- Collect any evidence from the scene, to include (but not be limited to) the following:
 - Photographs of the following:
 - The location where the use of force occurred (the incident scene);
 - A full body view of the suspect(s);
 - Any known or alleged injuries to a suspect;
 - A full body view of the involved officer(s);
 - Any known or suspected injuries to an officer;
 - Any damage to property (including Department equipment);
 - Any other evidentiary items (prior to collection).

Keep in mind that the purpose of photos is to be able to recreate the scene visually for those who review the use of force incident later, to visually document any injuries and/or to visually document that there were not visible injuries, and to visually document any damage caused or the fact that damage was not caused.

- Taser tags, cartridge, probes, and wires when the probes made contact with the suspect or the suspect's clothing. Taser tags should be recovered as they help to verify the Taser / Taser cartridge that were used in the use of force incident. The Taser cartridge, probes and wires should be recovered as they were deployed in the incident (and we do not want them left in the trash where non-department personnel might get custody of them).

Taser tags and the cartridge, probes and wires should be submitted to the evidence system and should clearly be labeled as being part of an internal affairs investigation.

- Civilian witness statements. All civilians who are known or believed to have been a witness to the use of force incident are to be identified and interviewed with their statement recorded (by audio or in writing) by the supervisor. This will include those civilians who were on scene but state they did not witness the incident. Just as we want statements from those individuals who did witness the incident, we want to have any potential witnesses commit to what they did not see in order to avoid them making a potentially accusatory statement after the fact when they in fact did not see anything.

There is no requirement for civilian witnesses to give written statements; however, if the supervisor feels that a written statement is appropriate due to the circumstances of the use of force incident, he or she may request a written statement from the witness.

- Available photos or video, including (but not limited to) cell phone footage, in-car camera or body camera footage, and/or any surveillance footage. The investigating supervisor should survey the area for any video surveillance cameras belonging to businesses that may have captured the incident on video. The supervisor should also ask any witnesses if they have a photo(s) or video taken with cell phones or cameras; if a witness does have a photo(s) or video, they should be asked if they are willing to provide the supervisor with the photo(s) or video via email or some other method of delivery. If the witness is not willing to provide the photo(s) or video, the supervisor will not take any further action at the scene but will consult with their Division Lieutenant as to whether or not to pursue a warrant to seize the photo(s) or video.

You should always identify every police vehicle and officer that was on the scene when the use of force incident occurred; this includes Garner vehicles and vehicles from other agencies (assuming the other agency will allow you to view their video) and Garner officers and officers from other agencies. You have an obligation to review (or attempt to review) the audio and/or video from all vehicles and officers present. (Note – if an involved employee's in-car camera or body camera system did not record the incident in question, the failure to record should be noted and explained in the investigative summary).

Any photos or video recovered as part of the use of force investigation should be included with the use of force investigation when submitted.

- Spent impact munitions or samples when multiple projectiles were delivered and are scattered about a scene. Spent munitions should be collected to verify the type of munition used by the officer in the use of force incident. Any munitions recovered should be submitted to the evidence system and should clearly be labeled as being part of an internal affairs investigation.
- Notify the involved employee's Division Lieutenant of the use of force incident. If the incident occurs during normal business hours, the Lieutenant should be notified prior to the end of that business day. If the incident occurs after hours or at a time when the Lieutenant is not at work, this notification may be made the next business day (email notification is normally acceptable).

An exception to this is if the use of force incident involves shots fired and/or results in serious injury or death to a suspect and/or officer. If that occurs, the Division Lieutenant is to be notified immediately and the investigation is to proceed as outlined later in this section.

Another exception to this is if the use of force incident draws significant public attention or involves unique or extraordinary circumstances where the supervisor feels it is appropriate or necessary to make immediate notification to the Division Lieutenant.

Once the investigation at the scene is complete, the supervisor will ensure that the following is addressed as part of continuing the use of force incident investigation:

- Take statements from any witness officers who were on scene but did not use force. Officers are only required to complete a use of force report if they use force defined as reportable in Department policy. Statements from witness officers will be documented in memorandum format with the memorandum addressed to the investigating supervisor. The supervisor is to review each statement to ensure that it is consistent with any verbal statements given by the witness officer and that the witness officer addresses any points of contention that they have personal knowledge of from the incident.
- Ensure that any officer who uses "reportable" force completes a Department *Use of Force Report* form (GPD 710.1-A). It is critical that the report be accurate, complete and thorough in documenting the statistical data on the front of the report and, more importantly, that the officer narrative on the back provides a detailed description of the suspect's actions that resulted in (i.e. justified) the use of force and the specific actions taken by the officer.

- If the officer is unable to complete a *Use of Force Report* due to injury or other reason but is able to answer the questions and give an oral narrative, the investigating supervisor may complete the form for the injured officer and indicate such on the report.
- If the officer is unable to complete a *Use of Force Report* and cannot talk with the investigating supervisor due to injury or other reason, the investigating supervisor may complete a *Use of Force Report* absent the narrative and indicate the circumstances on the report.
- Review each *Use of Force Report(s)* for accuracy and completeness. Each individual report should be an accurate depiction of the reporting officer's involvement in the use of force incident.

The officer's description of the suspect's actions should include any response to or failure to respond to commands given by the officer prior to or during the use of force as well as specific details of what actions the suspect took that justified the use of force.

The officer's description of their actions should include a detailed description of any commands given, any strikes delivered (including the number, how and where to the best of their recollection), any weapons used and any other relevant information. The officer's description of their actions should not include actions taken by any other Department personnel.

If more than one report is completed, the basic incident details and the suspect information should be consistent on all reports.

- Complete a *Use of Force Supervisory Investigation Summary* (GPD 710.1-C). Investigating a reportable use of force incident is not as simple as ensuring accurate documentation; as the investigating supervisor you must ensure appropriate action was taken, correct any noted deficiencies or inappropriate conduct, and protect the officer and the department from potential liability whenever possible. The investigative summary is designed to record relevant information from your investigation and will include the following:
 - The supervisor's summary of the incident details based on his/her investigation. This is your best understanding of what happened prior to, during, and after the use of force based on the information you gathered in your investigation. The summary should include an explanation of any details that are unclear or inconsistent based on the information available.

- Summaries of statements from the involved officer(s), witness officer(s), the suspect(s) and any civilian witnesses which are not consistent with your findings. The summaries should reference any information that is relevant to clarifying the circumstances of the incident and/or any potential policy violations.
- Documentation of any noteworthy evidence collected from the incident that contributed to the supervisor's findings. This section should include the disposition of the noted evidence.
- An explanation of any deviation from policy; as a reminder, it the responsibility of the investigating supervisor to determine if the use of force incident involved any actions on the part of the officer(s) that were not in accordance with Department policy.
- Any recommendation for non-punitive disciplinary action (including remedial training) against the involved officer(s); if punitive disciplinary action is appropriate, that recommendation will be made by the Division Lieutenant. Because the investigating supervisor is normally the immediate supervisor of the involved employee, it is appropriate for the investigating supervisor to recommend any non-punitive disciplinary action. In the event that the investigating supervisor is not the involved employee's immediate supervisor, the investigating supervisor should consult with the immediate supervisor prior to making a non-punitive disciplinary recommendation.
- Any known or suspected liability incurred by the Department stemming from the use of force incident. The investigator supervisor is to identify whether or not any policy violations or any actions by Department personnel in the use of force incident could expose the Department to liability.

The supervisory summary should be proofed for spelling, grammar, maintaining past tense (in actions already taken by the officer and the supervisor), and completeness. As a reminder, your review will be read by those inside and outside the department. It is to be thorough and professionally written.

When the use of force investigation is complete, anyone not directly involved with the incident should be able to review the use of force documentation and have a clear understanding of what happened, why and how it happened and what, if anything, we did as an agency in response to it.

The completed investigation shall include the following:

- All completed *Use of Force Report* forms;
- The supervisor's *Use of Force Supervisory Investigation Summary*;
- Originals of any written witness statements;
- Recorded witness statements (if available and relevant to clarifying the circumstances);
- Copies of all incident reports from the incident;
- Copies of any arrest paperwork; and
- All photos taken related to the investigation.

The completed investigation is to be forwarded to the involved employee's Division Lieutenant for review and approval (and for a punitive disciplinary action recommendation if appropriate). If the Lieutenant approves the investigation, he or she will forward it to the Operations Bureau Captain; if the Lieutenant does not approve the investigation, it will be returned to the investigating supervisor for correction before being resubmitted. Once the Lieutenant approves the investigation it will be reviewed by the Operations Bureau Captain and the Chief of Police using the same process. Once the Chief of Police approves the investigation, it is considered closed and will be forwarded to the Internal Affairs Administrator for statistical analysis and filing as an Internal Affairs record.

Supervisory Responsibilities – Use of Force by Intentional Pointing

Upon receiving notification of a reportable use of force incident involving an intentional pointing of a firearm or Taser the supervisor has the following responsibilities:

- Evaluate whether or not an on scene response is necessary. Supervisors are not required to respond to the scene for an intentional pointing of firearm or Taser. Supervisors are encouraged to respond to the scene if any of the following circumstances exist:
 - The pointing involves one or more juveniles.
 - The employee believes the incident is likely to generate a complaint.
 - The pointing involves an elected official, another public safety employee, or other person that may generate interest from the media and/or Town officials.
 - The employee requests the supervisor.
 - Any other circumstances where the officer or supervisor believes a supervisor response would be beneficial.
- Speak with the involved officer(s) to get a basic overview of the intentional pointing incident.
- Speak with any witness officers to verify the basic details of the incident (officer memorandums are not necessary in intentional pointing incidents).
- Notify the involved employee's Division Lieutenant of the use of force by intentional pointing incident. If the incident occurs during normal business hours, the Lieutenant should be notified prior to the end of that business day. If the incident occurs after hours or at a time when the Lieutenant is not at work, this notification may be made by email or in person / by phone the next business day.
- Ensure that any officer who intentionally points a firearm or Taser completes a Department *Use of Force By Pointing Report* form (GPD 710.1-B).
- Review each *Use of Force By Pointing Report* for accuracy and completeness. Each individual report should be an accurate depiction of the reporting officer's involvement in the use of force by intentional pointing incident.
- The completed *Use of Force By Pointing Report(s)* is to be forwarded to the involved employee's Division Lieutenant for review and approval. No investigative summary is necessary; however, any comments or narrative offered by the investigating supervisor may be included in the "Notes" section of the Administrative Investigations Management (AIM) software.

Supervisory Responsibilities – Use of Force / Domestic Animal

Upon receiving notification of a reportable use of force incident involving a domestic animal (excluding pointing incidents), the supervisor has the following responsibilities:

- Respond to the scene – a supervisor will investigate every reportable use of force incident involving a domestic animal at the scene where the use of force occurs whenever possible.
- Speak with the involved officer(s) to get a basic overview of the use of force incident to guide the on-scene investigation. Any involved officer(s) and any witness officers will be required to provide basic incident details relevant to clarifying the circumstances necessitating the use of force.

Any such statement is not subject to Garrity warnings; the Supreme Court has ruled that a supervisor questioning officers on the scene of a use of force with no implied threat of job loss does not require Garrity protections (*United States v. Camacho*).

- Take photographs of the location where the use of force occurred (the incident scene) and a full view of the animal.
- Speak with any civilian witnesses to get their statements as to what they saw in the use of force incident.
- Notify the involved employee's Division Lieutenant if the use of force incident involves shots fired and/or results in serious injury to or the death of the animal.

Once the investigation at the scene is complete, the supervisor will complete a brief summary memo that includes any relevant information from the outline provided on pages 22-23 of this manual.

Supervisory Responsibilities – Use of Force / Non-Domestic Animal

Upon receiving notification of a reportable use of force incident involving a non-domestic animal, the supervisor has the following responsibilities:

- Ensure that any officer who uses force on a non-domestic animal completes a Department *Use of Force Report* form (GPD 710.1-A) to document their justification for the use of force.
- Review each *Use of Force Report(s)* for accuracy and completeness. Each individual report should be an accurate depiction of the reporting officer's involvement in the use of force incident.
- The completed *Use of Force Report(s)* is to be forwarded to the involved employee's Division Lieutenant for review and approval. No investigative summary is necessary; however, any comments or narrative offered by the investigating supervisor may be included in the "Notes" section of the Administrative Investigations Management (AIM) software.

“Officer Involved Shooting” Use of Force Incident – Person Shot

In the event a supervisor determines that an officer has been involved in an “officer involved shooting” incident where a suspect and/or other person has been shot, he or she will utilize the following protocol:

- The supervisor will immediately respond and establish incident command – by radio with the Raleigh-Wake Emergency Communications Center (RWECC) – so there is a single person coordinating activity and ensuring this protocol is adhered to.
- The primary responsibilities of the initial Incident Commander are:
 - To ensure EMS is requested and basic medical attention is provided to the victim(s),
 - To contain and protect the scene,
 - To address exigent circumstances,
 - To make notification to their Division Commander (see below for specific command staff responsibilities), and
 - To safeguard the involved officer(s).
- Any involved officer and any witness officers will be required to provide basic incident details relevant to clarifying if there are any exigent circumstances such as injured persons, suspects who have fled, what direction shots were fired in, the location of weapons, and/or other similar details related to immediate public safety and/or evidentiary issues.

Any such statement is not subject to Garrity warnings; the Supreme Court has ruled that a supervisor questioning officers on the scene of a use of force with no implied threat of job loss does not require Garrity protections (*United States v. Camacho*).

- The involved officer(s) will not be initially questioned about details of the shooting beyond exigent circumstances.
- Witness officers will also not be initially questioned about details of the shooting beyond exigent circumstances.
- Once exigent circumstances are addressed, the Incident Commander is responsible for immediately assigning another officer (preferably another supervisor) to escort each involved officer until the involved officer leaves the incident scene and is released from duty by the Chief of Police or his designee (in the context of this manual, “released from duty” is meant to indicate “allowed to leave work for the day and go home – or wherever the officer may choose to go”).

- If the incident involved the discharge of a firearm:
 - If an involved officer utilized their issued handgun and is in possession of their issued handgun, he or she is to be instructed not to un-holster the firearm or remove the magazines from their gun belt for any reason while on the scene or until they are ordered to turn it over to the assigned Internal Affairs Investigator or the SBI.
 - If an involved officer utilized a firearm other than their handgun and is in possession of that firearm, the escort will secure that firearm and any spare magazines in the trunk of their (the escort's) vehicle.
 - If an involved officer is not in possession of the firearm they used in the shooting, the firearm shall be left where it lays on the scene for evidentiary purposes.
- If the incident involved the discharge of a Taser:
 - If an involved officer utilized their Taser and is in possession of their Taser, he or she is to be instructed not to un-holster the Taser or to alter its state in any way (to include turning it on or off) while on the scene or until they are ordered to turn it over to the assigned Internal Affairs Investigator or the SBI.
 - If an involved officer is not in possession of the Taser they used in the incident, the Taser shall be left where it lays on the scene for evidentiary purposes.
- If an involved officer is injured to the extent that they will be transported by EMS, the escort officer will secure the involved officer's gun belt (including the holstered firearm and magazines and all other weapons and equipment) and any parts of the involved officer's uniform that is removed during triage in the trunk of the Incident Commander's vehicle and will escort the involved officer to the hospital.
- Each involved officer will be instructed not to speak to anyone while at the scene about the circumstances of the shooting incident beyond exigent circumstances unless ordered to do so by the assigned Internal Affairs Investigator or the Chief of Police.
 - No one else is to speak to an involved officer other than to check on their general welfare.
 - Each involved officer is to be escorted to an on-scene police vehicle where their escort will stay with them until they are released to go to the Police Department (or another facility designated by the Chief of Police or an external agency investigating the incident).

- The escort will then drive the involved officer to the designated facility and will continue to stay with them until the involved officer is released from duty or the escort is given other direction by the assigned Internal Affairs Investigator or the Chief of Police.
- If an involved officer fired their handgun, the involved officer will turn over his/her handgun and magazines to a supervisor or a member of the SBI designated by the Chief of Police once at the designated facility.
- If an involved officer fired their Taser, the involved officer will turn over his/her Taser to a supervisor or a member of the SBI designated by the Chief of Police once at the designated facility. The Taser will be left in the condition it is found; it will not be turned on or off and no attempt will be made to download any data from the Taser unless directed by the Chief of Police, the assigned Internal Affairs Investigator, or a member of the SBI designated by the Chief of Police.
- It will be the responsibility of the escorting officer to provide a statement (to the SBI and to the assigned Internal Affairs Investigator) as to their time escorting the involved officer. The statement should include the fact that they were present with the involved officer and the involved officer's handgun and magazines and/or Taser were not altered, manipulated or handled during that time and/or that they seized a firearm other than the involved officer's handgun from the officer and how it was secured.
 - (See "Officer Status During the Investigation" in this section for additional information regarding officer and firearm status).
- The Incident Commander is not initially responsible for investigating the shooting incident or the criminal incident that led to the shooting; he or she doesn't need to coordinate any investigative steps or assignments. The Incident Commander does need to maintain control of the scene, address exigent circumstances, and wait for additional resources to respond. In most instances, he/she will pass Incident Command to a member of the command staff and be assigned other duties by the subsequent Incident Commander.

Additional Resources

- Once the Incident Commander has made notification to his or her Division Commander, the Division Commander will:

- Respond to the scene to coordinate with the on-scene supervisor.
- Make immediate notification to their Bureau Captain.
- The Bureau Captain will respond to the scene and will notify the Chief of Police.
- The Chief of Police will respond to the scene and will notify the Internal Affairs Administrator and, when sufficient information is available, the Town Manager.
- The Internal Affairs Administrator will respond to the scene to determine the known facts of the incident and to make a recommendation to the Chief of Police as to how to proceed.
- Once the command staff responding is assembled on the scene the initial Incident Commander will provide a single briefing to the command staff members. The Chief of Police will then assume the role of Incident Commander or will designate a member of the command staff to serve as the Incident Commander. The following steps will then be taken:
 - Command Staff members will not question the involved officer beyond clarification of any issues related to exigent circumstances.
 - The Incident Commander will ensure that there are no outstanding questions for the involved officer related to exigent circumstances (including evidentiary concerns); once that is done, the escort for the involved officer will transport him or her to a Police or other designated facility. Once at that facility, the involved officer will be allowed use of the restroom and an office so they can contact their family or anyone else they wish to call (if they have not already been able to do so). If necessary, arrangements should be made to provide the involved officer with food and drink.
 - The Chief of Police (or his designee) will make notification to the SBI to respond and conduct an external investigation of the shooting incident. The Chief of Police will appoint a department supervisor, typically the Internal Affairs Administrator, to conduct the internal administrative investigation. The Chief will also assign staff to conduct the investigation of the original criminal incident that the officer(s) had responded to or initiated.
 - The Chief of Police (or his designee) will make notification to the Wake County District Attorney; the purpose of this notification is to ensure a collaborative investigation and to provide the District Attorney and/or his/her staff the opportunity to respond to the incident scene.

State Bureau of Investigation (SBI) Response

The following is an overview of the standard SBI response and protocol for an officer-involved shooting incident:

- The SBI will make every effort to respond to a request for assistance within one hour of receiving the request; their normal protocol is to send agents from within the Capital District.
- The SBI will strive to have as many agents respond as necessary given the specific circumstances of the incident. One SBI Special Agent will be designated as the assigned case agent and will make the shooting their top priority.
- The SBI will initially be provided with a briefing on the incident. A member of the Command Staff and/or a Chief's supervisory designee will be available to brief the SBI upon their arrival so that the investigation can proceed as quickly as possible.
- The SBI's external investigation will take precedence over the department's internal investigation.
 - SBI interviews and other investigatory steps will be the priority in reviewing the shooting incident. The department's internal investigation will be coordinated with but will normally follow after similar steps in the SBI investigation.
 - The SBI Special Agent in Charge will maintain liaison with the Chief of Police (or his designee) throughout the investigation.
- The SBI will use the following terminology during their investigation:
 - Any officer who discharges his or her firearm will be referred to as a "subject officer."
 - Any suspect who is shot will be referred to as a "victim" for the purposes of the investigation.
- The SBI will send crime scene agents to the scene; however, they will normally collaborate with (rather than take the place of) CCBI in processing the crime scene.
 - The SBI will seize the firearm and magazines (and any other weapon used in the incident) of each subject officer and will likely hold them for the duration of their investigation.
- The SBI does not require an immediate interview with the subject officer. This is our department policy as well; a minimum of a 24-hour waiting period after an officer is involved in a shooting is recommended to increase the likelihood of an accurate and complete

recollection of the incident. However, the SBI is willing to interview the subject officer the day of the incident should the subject officer or their attorney so choose.

- Subject officer interviews with the SBI will normally take place the day after the shooting occurs.
- The SBI will advise any subject officer of their Miranda warnings prior to speaking to them. The assigned Internal Affairs Investigator will advise any subject officer of their Garrity warnings prior to speaking to them. This approach is consistent with our department policy to avoid confusion as to which investigation the subject officer is answering for at any given time.
- As a part of their investigation, it is standard procedure for the SBI to ask each subject officer to consent to providing the SBI access to their department personnel records, to include their personnel file, internal affairs file, medical records, and firearms training records. This is an individual decision that must be made by the subject officer in consultation with their attorney (if applicable).

Officer Status During the Investigation

After an officer is involved in a shooting incident, the following protocol will be adhered to:

- The involved officer(s) will not be required to complete a *Use of Force* report or a criminal incident report prior to their release from duty the day of the shooting incident.
 - The assigned Internal Affairs Investigator, in consultation with the Chief of Police and the SBI, will determine when the involved officer(s) will be required to complete any reports related to the incident.
 - This will normally be at least 24-hours after the shooting incident but as soon as practical thereafter.
 - The involved officer(s) will be afforded the opportunity to review any in-car camera video that is available and/or to visit the scene of the shooting incident prior to completing any reports.
- Prior to each involved officer being released from duty the day of the shooting incident, the Chief of Police will make a determination as to the employee's status:

- Should the preliminary on-scene investigation indicate appropriate action on the part of the officer, he or she will be placed on paid Modified Duty pending initial interviews with the SBI (assuming the officer elects to speak to them) and the department's assigned Internal Affairs Investigator. The Chief of Police (or his designee) will complete a *Notice of Modified Duty Status – Officer Involved Shooting / Serious Injury / Death* form (GPD form 320.1-H) to inform the officer of their temporary status.
 - The officer will be issued a replacement firearm and will maintain their sworn status but will be given an administrative (non-enforcement) assignment.
 - After transporting the firearm home, the officer will not be authorized to carry the firearm until such time that they have qualified with the firearm (per North Carolina Administrative Code requirements). Arrangements will be made for this qualification to take place as soon as is practical.
- Should the preliminary on-scene investigation raise a question(s) that cannot be initially resolved, the involved officer will be placed on paid Emergency Relief from Duty pending initial interviews with the SBI (assuming the officer elects to speak to them) and the department's assigned Internal Affairs Investigator. This is necessary in this circumstance to protect the employee and the department.

The Chief of Police (or his designee) will complete a *Notice of Emergency Relief From Duty – Officer Involved Shooting / Serious Injury / Death* form (GPD form 320.1-G) to place the employee on leave and to provide the employee with specific guidelines as to their status.

- It will be at the discretion of the Chief of Police as to when to transition the officer to Modified Duty so they can return to work in a non-enforcement role. Once this decision is made, the Chief of Police (or his designee) will complete a *Notice of Modified Duty Status – Officer Involved Shooting / Serious Injury / Death* form (GPD form 320.1-H) to change the employee's status. The employee will be issued a replacement firearm once they are transitioned to Modified Duty.
 - Regardless of the employee's status, he or she will report for mandatory counseling to a mental health professional selected by the department. This counseling is mandatory to ensure that the involved officer receives timely assistance and will be scheduled by the department in coordination with the involved officer.

- In most cases, the involved officer will not be returned to full duty until the department's internal investigation has been completed (including a finding that the officer acted within policy) and the Chief of Police has consulted with the District Attorney regarding the SBI investigation.

“Officer Involved Shooting” Use of Force Incident – Person NOT Shot

In the event a supervisor determines that an officer has been involved in an “officer involved shooting” incident where a suspect or other person has been fired upon by an officer but is not shot, he or she will utilize the following protocol:

- The supervisor will immediately respond and establish incident command – by radio with RWECC – so there is a single person coordinating activity and ensuring this protocol is adhered to.
- The primary responsibilities of the initial Incident Commander are:
 - To contain and protect the scene,
 - To address exigent circumstances,
 - To make notification to their Division Commander (see below for specific command staff responsibilities), and
 - To safeguard the involved officer(s).
- Any involved officer and any witness officers will be required to provide basic incident details relevant to clarifying if there are any exigent circumstances such as what direction shots were fired in, suspects who have fled, the location of weapons and/or other similar details related to immediate public safety and/or evidentiary issues.

Any such statement is not subject to Garrity warnings; the Supreme Court has ruled that a supervisor questioning officers on the scene of a use of force with no implied threat of job loss does not require Garrity protections (*United States v. Camacho*).

- The involved officer(s) will not be initially questioned about details of the shooting beyond exigent circumstances.
- Witness officers will also not be initially questioned about details of the shooting beyond exigent circumstances.
- Once exigent circumstances are addressed, the Incident Commander is responsible for immediately assigning another officer (preferably another supervisor) to escort each involved officer until the involved officer leaves the incident scene and is released from duty by the Chief of Police or his designee.

- If the incident involved the discharge of a firearm:
 - If an involved officer utilized their handgun and is in possession of their handgun, he or she is to be instructed not to un-holster the firearm or remove the magazines from their gun belt for any reason while on the scene or until they are released from duty that day.
 - If an involved officer utilized a firearm other than their handgun and is in possession of that firearm, the escort will secure that firearm and any magazines in the trunk of their (the escort's) vehicle.
 - If an involved officer is not in possession of the firearm they used in the shooting, the firearm shall be left where it lays on the scene for evidentiary purposes.
- If the incident involved the discharge of a Taser:
 - If an involved officer utilized their Taser and is in possession of their Taser, he or she is to be instructed not to un-holster the Taser or to alter its state in any way (to include turning it on or off) while on the scene or until they are ordered to turn it over to the assigned Internal Affairs Investigator.
 - If an involved officer is not in possession of the Taser they used in the incident, the Taser shall be left where it lays on the scene for evidentiary purposes.
- If an involved officer is injured to the extent that they will be transported by EMS, the escort officer will secure the involved officer's gun belt (including the holstered firearm and magazines and all other weapons and equipment) and any parts of the involved officer's uniform that is removed during triage in the trunk of the Incident Commander's vehicle and will escort the involved officer to the hospital.
- Any involved officer will be instructed not to speak to anyone about the circumstances of the shooting incident while at the scene beyond exigent circumstances unless ordered to do so by the assigned Internal Affairs Investigator or the Chief of Police.
 - No one else is to speak to the involved officer other than to check on their general welfare.
 - The involved officer is to be escorted to an on-scene police vehicle where their escort will stay with them until they are released to go to the Police Department (or another designated facility).
 - The escort will then drive the involved officer to the designated facility and will continue to stay with them until the involved officer is released from duty or the

escort is given other direction by the assigned Internal Affairs Investigator or the Chief of Police.

- If the involved officer fired their handgun, it will be at the discretion of the Chief of Police whether or not the involved officer will turn over his/her handgun and magazines to a supervisor designated by the Chief of Police once at the designated facility.
- It will be the responsibility of the escorting officer to provide a statement to the assigned Internal Affairs Investigator as to their time escorting the involved officer. The statement should include the fact that they were present with the involved officer and the involved officer's handgun and magazines were not altered, manipulated or handled during that time and/or that they seized a firearm other than the involved officer's handgun from the officer and how it was secured.
 - (See the "Officer Status During the Investigation" section of this document for additional information regarding officer and firearm status).
- The Incident Commander is not initially responsible for investigating the shooting incident or the criminal incident that led to the shooting; he or she doesn't need to coordinate any investigative steps or assignments. The Incident Commander does need to maintain control of the scene, address exigent circumstances, and wait for additional resources to respond. In most instances, he/she will pass Incident Command to a member of the command staff and be assigned other duties by the subsequent Incident Commander.

Additional Resources

- Once the Incident Commander has made notification to his or her Division Commander, the Division Commander will:
 - Respond to the scene to coordinate with the on-scene supervisor.
 - Make immediate notification to their Bureau Captain.
- The Bureau Captain will respond to the scene and will notify the Chief of Police.
- The Chief of Police will respond to the scene and will notify the Internal Affairs Administrator and, when sufficient information is available, the Town Manager.
- The Internal Affairs Administrator will respond to the scene to determine the known facts of the incident and to make a recommendation to the Chief of Police as to how to proceed.

- Once the command staff responding is assembled on the scene the initial Incident Commander will provide a single briefing to the command staff members. The Chief of Police will then assume the role of Incident Commander or will designate a member of the command staff to serve as the Incident Commander. The following steps will then be taken:
 - Command Staff members will not question an involved officer beyond clarification of any issues related to exigent circumstances.
 - The Incident Commander will ensure that there are no outstanding questions for the involved officer(s) related to exigent circumstances (including evidentiary concerns); once that is done, the escort for each involved officer will transport him or her to the Police Department or another designated facility. Once at that facility, each involved officer will be allowed use of the restroom and an office so they can contact their family or anyone else they wish to call (if they have not already been able to do so). If necessary, arrangements should be made to provide each involved officer with food and drink.
 - The Chief of Police will appoint a department supervisor, typically the Internal Affairs Administrator, to conduct the internal administrative investigation. The Chief will also assign staff to conduct the investigation of the original criminal incident that the officer(s) had responded to or initiated.
 - The Chief of Police will not normally initiate a criminal investigation for an officer involved shooting with no one struck unless there are unique circumstances that warrant such action. If a criminal investigation is warranted, it is at the discretion of the Chief of Police as to whether to request the SBI to conduct the investigation or to assign an internal investigator.

Officer Status During the Investigation

After an officer is involved in a shooting incident where no one is struck, the following protocol will be adhered to:

- The involved officer(s) will not be required to complete a *Use of Force* report or a criminal incident report prior to their release from duty the day of the shooting incident.
 - The assigned Internal Affairs Investigator, in consultation with the Chief of Police, will determine when the involved officer(s) will be required to complete any reports related to the incident.

- This will normally be at least 24-hours after the shooting incident but as soon as practical thereafter.
- The involved officer(s) will be afforded the opportunity to review any in-car camera video that is available and/or to visit the scene of the shooting incident prior to completing any reports.
- Prior to each involved officer being released from duty the day of the shooting incident, the Chief of Police will make a determination as to the employee's status:
 - Should the preliminary on-scene investigation indicate appropriate action on the part of the officer, he or she will remain on Active Duty but will be released from duty for the day (if there is time left in his/her scheduled workday).
 - Should the preliminary on-scene investigation raise a question(s) that cannot be initially resolved, he or she will be placed on paid Emergency Relief from Duty pending initial interviews with the department's assigned Internal Affairs Investigator. This is necessary in this circumstance to protect the employee and the department.

The Chief of Police (or his designee) will complete a *Notice of Emergency Relief From Duty – Officer Involved Shooting / Serious Injury / Death* form (GPD form 320.1-G) to place the employee on leave and to provide the employee with specific guidelines as to their status.

 - It will be at the discretion of the Chief of Police as to when to transition the officer back to Active Duty so they can return to work.
- Regardless of the employee's status, he or she will be offered the opportunity for counseling with a mental health professional. This counseling is optional and is made available to ensure that the involved officer receives timely assistance if they so desire; any appointment will be scheduled by the department in coordination with the involved officer.

Use of Force Incident Resulting in Serious Injury or Death (Other than an “Officer Involved Shooting” Incident)

In the event a supervisor determines that an officer has been involved in a use of force incident that does not involve a firearm resulting in serious injury (see the “Definitions” section of this manual) to or the death of a suspect, he or she will utilize the following protocol:

- The supervisor will immediately respond and establish incident command – by radio with RWECC – so there is a single person coordinating activity and ensuring this protocol is adhered to.
- The primary responsibilities of the initial Incident Commander are:
 - To ensure EMS is requested and basic medical attention is provided to the victim(s),
 - To contain and protect the scene,
 - To address exigent circumstances,
 - To make notification to their Division Commander (see below for specific command staff responsibilities), and
 - To safeguard the involved officer(s).
- Any involved officer and any witness officers will be required to provide basic incident details relevant to clarifying if there are any exigent circumstances such as potential injuries to involved persons, suspects who have fled, the location of weapons, and/or other similar details related to immediate public safety and/or evidentiary issues.

Any such statement is not subject to Garrity warnings; the Supreme Court has ruled that a supervisor questioning officers on the scene of a use of force with no implied threat of job loss does not require Garrity protections (*United States v. Camacho*).

- The involved officer(s) will not be initially questioned about details of the use of force incident beyond exigent circumstances.
- Witness officers will also not be initially questioned about details of the use of force incident beyond exigent circumstances.
- Once exigent circumstances are addressed, the Incident Commander is responsible for immediately assigning another officer (preferably another supervisor) to escort each involved officer until the involved officer leaves the incident scene and is released from duty by the Chief of Police or his designee.
- Each involved officer is to be instructed not to speak to anyone about the circumstances of the use of force incident beyond exigent circumstances while at the scene unless ordered to do so by the assigned Internal Affairs Investigator or the Chief of Police.
 - No one else is to speak to the involved officer other than to check on their general welfare.

- Each involved officer is to be escorted to an on-scene police vehicle where their escort will stay with them until they are released to go to the Police Department (or another designated facility).
 - The escort will then drive the involved officer to the designated facility and will continue to stay with them until the involved officer is released from duty or the escort is given other direction by the assigned Internal Affairs Investigator or the Chief of Police.
 - Once at the designated facility, the involved officer will turn over any weapon used in the use of force incident to the assigned Internal Affairs Investigator or a supervisor designated by the Chief of Police.
 - It will be the responsibility of the escorting officer to provide a statement to the assigned Internal Affairs Investigator as to their time escorting the involved officer.

The statement should include the fact that they were present with the involved officer and the involved officer's gun belt and contents were not altered, manipulated or handled during that time and/or that they seized a firearm other than the involved officer's handgun from the officer and how it was secured.

- (See the "Officer Status During the Investigation" section of this document for additional information regarding officer and firearm status).
- The Incident Commander is not initially responsible for investigating the use of force incident or the criminal incident that led to the use of force; he or she doesn't need to coordinate any investigative steps or assignments. The Incident Commander does need to maintain control of the scene, address exigent circumstances, and wait for additional resources to respond. In most instances, he/she will pass Incident Command to a member of the command staff and be assigned other duties by the subsequent Incident Commander.

Additional Resources

- Once the Incident Commander has made notification to his or her Division Commander, the Division Commander will:
 - Respond to the scene to coordinate with the on-scene supervisor.
 - Make immediate notification to their Bureau Captain.
- The Bureau Captain will respond to the scene and will notify the Chief of Police.

- The Chief of Police will respond to the scene and will notify the Internal Affairs Administrator and, when sufficient information is available, the Town Manager.
- The Internal Affairs Administrator will respond to the scene to determine the known facts of the incident and to make a recommendation to the Chief of Police as to how to proceed.
- Once the command staff responding is assembled on the scene the initial Incident Commander will provide a single briefing to the command staff members. The Chief of Police will then assume the role of Incident Commander or will designate a member of the command staff to serve as the Incident Commander. The following steps will then be taken:
 - Command Staff members will not question any involved officer beyond clarification of any issues related to exigent circumstances.
 - The Incident Commander will ensure that there are no outstanding questions for the involved officer(s) related to exigent circumstances (including evidentiary concerns); once that is done, the escort for each involved officer will transport him or her to the Police Department or another designated facility. Once at that facility, the involved officer will be allowed use of the restroom and an office so they can contact their family or anyone else they wish to call (if they have not already been able to do so). If necessary, arrangements should be made to provide the involved officer with food and drink.
 - The Chief of Police will appoint a department supervisor, typically the Internal Affairs Administrator, to conduct the internal administrative investigation. The Chief will also assign staff to conduct the investigation of the original criminal incident that the officer(s) had responded to or initiated.
 - The Chief of Police will consider the totality of the circumstances in determining whether or not a criminal investigation is warranted for a use of force incident resulting in serious injury or death. If a criminal investigation is warranted, it is at the discretion of the Chief of Police as to whether to request the SBI to conduct the investigation or to assign an internal investigator.
 - The Chief of Police (or his designee) will make notification to the Wake County District Attorney; the purpose of this notification is to ensure a collaborative investigation and to provide the District Attorney and/or his/her staff the opportunity to respond to the incident scene.

Officer Status During the Investigation

After an officer is involved in a use of force incident resulting in serious injury or death, the following protocol will be adhered to:

- The involved officer(s) will not be required to complete a *Use of Force* report or a criminal incident report prior to their release from duty the day of the use of force incident.
 - The assigned Internal Affairs Investigator, in consultation with the Chief of Police, will determine when the involved officer will be required to complete any reports related to the incident.
 - This will normally be at least 24-hours after the use of force incident but as soon as practical thereafter.
 - The involved officer will be afforded the opportunity to review any in-car camera video that is available and/or to visit the scene of the use of force incident prior to completing any reports.
- Prior to each involved officer being released from duty the day of the use of force incident, the Chief of Police will make a determination as to the employee's status:
 - Should the preliminary on-scene investigation indicate appropriate action on the part of the officer, he or she will be placed on paid Modified Duty pending initial interviews with the department's assigned Internal Affairs Investigator. The Chief of Police (or his designee) will complete a *Notice of Modified Duty Status – Officer Involved Shooting / Serious Injury / Death* form (GPD form 320.1-H) to inform the officer of their temporary status.
 - Should the preliminary on-scene investigation raise a question(s) that cannot be initially resolved, he or she will be placed on paid Emergency Relief from Duty pending initial interviews with the department's assigned Internal Affairs Investigator. This is necessary in this circumstance to protect the employee and the department.

The Chief of Police (or his designee) will complete a *Notice of Emergency Relief From Duty – Officer Involved Shooting / Serious Injury / Death* form (GPD form 320.1-G) to place the employee on leave and to provide the employee with specific guidelines as to their status.

- It will be at the discretion of the Chief of Police as to when to transition the officer back to Active Duty.

- Regardless of the employee's status, he or she will report for mandatory counseling to a mental health professional selected by the department. This counseling is mandatory to ensure that the involved officer receives timely assistance and will be scheduled by the department in coordination with the involved officer.

Use of Force by Non-GPD Personnel

In the event a sworn employee of the Garner Police Department witnesses what Department policy would define as a reportable use of force incident involving a sworn law enforcement officer(s) from another agency or a private security officer(s), the G.P.D. employee is to complete a memorandum to their immediate supervisor. The memorandum will include a description of the use of the force, any other observations made by the G.P.D. employee, and either any action taken by the G.P.D. employee that did not constitute a reportable use of force or the fact that the G.P.D. employee did not take any action in the incident. (If the G.P.D. employee took action that did constitute a reportable use of force incident, a use of force investigation will be conducted in accordance with Department policy).

The purpose of this memorandum is to document action (or inaction) by Department employees so that the Department can respond to inquiries as to any involvement or alleged involvement by Department employees in use of force incidents initiated by other law enforcement agencies or private security personnel. The completion of this memorandum is part of Internal Affairs documentation and is separate and apart from any other documentation that might be required as the result of G.P.D. involvement in the incident (i.e. an Incident or Call for Service Report).

VEHICLE PURSUIT INVESTIGATIONS

The Department is committed to investigating vehicle pursuit incidents in order to ensure that each vehicle pursuit was conducted in accordance with Department policy, to identify training issues, and to protect employees from allegations of inappropriate or unnecessary pursuit operations. The investigation of a vehicle pursuit incident is defined as an internal affairs investigation because it relates to employee performance and involves information to be gathered for Departmental purposes. It should be noted that a vehicle pursuit investigation is different from a performance complaint investigation or an allegation of serious misconduct investigation in that a vehicle pursuit investigation is initiated based on specific actions by an employee rather than a complaint against an employee.

The initial responsibility for reporting a vehicle pursuit rests with the involved officer(s) making notification to the on-duty supervisor and/or RWECC in accordance with Department policy.

Supervisory Responsibilities – Vehicle Pursuit

Upon receiving notification of or otherwise becoming aware of a vehicle pursuit involving Department personnel, the on-duty patrol supervisor (or an on-duty traffic supervisor if applicable) has the following responsibilities related to the internal investigation of the pursuit after the pursuit has ended and any apprehension efforts have been concluded (*note – this section intentionally does not address supervisory responsibilities during the pursuit*):

- Respond to the scene:
 - If the pursued vehicle has stopped or has crashed, respond to that location (see below for specific requirements if a crash is involved). Document any crashes or intentional contact between the suspect vehicle and police vehicle with photographs.
 - If the pursuit was terminated and the vehicle fled, arrange to meet the involved officer(s) in the area where the vehicle was last seen.
- Speak with the involved officer(s) to get a basic overview of the vehicle pursuit incident to guide the investigation.
- Attempt to interview the suspect and any passengers from the suspect vehicle as to the circumstances related to the suspect fleeing.

Once the investigation at the scene is complete, the supervisor will ensure that the following is addressed as part of continuing the vehicle pursuit incident investigation:

- Ensure that any officer who is directly involved in the vehicle pursuit completes a Department *Vehicle Pursuit Report* form (GPD 810.2-A). It is critical that the report be accurate, complete, and thorough in documenting the information requested for each specific officer rather than for the incident as a whole.
- Review each *Vehicle Pursuit Report* for accuracy and completeness. Each individual report should be an accurate depiction of the reporting officer's involvement in the vehicle pursuit incident. Keep in mind that each involved officer could have different information based on the timing and duration of their involvement in the pursuit.

If more than one report is completed, the basic incident details and the suspect information should be consistent on all reports.

- Request GPS data from RWECC on vehicles involved in the pursuit.
- Secure (if a DVD system) and review the in-car camera audio and video for each police vehicle involved in the vehicle pursuit. This review should address the following:
 - The functionality of the camera, in-car microphone, and body microphone for each vehicle so equipped in the pursuit. If any component of the system did not record, this must be addressed in the supervisor's summary memo (to include why it did not record and what, if any, disciplinary action is being taken – failure to properly utilize the in-car camera system is a policy violation that is to be addressed in a supervisor-observed performance complaint).
 - The information provided on the *Vehicle Pursuit Report* is consistent with the incident as shown on the in-car camera. This includes time of involvement and termination, route traveled, operation of emergency equipment, position in the pursuit, any vehicular use of force, etc.
- Complete a summary memo of the event for the Patrol Division Commander, who will serve as the investigating officer for the pursuit. It is the responsibility of the supervisor to ensure that the investigating officer has all relevant information to properly investigate the pursuit. The supervisor will not be responsible for investigating the pursuit as their involvement should be reviewed as part of the overall investigation.

The supervisor's summary will include the following:

- The supervisor's summary of the incident details based on his/her investigation. This is your best understanding of what happened prior to, during, and after the vehicle pursuit based on the your monitoring of the pursuit and the information you gathered after it was concluded. The summary should include an explanation of any details that are unclear or inconsistent based on the information available.
- Summaries of statements from the involved officer(s), witness officer(s), the suspect(s) and any civilian witnesses. The summaries should reference any information that is relevant to clarifying the circumstances of the incident and/or any potential policy violations.
- A description of any noteworthy evidence collected from the incident that contributed to the supervisor's findings. This section should include the disposition of the noted evidence.
- An explanation of any deviation from policy.

Once the supervisor's summary is complete, the summary and any relevant materials and/or information will be provided to the Division Commander investigating the pursuit.

Investigative Responsibilities – Vehicle Pursuit

As noted above, the Patrol Division Commander will be responsible for investigating all pursuits (assuming the Patrol Division Commander is available, was not involved in the pursuit, and did not serve as the supervisor for the pursuit – in that case, another Division Commander will be assigned by the Operations Bureau Captain to investigate the pursuit).

- Investigating a vehicle pursuit incident is not as simple as ensuring accurate documentation; as the investigating supervisor you must ensure appropriate action was taken, correct any noted deficiencies or inappropriate conduct, and protect the officer and the department from potential liability whenever possible.
- The investigating supervisor is responsible for reviewing the summary memo, DVDs or other in-car camera recordings, and all information provided by the pursuit supervisor; the investigator supervisor is also responsible for conducting a thorough analysis of the pursuit and documenting the following in an investigative summary:

- A summary of what occurred leading up to, during, and at the conclusion of the vehicle pursuit;
- Any violations of policy occurring during or otherwise related to the pursuit;

(Note: a separate AIM entry should be generated for any policy violation reported or discovered during a vehicle pursuit investigation. The Patrol Division Commander will normally investigate the policy violation and will, in consultation with the involved employee's immediate supervisor, make a recommendation for disposition and, if appropriate, any disciplinary action.

- Any known or suspected liability incurred by the Department stemming from the vehicle pursuit incident. The investigating supervisor is to identify whether or not any policy violations or any actions by Department personnel in the vehicle pursuit incident could have exposed the Department to liability.

The investigative summary should be proofed for spelling, grammar, maintaining past tense (in actions already taken by the officer and the supervisor), and completeness. As a reminder, your review will be read by those inside and outside the department. It is to be thorough and professionally written.

When the vehicle pursuit investigation is complete, anyone not directly involved with the incident should be able to review the vehicle pursuit documentation and have a clear understanding of what happened, why and how it happened and what, if anything, we did as an agency in response to it.

The completed investigation shall include the following:

- All completed *Vehicle Pursuit Report* forms;
- All in-car camera audio and video from the incident;
- GPS data from the pursuit;
- Radio transmissions from RWECC;
- The patrol supervisor's summary memo;
- The Patrol Division Commander's investigative summary;
- Originals of any written witness statements;
- Copies of all incident and/or crash (DMV-349) reports from the incident;

- Copies of any arrest paperwork; and
- All photos taken related to the investigation.

The completed investigation is to be forwarded to the Operations Bureau Captain for review and approval (and for a punitive disciplinary action recommendation if appropriate). If the Operations Bureau Captain approves the investigation, he or she will forward it to the Chief; if the Operations Bureau Captain does not approve the investigation, it will be returned to the investigating supervisor for correction before being resubmitted. Once the Operations Bureau Captain approves the investigation it will be reviewed by the Chief of Police using the same process. Once the Chief of Police approves the investigation, it is considered closed and will be forwarded to the Internal Affairs Administrator for statistical analysis and filing as an Internal Affairs record.

Vehicle Pursuit Involving Suspect, Civilian, and/or Police Vehicle Crash

In the event that a vehicle pursuit results in a vehicle crash involving a police vehicle, the suspect vehicle, and/or another vehicle, the following additional guidelines are to be adhered to:

- Request EMS if they are needed and have not already been requested to respond.
- Make immediate notification to the Division Lieutenant for the involved officer(s).
- Contact the Traffic Safety Unit to request personnel to investigate the crash.
 - Crashes between a suspect and a police vehicle which do not meet the NC General Statute threshold as a reportable crash do not require a DMV-349 report. These minor crashes will be documented in the summary memo and with photographs. However, supervisors may elect to complete a DMV-349 on any crash if it is, in their best judgment, appropriate to do so.
- Evaluate the physical and emotional state of the officer(s) involved and determine if they are fit to continue with the arrest and reporting process. The complete and accurate completion of the arrest processing and the vehicle pursuit documentation are reliant upon the officer being clear-minded and focused on the incident at hand.
 - If the supervisor determines that the officer is not able to continue, the supervisor will assign another officer to complete the arrest process.

- If the officer is unable to complete a *Vehicle Pursuit Report* due to injury or other reason but is able to answer the questions and give an oral narrative, the investigating supervisor may complete the form for the injured officer and indicate such on the report.
- If the officer is unable to complete a *Vehicle Pursuit Report* and cannot talk with the investigating supervisor due to injury or other reason, the investigating supervisor may complete the form absent the narrative and indicate the circumstances on the report.

Vehicle Pursuit Involving Intentional Contact Between Police and Suspect Vehicle (“Pinning” a Nearly Stopped or Stopped Vehicle)

If during a pursuit a police officer driving a police vehicle attempts to use the bumper or push bumper to “pin” a stopped or nearly stopped suspect vehicle, the following guidelines are to be adhered to:

- Intentional contact between a police vehicle and suspect vehicle when the officer is attempting to “pin” a suspect vehicle is not considered a reportable crash for department purposes.
- Complete a DMV-349 on any crash or intentional contact between the suspect and police vehicle if the crash meets the reportable threshold by NC General Statute. This policy requirement is to simplify procedures for supervisors; thereby ensuring reports are done on all crashes between a suspect vehicle and police vehicle that meet the General Statute threshold for reporting, even if the contact is intentional. Supervisors in these situations are not expected to make a final determination of the intent of the suspect or officer; they are required to complete the DMV-349.
- If the attempt to pin the suspect vehicle results in injury to the officer or suspect, immediately request EMS and notify the Division Lieutenant as soon as practical. Traffic Safety Unit officers or a crash reconstructionist should investigate injury crashes.

RECEIVING COMPLAINTS AGAINST EMPLOYEES

The Garner Police Department will receive, document, investigate, and resolve all complaints against the Department or any of its employees, regardless of the manner in which the complaint is received (i.e. in person, by telephone, via e-mail, in writing, etc.). We shall accept all complaints, including anonymous complaints; the fact that a complainant does not wish to or is not willing to identify themselves shall not cause us to dismiss the complaint.

It is important that supervisors be able to differentiate between concerns and complaints. A concern is information received from a member of the public regarding an employee's performance that does not rise to the level of a complaint. Concerns are normally addressed with basic supervisory intervention and do not require investigation. A complaint is a statement by an individual, regardless of who the individual is or how the statement is communicated, that alleges a violation of law or Department policy. All complaints need to be investigated and resolved in order to maintain community transparency, to ensure acceptable and appropriate behavior by employees, to clarify misunderstandings and misperceptions by the community, to identify policy and/or training issues, and to protect employees from false allegations.

Any non-supervisory member of the Garner Police Department who is contacted by a complainant or receives information regarding a citizen concern, a performance complaint, or an allegation of serious misconduct (including criminal allegations) shall immediately notify their supervisor or, if their supervisor is not available, another Department supervisor.

Supervisory Responsibilities – Performance Complaint

Any supervisory member of the Garner Police Department who is contacted by a complainant or receives information regarding a performance complaint shall adhere to the following procedures:

- Interview the complainant to get the complainant's name and contact information and to determine the involved employee(s), the nature and details of the complaint, and the identity of any possible witnesses.

The complainant should be informed that they will be contacted by the Department supervisor investigating their complaint for follow-up. If the complainant wants to make a written statement at that time, the supervisor should provide the complainant with an *Allegation of Misconduct Statement* form (GPD form 320.1-B).

- Create a new performance complaint case in the Administrative Investigations Management (AIM) software (but do not assign a case number) and notify the employee's Division Lieutenant by the next business day. The Division Lieutenant will assign a supervisor (typically the employee's direct supervisor) and will make notification up the chain-of-command through the Chief of Police and the Internal Affairs Administrator. It is at the discretion of the supervisor taking the complaint to make immediate notification to the chain-of-command if appropriate due to the unique circumstances of the complaint and/or public attention to the complaint.

If an *Allegation of Misconduct Statement* was completed, that form will be entered into the AIM system.

(If for any reason the AIM system is unavailable, the supervisor may complete a *Complaint Against Employee Form* (GPD form 320.1-A) in lieu of making the AIM entry).

If the supervisor taking the complaint is not the immediate supervisor of the involved employee(s), he or she has fulfilled their responsibilities for receiving this complaint.

Note – if two or more employees are involved and they do not report to the same immediate supervisor, the Chief of Police will assign one of the immediate supervisors to investigate the performance complaint.

Supervisory Responsibilities – Allegations of Serious Misconduct

Any supervisory member of the Garner Police Department who is contacted by a complainant or receives information concerning an allegation of serious misconduct against a Department employee shall adhere to the following procedures:

- Interview the complainant to get the complainant's name and contact information and to determine the involved employee(s), the nature and details of the complaint and the identity of any possible witnesses.

The complainant (and any witnesses present) should be asked to complete and sign an *Allegation of Misconduct Statement* form (GPD form 320.1-B) so that the Internal Affairs Investigator has a statement in the complainant's (or witness') own words. This also protects the involved employee(s) and the Department should the complainant (and/or witness) later change their allegation or the allegation be found to be misleading or untrue. *(Note – it is not required for the complainant or any witness to complete a written statement in order for their statement to be included in the investigation).*

The complainant should be informed that they will be contacted by the Department supervisor investigating their allegation.

- Create a new allegation of serious misconduct case in the Administrative Investigations Management (AIM) software (but do not assign a case number) and immediately notify the employee's Division Lieutenant or, if the Lieutenant is unavailable (or is the involved employee), the employee's captain. The lieutenant or captain will ensure that the Internal Affairs Administrator and the other members of the accused employee's chain-of-command are notified of the allegation, up through and including the Chief of Police.

If an *Allegation of Misconduct Statement* was completed, that form will be entered into the AIM system.

(If for any reason the AIM system is unavailable, the supervisor may complete a *Complaint Against Employee Form* (GPD form 320.1-A) in lieu of making the AIM entry).

- Unless directed otherwise, the supervisor taking the allegation of serious misconduct will have fulfilled his/her responsibilities for receiving this allegation of serious misconduct.
- The Chief of Police will be responsible for reviewing the allegation, consulting with the Internal Affairs Administrator and determining if the allegation includes an alleged criminal violation.

- If a criminal violation is alleged and the Chief of Police determines a criminal investigation is necessary, the Chief of Police will assign an internal or external criminal investigator to the criminal investigation and a separate Internal Affairs Investigator to the administrative investigation.
- If no criminal violation is alleged, the Chief of Police will assign an Internal Affairs Investigator to the administrative investigation.

Emergency Relief from Duty

Depending on the nature of the complaint or the allegation, it may be necessary to place an accused employee on Emergency Relief from Duty. The purpose of Emergency Relief from Duty status is to remove a sworn employee from active law enforcement duty when the nature of a performance complaint or, more commonly, an allegation of serious misconduct makes it in the best interest of the Department and/or the employee to not have the employee on active duty. An employee placed on Emergency Relief from Duty is subject to a paid non-disciplinary suspension.

The following criteria should be considered when deciding whether or not to place an accused employee on Emergency Relief from Duty:

1. The nature of the offense – anytime that an employee is accused of committing a criminal offense or a civil rights violation, the supervisor should consider Emergency Relief from Duty. In the event that the accusation is sustained, Emergency Relief from Duty avoids the employee being involved in any enforcement action subsequent to the complaint but prior to the conclusion of the investigation.
2. The amount of public attention being paid to the complaint or allegation – i.e. will the accused employee face undue attention while performing his or her duties.
3. Whether the employee's presence on-duty could negatively impact the internal investigation.
4. Any other factor unique to the complaint or allegation that would result in the employee being negatively impacted in the performance of his or her duties and/or the Department being negatively impacted in police operations.

If a supervisor finds it necessary to place an employee on Emergency Relief from Duty, the following steps are to be taken:

1. The supervisor will notify the employee's Division Lieutenant of the circumstances and the need for Emergency Relief from Duty.
2. The supervisor will complete a *Notice of Emergency Relief from Duty* form (GPD form 320.1-D) to be provided to the affected employee. This form includes a notice to the employee that they are being placed on non-disciplinary suspension as the result of a complaint against them and informs them of the temporary suspension of their status as a sworn law enforcement officer.

3. The investigating supervisor and the employee's Division Lieutenant should meet privately with the affected employee to place the employee on Emergency Relief from Duty.
 - a. If the employee is on-duty at the time, the meeting should be held at the Police Department in a manner that allows for as much privacy as possible. At the conclusion of the meeting, arrangements should be made to transport the employee to their residence or to their personal vehicle if they do not take their assigned vehicle home.
 - b. If the employee is off-duty at the time, the meeting should be held at the employee's residence (if acceptable to the employee) or at a location that allows for as much privacy as possible. If the meeting is not held at the employee's residence, the employee should be given notice to bring the necessary Department property (including their vehicle) to this meeting and arrangements should be made to transport the employee back to their residence.
 - c. As outlined in the *Notice of Emergency Relief from Duty* form, an employee placed on Emergency Relief from Duty must surrender their badge, firearm, identification cards, portable radio, and police vehicle. Arrangements should be made by the investigating supervisor to secure these items temporarily until they can be turned over to the Internal Affairs Administrator.

Once the Chief of Police receives notification of an employee being placed on Emergency Relief from Duty, the Chief will review the circumstances resulting in the Emergency Relief from Duty and may elect to return the employee to duty, to change the employee's status to Modified Duty, or may (after consultation with the Town Human Resources Director) elect to have the employee be placed on non-disciplinary suspension pending the outcome of the investigation pursuant to the Town of Garner Personnel Policies and Procedures Manual.

EMPLOYEE RIGHTS AND RESPONSIBILITIES DURING COMPLAINT & ALLEGATION INVESTIGATIONS

Every Garner Police Department employee has certain unalienable rights as the result of their status as United States and North Carolina citizens and as employees of the Town of Garner and the Garner Police Department. Although law enforcement officers are often held to higher community standards as the result of their position, they do not relinquish their Constitutional rights. Garner Police Officers also have certain responsibilities based on statutory law, case law, and as a result of their employment status and the sworn oath they take when they assume the role of a sworn law enforcement officer.

All Department employees have the right to be treated fairly during an internal investigation, regardless of the nature of the complaint or allegation made against them. Employees under investigation will not be subjected to offensive language, threatened with dismissal or other disciplinary action, or be made promises by any supervisor or the assigned Internal Affairs Investigator.

Employees who are subject to an internal investigation are not allowed to contact (directly or through third parties) complainants or witnesses (including other Department or Town employees) in the investigation without prior permission from the assigned Internal Affairs Investigator or the Chief of Police. This is not intended to prohibit employees from communicating with other employees on topics other than the internal investigation. If an employee is conducting a criminal investigation and subsequently becomes the subject of an internal investigation involving a person (or persons) involved in the original criminal investigation, the criminal investigation will be re-assigned to another employee.

Employee Rights and Responsibilities during Administrative Investigations

All Department employees will receive training on the Department's internal affairs process and their rights and responsibilities as Department employees; the training will (at a minimum) address the following:

- Employees will be required to truthfully and completely answer all questions specifically, narrowly, and directly related to the performance of his/her duties. Although the Fifth Amendment to the U.S. Constitution protects individuals from compelled statements against their own interest, this protection does not extend to administrative matters, including administrative internal investigations.

Employees also do not have the “right” to lie; they are required to answer truthfully and completely.

- Refusal to comply with an order to answer questions or failure to answer questions truthfully and completely will be considered gross personal misconduct and may subject the employee to disciplinary action, up to and including termination. Town and Department policy require that employees cooperate fully with administrative internal investigations.
- Any statements made by the employee during an internal administrative interview will not be used against the employee in any subsequent criminal proceedings. In *Garrity v. New Jersey* (385 U.S. 493 – 1967), the United States Supreme Court ruled that state investigators in New Jersey could not threaten police officers with termination of employment if they did not give agree to forego their Fifth and Fourteenth Amendment protections against self-incrimination. This right was further clarified in *Gardner v. Broderick* (392 U.S. 273 – 1968) when the United States Supreme Court ruled that employees could be required to answer questions directly relating to the performance of their duties so long as they were not also required to waive their right against self-incrimination in a criminal matter. The Court also ruled that employees could not refuse to answer questions as the protection against self-incrimination did not apply in an administrative hearing.

Therefore, employees can be required to answer questions if their responses are used solely for administrative purposes related to the employee questioned and employees can be subject to discipline, up to and including termination, for failure to answer questions in an administrative investigation. Employees interviewed as witnesses can be required to answer questions related to administrative or criminal investigations involving other employees.

- As a part of any administrative investigation, employees may be required to undergo certain non-testimonial procedures including, but not limited to, polygraph, breath or blood analysis, photographs or line-ups, etc. (see *Allegation of Serious Misconduct Investigative Procedures*). Employees do not have the right to refuse these procedures; refusal to cooperate constitutes insubordination and will subject the employee to disciplinary action, up to and including termination.
- Employees are not permitted to have an attorney present during any administrative investigation interview or hearing. This is based on the following:

- Although the Sixth Amendment to the U.S. Constitution guarantees individuals the right to legal counsel, this does not apply to administrative hearings.
- Town of Garner Personnel Policy (Part IX, “Disciplinary Action” – Section 2, “Employee Legal Representation”) prohibits the presence of an attorney in this situation – “*The Town prohibits the participation or presence of an attorney or any form of legal representation in any informal or formal employer/employee meetings or conferences.*”
- The presence of an attorney has the tendency to change the interview from a fact-finding discussion of an employee’s actions based on their responsibilities as a Garner Police Officer to an adversarial discussion. Because the questions in an administrative investigation are subject to Garrity, there is nothing for the employee to consult with the attorney on as their sole obligation is to tell the truth in regard to questions limited in scope to the issue at hand.

Employees subject to administrative investigations may elect to consult with an attorney; however, the attorney is not allowed to be present for an administrative investigation interview. The employee also may not delay the scheduling of an administrative interview or the conducting of the actual interview in order to consult with an attorney.

Formal Notice of Complaint

Before any interview in an allegation of misconduct investigation or before a special examination in any administrative investigation, the employee under investigation will be provided with a completed *Notice of Internal Affairs Complaint* form (GPD form 320.1-C). [Note: the Chief of Police may choose not to inform an employee prior to an interview that he/she is under investigation if the notice is likely to jeopardize the investigation].

Before any interview in a performance complaint investigation, the employee under investigation will be informed of the complaint against them by the supervisor investigating the complaint.

- The investigating supervisor may elect to provide an employee with a completed *Notice of Internal Affairs Complaint* form in a performance complaint investigation if the supervisor feels the circumstances warrant it.
- Any employee subject to a performance complaint investigation may request that they be provided with a completed *Notice of Internal Affairs Complaint* form regardless of the nature or circumstances of the complaint. The supervisor will always grant such a request.

When used, the *Notice of Internal Affairs Complaint* form will provide the employee with a copy of the allegation(s) and a list of their specific rights and responsibilities during interviews and investigations.

Formal Notice of Garrity Warnings

Prior to interviewing an employee who is subject to an allegation of misconduct investigation or an employee who is a witness in an allegation of misconduct investigation, the employee has the right to know what they are being interviewed about – i.e. whether you are conducting an administrative investigation or a criminal investigation. When conducting an allegation of misconduct investigation, any employee being interviewed is to be advised of their *Garrity* warnings. This is accomplished by completing a *Statement for Internal Investigation and Administrative Purposes* (GPD form 320.1-E), reviewing the form with the employee and, assuming they indicate they understand the form and its purpose (similar to advising a suspect of their *Miranda* warnings), having the employee sign the form and indicate whether or not they are willing to answer questions as directed. As a matter of clarification, employees who are subject to an administrative investigation are never entitled to the protections of *Miranda* as a part of the administrative investigation and shall not be given their *Miranda* warnings.

Employees who are subject to a performance complaint investigation will not normally be formally advised of their *Garrity* warnings as there is not normally the possibility of criminal charges related to a performance complaint investigation. However, should the supervisor feel there is any possibility of a criminal violation or there is a need to provide formal notice of *Garrity* warning to the employee involved for any reason, the supervisor may do so. Any employee who is subject to a performance complaint investigation may request formal notice of their *Garrity* warnings prior to being interviewed; the supervisor will always grant such a request.

Reaching a Conclusion

Upon the conclusion of an administrative investigation, employees are subject to the threshold of a “preponderance of the evidence”, also known as the “greater weight of the evidence” (a greater burden than probable cause) in terms of a sustained finding.

Employee Rights and Responsibilities during Criminal Investigations

When an employee is subject to a criminal investigation, they maintain the same rights they would otherwise have as a citizen under the United States Constitution and the Bill of Rights. As outlined in *Gardner v. Broderick* (392 U.S. 273 – 1968), the Department cannot require an employee to waive these rights simply due to their status as a police officer.

Thus, when interviewing an employee who is alleged to have committed a criminal violation, the employee is entitled to the provisions established by the United States Supreme Court in *Miranda v. Arizona* (384 U.S. 436 – 1966) (see *Supervisory Responsibilities during Criminal Investigations*) if they are being interrogated and are in custody. However, to alleviate any confusion between administrative and criminal investigations, any employee who is subject to criminal investigation shall be advised of their *Miranda* warnings prior to being questioned by a Department investigator using GPD form 840.1-A, *Waiver of Adult Miranda Rights* regardless of the circumstances of the interview. (Note – an investigator from an external agency may or may not elect to provide the accused employee their *Miranda* warnings).

Any statements legally obtained from an employee in a criminal investigation may be used against that employee in a criminal prosecution and/or in an administrative investigation involving them and/or another Department employee unless restricted by the agency obtaining those statements in a criminal investigation (such as the SBI).

SUPERVISORY RESPONSIBILITIES

The Garner Police Department conducts internal investigations so that we can address inappropriate behavior, identify training needs, and protect employees from unwarranted allegations arising from the lawful discharge of their official duties. Supervisors who conduct internal investigations have the ultimate responsibility in ensuring that appropriate investigative methods are utilized, that Town and Department policy are adhered to, that employees and members of the public are treated fairly and in accordance with the law, and that the truth is found in all matters.

Supervisory Responsibilities during Use of Force Investigations

Supervisors conducting use of force investigations are responsible for conducting an on-scene investigation (unless the incident only involves an intentional pointing incident) in order to ensure that the use of force was necessary, that the officer(s) only used that amount of force reasonable for the circumstances at hand, to identify training issues, and to protect employees from allegations of excessive or inappropriate use of force.

At the conclusion of a use of force investigation, the supervisor will submit an investigative summary that details the incident, summarizes statements, outlines evidence, evaluates compliance with policy, and addresses any potential liability incurred by the Department.

In some instances, the supervisor investigating a use of force incident may make a recommendation for disciplinary action if there is a policy violation and non-punitive disciplinary action is appropriate.

Supervisory Responsibilities during Administrative Investigations

Supervisors conducting administrative investigations must ensure that the involved employee(s) is notified of the internal affairs complaint against them (unless otherwise directed by the Chief of Police) either verbally (in the case of a performance complaint) or in writing (in the case of an allegation of misconduct or certain performance complaints as outlined herein) and that the employee understands both their rights and their responsibilities before proceeding with the investigation.

Supervisors conducting administrative investigations must ensure that any information gathered from employees in the context of Garrity (i.e. an ordered administrative statement) is not shared with or otherwise made available to an investigator conducting a criminal investigation.

At the conclusion of an administrative investigation, the supervisor will be expected to make a determination as to the disposition of each allegation made against the employee(s) involved. In performance complaint investigations, the supervisor will also have responsibility for any appropriate disciplinary action.

Supervisory Responsibilities during Criminal Investigations

As described above - to alleviate any confusion between administrative and criminal investigations, any employee who is subject to criminal investigation shall be advised of their *Miranda* warnings prior to being questioned by a Department investigator using GPD form 840.1-A, *Waiver of Adult Miranda Rights* regardless of the circumstances of the interview. Supervisors conducting criminal investigations may share information with supervisors conducting administrative investigations. Supervisors conducting administrative investigations will not share information with supervisors conducting criminal investigations.

Supervisory Liability

Supervisors not only have a significant role in terms of employee development and training, they also take on individual and organizational liability in their responsibilities as supervisors. The same is true when supervisors are involved in internal investigations and disciplinary actions. It is imperative that supervisors conduct fair and complete investigations to ensure that the rights of employees are protected, that inappropriate conduct is addressed, and that supervisors do not unintentionally create liability for themselves or the Department.

PERFORMANCE COMPLAINT INVESTIGATIVE PROCEDURES

It is critical that the Department address all internal investigations in a consistent manner. The following procedures are designed to guide supervisory actions when investigating a performance complaint. (Note – see “Supervisor-Observed Performance Complaints” for procedures relating to policy violations observed by a Department supervisor rather than reported by a citizen or another employee).

Immediate Actions

Upon being assigned to a performance complaint internal investigation, the supervisor should consider and/or address the following as soon as is practical:

- Verify that the complaint involves a performance complaint and not an allegation of serious misconduct

Although there are similarities in the manner in which performance complaints and allegations of serious misconduct are investigated, there are also differences. You must verify that the performance complaint involves demeanor, improper conduct, improper police action, policy violations, or a similar non-serious allegation and does not rise to the level of an allegation of serious misconduct.

If you are unsure as to whether or not the circumstances of the complaint may rise to the level of an allegation of serious misconduct, you should immediately seek clarification from the Internal Affairs Administrator or, if he/she is unavailable, from the Chief of Police.

- Verify that there is nothing that can be considered criminal in the complaint

You must know whether you are conducting an administrative investigation or a criminal investigation before taking any other action in the investigation. If you are investigating a performance complaint, you will know that you are conducting an administrative investigation (any potential violation of criminal law rises to the level of an allegation of serious misconduct).

If you have any question as to exactly what your responsibility is, you should immediately seek clarification from the Internal Affairs Administrator or, if he/she is unavailable, from the Chief of Police.

- Know what you are investigating

It is ultimately the investigating supervisor's responsibility to determine if the accused employee(s) violated a Department and/or Town policy or policies in an administrative investigation. In order to effectively do this, you must identify and understand the policy or policies alleged to have been violated.

Prior to taking any investigative action, you should review the involved policy or policies. If you have any questions regarding policy, you should seek clarification from the Internal Affairs Administrator. If for any reason you do not feel comfortable with conducting the investigation, you should communicate this to the Internal Affairs Administrator.

- Notify the involved employee

Normally, the accused employee should be notified as soon as possible that a performance complaint has been made against them. This should normally be accomplished by giving in-person verbal notification to the employee. This may be accomplished by completing a *Notice of Internal Affairs Complaint* form (GPD form 320.1-C) and serving it on the employee at the discretion of the investigating supervisor or if requested by the employee who is the subject of the complaint.

The supervisor should remind the employee that they are to notify the supervisor if they will be unavailable for an extended period of time during the investigation and that the employee is not to discuss the incident with anyone else other than family, personal attorney, spiritual advisor, a therapist, or the Chief of Police without prior permission from the assigned Internal Affairs Investigator, the Internal Affairs Administrator or the Chief of Police.

In the case of a performance complaint, you should assume that you can notify the involved employee of the complaint unless you feel that making notification could impede the investigation. If that is the case, you should consult with the Internal Affairs Administrator for guidance.

- Contact the complainant

You should contact the complainant by phone (or in writing if you are unable to reach the complainant by phone) to inform them that you are investigating the complaint, to verify that you have all the details you need from them, and that you have current contact information from them. If the investigation goes more than seven days, the complainant should be re-contacted on a weekly basis to provide updates and to let them know that the matter is being addressed.

- Secure any known evidence that may be disposable

The most common evidence in a performance complaint is some type of recording, including (but not limited to) the in-car audio and/or video from a police vehicle or body camera, an officer's department-issued or personally-owned recording device, or a recording made by a member of the public (either the complainant or a witness). As a reminder, you should always identify every police vehicle that was on the scene when the incident resulting in the complaint occurred; this includes Garner vehicles and vehicles from other agencies (assuming the other agency will allow you to view their video). You have an obligation to review (or attempt to review) the audio and/or video from all vehicles and officers present.

It is the responsibility of the investigating supervisor to determine what other evidence may exist depending on the nature of the performance complaint. The supervisor should consider all possibilities in terms of evidence that may be disposable and need to be identified and secured as part of the internal investigation.

Developing a Plan of Action

Supervisors who are assigned to investigate performance complaints are expected to approach the investigation utilizing the same procedures they would use in a criminal investigation to ensure that all individual rights are protected and the truth is discovered. This should involve taking the time to ensure that you are aware of all the details of the complaint, have identified all persons known or suspected to be involved, and have recovered any available evidence prior to conducting interviews or otherwise actively pursuing the investigation.

A supervisor assigned to a performance complaint investigation should consider and address the following when preparing a plan for the investigation:

- Communicating with the accused employee(s)

The supervisor should explain to the employee the process he or she expects to undertake in investigating the complaint so that the employee understands the process being used. If the investigation lasts beyond seven days, the supervisor should re-contact the employee at least on a weekly basis to update them on the status of the investigation (unless such communication would negatively impact the investigation for any reason) and attempt to answer any questions the employee may have. Any updates should be documented in the "Notes" section of the Administrative Investigations Management (AIM) software.

The supervisor should ensure that they have accurate contact information for the employee and that the employee has the supervisor's contact information. The supervisor should remind the employee that they are to notify the supervisor if they will be unavailable for an extended period of time during the investigation and that the employee is not to discuss the incident with anyone else other than family, personal attorney, spiritual advisor, a therapist, or the Chief of Police without prior permission from the assigned Internal Affairs Investigator, the Internal Affairs Administrator or the Chief of Police.

- Identifying Potential Witnesses

As with any investigation, it is critical that you identify and attempt to interview all individuals who may be involved with or have information related to the circumstances surrounding the complaint.

Just as it is important to get statements from those individuals who allege they witnessed or have knowledge of the allegation, it is equally important to identify those individuals who are somehow linked to the complaint yet claim to have no knowledge of or involvement with it. Securing these statements during your investigation will minimize the likelihood of someone coming forward after the fact to allege something contrary to your ultimate finding of fact.

- Determining the Order of Interviews

Although investigators take different approaches from time to time, it is a good idea in internal investigations (especially those of a serious nature) to interview the accused employee(s) twice – as the first and last interview in the investigation. This approach allows the investigator to understand the employee's perspective regarding the complaint through the initial interview while also addressing issues raised during the investigation with the employee in the final interview.

Other interviews should be conducted in an order determined by the supervisor conducting the internal investigation. The following factors merit consideration when determining the order of interviews:

- It is normally best to interview sworn personnel prior to civilians. Sworn personnel will often be more forthcoming and detailed in their statements, thus allowing you to better prepare questions to gather details from other witnesses.
- Witnesses who are expected to be uncooperative are best kept to last; this will allow you to gather details to ask them specific questions rather than relying on them to offer information.

- The availability of a witness may need to be considered to ensure that any absence does not unnecessarily delay the investigation.

- Setting Interview Times and Locations

When interviewing the accused employee(s), the supervisor should attempt to schedule the time of the interview so that it is convenient to the employee, especially if they remain on active duty. Whenever possible, the interview should be scheduled during the employee's regular work schedule unless the employee requests otherwise. The employee interview should take place in a private setting where the interview will not be interrupted; when possible, the employee interview should be held at a Department facility, but one where the employee will not have to interact with other employees if possible due to the circumstances of the interview.

When interviewing the complainant and witnesses, the supervisor should attempt to schedule the time of the interview so that it is convenient to the interviewee. Non-employee interviews should be scheduled for a Department facility or, if necessary, a "neutral" location. You should avoid conducting interviews in a complainant or witness' home, office or attorney's office. If interviewing a Department employee, the interview should be scheduled during the employee's regular work schedule unless the employee requests otherwise. It is important to keep in mind that not all complainants and/or witnesses will be eager participants in this process; increasing their comfort level will likely increase their willingness to cooperate. As a reminder, some individuals will prefer not to come to police department facilities. It is also recommended that the supervisor travel to civilian interviews in an unmarked vehicle whenever possible.

- Preparing for Interviews

Just as you would for a criminal interview, the supervisor conducting interviews in an internal investigation must take time to prepare for those interviews. It is important to remember that the purpose of any internal investigation is to determine the truth by seeking information, challenging assertions and probing individuals not only for false responses but also for incomplete responses. The best way to do this is to prepare questions that will address specific points of contention and to anticipate how individuals may respond to those questions so that you are prepared with follow-up questions. If you as a supervisor are unsure as to how to best proceed in this regard, you are encouraged to consult with the Internal Affairs Administrator.

General Interview Guidelines

Regardless of who you are interviewing, you must remain neutral in order to maximize the potential for cooperation and honesty; keep in mind that this can include your body language and your overall demeanor in the interview. You should avoid forming any opinion regarding the person being interviewed and instead focus on obtaining as much information and evidence as possible. You should also avoid expressing your opinion as to how the case will or should be decided.

All interviews should be conducted individually and privately. However, keep in mind that we do not have control over civilian witnesses and they may elect to have someone else present during an interview. This should be allowed if necessary to conduct the interview.

Although the nature of the complaint may make the interview uncomfortable, do not avoid asking the questions that need to be asked. Specifically, ask pointed questions that address the elements present in the allegation. Also, challenge the interviewee on points that need to be challenged or clarified. As a reminder, it is your responsibility as the investigating supervisor to evaluate all available information to make a determination as to the validity of the complaint. You must first collect the information so that you can later evaluate it.

When interviewing non-police personnel, use caution to avoid the use of police terminology that could confuse or frustrate the interviewee. Use terms and concepts that are familiar to the public and take extra effort to ensure that the interviewee understands what you are asking of them. Utilize “active listening” skills and repeat information back to the interviewee to confirm it when necessary – especially information that sustains or negates the complaint.

Always make sure you have current contact information for the complainant(s) and all witnesses. Let the individuals you interview know that you may need to follow-up with them if necessary to clarify information you gather after speaking with them. Also encourage witnesses not to talk about the interview or the incident with anyone else out of fairness to all persons involved.

Guidelines for Conducting Employee Interviews

When conducting a performance complaint investigation, the investigating supervisor is to verify that the accused employee is aware of the complaint against them; if the employee is not aware, the complaint will be explained to the employee. If the employee requests it, he/she shall be given a *Notice of Internal Affairs Complaint* from (GPD form 320.1-C).

The investigating supervisor is to remind employees interviewed as part of a performance complaint investigation of the following:

- That the supervisor is conducting an administrative investigation;
- That the employee is ordered to answer all questions fully and truthfully; and
- That the employee is not to discuss the performance complaint with other employees.

If the employee refuses to answer questions, the supervisor shall complete a *Statement for Internal Investigation and Administrative Purposes* form (GPD form 320.1-E) and review it with the employee. (Note – If for any reason the employee refuses to answer questions after being formally advised of their *Garrity* warnings, the employee is to be immediately placed on Emergency Relief from Duty (if the employee is on Active or Modified Duty at that time) and the supervisor is to immediately notify the Internal Affairs Administrator.

If an employee is formally advised of their *Garrity* warnings in a performance complaint investigation the supervisor should specifically review the four bulleted points on the form that relate to the following:

- The employee is being ordered to make a statement and/or answer questions directly related to their performance. All questions you ask are to be in regard to actions or inactions taken or observed by the employee in their work performance or that impact work performance. Questions should seek factual information; employees should not be asked to give their opinion or to speculate as to the actions or inactions of another employee. Employees are not to be asked about their behavior outside of their work performance unless it relates to the complaint being investigated.
- The employee is required to answer all questions fully and truthfully; keep in mind this is not necessarily the same as “telling the truth” or “not lying.” It is not just that we require what the employee says to be truthful; we also require the employee to tell the “whole truth” – i.e. the employee should not tailor the information to adequately respond to the line of questioning. The employee is expected (and required) to share all information they have that is relevant to the investigation.
- The employee is making the statement solely and exclusively for internal investigative purposes and administrative purposes related to their actions or inactions. However, while an employee’s statement will not and cannot be used against them by anyone in any criminal investigation, information they provide under *Garrity* may be used against other employees in administrative and criminal investigations.

While employees maintain their Fifth Amendment right against self-incrimination in criminal matters, they have no such protection in regard to incriminating other employees in administrative or criminal investigations. They can be ordered to make a statement and the information they provide may be used against another employee in administrative and criminal investigations.

- The employee is reserving their right to remain silent as provided under the Fifth and Fourteenth Amendments and is relying on the protections set forth in *Garrity v. New Jersey* and *Gardner v. Broderick* in regard to criminal proceedings. This statement protects the employee because any information they provide of a self-incriminating nature cannot be used in a criminal proceeding against them. Any such information should be deemed inadmissible at criminal trial as the Department cannot order a statement as an employment requirement and then use the information gathered in violation of the employee's Fifth Amendment rights.

Recording Interviews and Statements

When investigating performance complaints, there is no requirement to audio record interviews or to have written statements from the officer or other involved parties; however, the investigating supervisor may elect to do so if the complexity of the complaint makes it appropriate. You have the authority to record any employee interview and/or to require a written statement from an employee. You cannot require a member of the public to be recorded or to make a written statement, but may request them to do so.

If you elect to have an interview recorded, you must maintain that recording as part of the investigation; if you accept a written statement, you must maintain that statement as part of the investigation. However, there is no requirement for complainants or witnesses to give a recorded or a written statement in order for their statement to be considered in the performance complaint investigation.

Employees do not have the right to record their participation in an administrative internal investigation interview and are not to be allowed to do so. The interview is a component of the internal investigation; employees do not have the right to review active internal investigation records regardless of whether or not they are the subject of the investigation. You should confirm with an employee being interviewed that they are not recording the interview prior to beginning.

Members of the public should be discouraged from recording interviews as internal investigations are considered part of an employee's personnel file (see N.C.G.S. §160A-168) and are therefore not subject to the North Carolina Public Records Act and are not available to the public. However, if a member of the public insists on recording their interview as a requirement for the interview taking place, the supervisor should consider the value of the information sought in the interview and in most cases should consent to the recording.

Regardless of whether or not you record an interview, you should be prepared to provide a summary of every interview conducted as part of the internal investigation. The interview summary should minimally include the following information:

- The name of the interviewer, the name of the interviewee and the name(s) of anyone else present.
- The date, time and location of the interview.
- Your perception of the interviewee's demeanor, willingness to cooperate, and overall responsiveness.
- A summary of the interviewee's most relevant statements and responses, to include any admissions.
- Anything else you deem noteworthy from the interview.

Conclusion of Fact and Disciplinary Action

When your investigation of a performance complaint is complete, it is your responsibility to reach a conclusion of fact for each policy violation alleged and to determine whether disciplinary action is warranted based on your finding(s).

You are to assign one of the following dispositions to each policy violation addressed by the investigation:

- **Exonerated**: The incident occurred as alleged but was lawful and proper. This means that the facts of the complaint were accurate but that the action (or inaction) by the accused employee was not a violation of policy or the law.
- **Not Sustained**: There is insufficient evidence to either prove or disprove the complaint. This is not the same as "not guilty" but instead means that the information you were able to develop through your investigation is inconclusive as to whether or not the employee violated policy. This finding should not be used if one of the other options can be justified based on your investigation.

- Policy Failure: The allegation occurred as alleged but the action(s) taken by the employee was within policy. Although rare, it is possible that an employee could be acting in compliance with a policy that resulted in unfair or inappropriate treatment of a member of the public. This is much more likely to be found in an allegation of serious misconduct than in a performance complaint.
- Sustained: There is evidence sufficient to prove the complaint. A sustained finding indicates that you believe that the accused employee in fact violated policy in a manner consistent with or similar to the complaint made against them.
- Unfounded: The complaint is found to be false or not factual. This may be thought of as “not guilty” of a policy violation based on disproving the facts presented in the complaint.

If you reach a finding of “exonerated”, “not sustained” or “unfounded” you may not assign discipline to the accused employee as there is no finding that they in fact violated policy. If you reach a finding of “policy failure” you may not assign discipline to the accused employee; although they may have acted (or failed to act) as described in the complaint, the action (or inaction) was not a violation of policy. The fault instead lies with the Department.

If you reach a finding of “sustained” it indicates that the accused employee did in fact violate Department policy and the employee is subject to discipline. When making a determination as to disciplinary action, the supervisor should consider the following:

- The nature and seriousness of the complaint.
While some employee behavior can be adequately addressed through counseling or remedial training, other more serious violations may require a written warning in order to deter future similar behavior by the accused employee and/or other employees.
- The employee’s willingness to take responsibility for his or her actions (or inactions).
An employee’s willingness to acknowledge that their performance was not in accordance with the values of the Department is a key component to avoiding recurrences in the future.
- The employee’s work and disciplinary history in the context of the Town’s progressive discipline plan.
Progressive discipline is intended to encourage employees to make permanent corrections to performance deficiencies and minor problems relating to personal conduct. Progressive discipline may be based on repeated performance deficiencies or detrimental personal conduct of the same or of a different nature.

Progressive discipline shall involve consideration of all previous disciplinary actions (regardless of whether or not prior acts are the same or similar to the current act), if any, whether for unsatisfactory job performance or for detrimental personal conduct. In determining the appropriate level of discipline for unsatisfactory job performance, consideration shall also be given to the time elapsed since the last warning for unsatisfactory performance or detrimental personal conduct, if any.

- Past disciplinary action against other employees in similar situations.

It is critical that we treat employees fairly. However, this does not necessarily mean treating all employees the same – there is nothing more unfair than treating two employees who are not similarly situated in a similar manner. This means that two employees who commit the same policy violation may not receive the same disciplinary action depending on their prior work and disciplinary history, their level of cooperation and their willingness to take responsibility for their actions.

If as the result of your investigation and your findings you determine that disciplinary action is warranted in a sustained complaint, you will include a recommendation for either a counseling session, a written warning (level 1, 2 or 3) or punitive disciplinary action (to be determined by the Operations Captain) in your investigative summary (see below). Non-disciplinary counseling and/or remedial training may be included with or used in lieu of any of the above recommendations with a sustained finding.

- If you recommend a counseling session, you may meet with the employee to review your findings and to conduct the counseling session. You should then submit your investigative summary, including documentation of the counseling session that you held with the employee.
- If you recommend a written warning (level 1, 2 or 3), you may meet with the employee to review your findings and to issue the written warning once the Division Lieutenant and the Operations Captain approve the investigation and your recommendation. The purpose of the Division Lieutenant and the Operations Captain approving the recommendation is to encourage consistency in disciplinary actions taken.
- If you recommend punitive disciplinary action be taken, the Division Lieutenant will make a recommendation to the Operations Captain; the punitive disciplinary action will ultimately be approved by the Chief of Police following a pre-disciplinary conference. Town policy requires that the Chief of Police assign any punitive disciplinary action.

Investigative Summary

Once you have taken the appropriate investigative steps to gather all the available information related to the performance complaint and you have reached a decision on any non-punitive disciplinary action, it is your responsibility to summarize your investigation and to document your finding as to each policy violation in the complaint.

However, prior to completing the investigative summary you are responsible for ensuring that the following has been addressed:

- All evidence has been identified, collected and considered.
- All witnesses have been identified and interviewed.
- The involved officer has been interviewed and has been afforded his or her rights.
- All investigative actions have been documented and a finding has been reached in accordance with policy.

Once you are confident that the above steps have been addressed and your investigation is complete, you will complete an investigative summary memo. The purpose of the investigative summary is to allow any member of the command staff or another supervisor who is unfamiliar with the complaint to be able to review the investigation and the justification for the finding(s) (as well as any written warning(s) or disciplinary action that might result from the finding(s) by the investigating supervisor). The investigative summary should include the following (in the order shown):

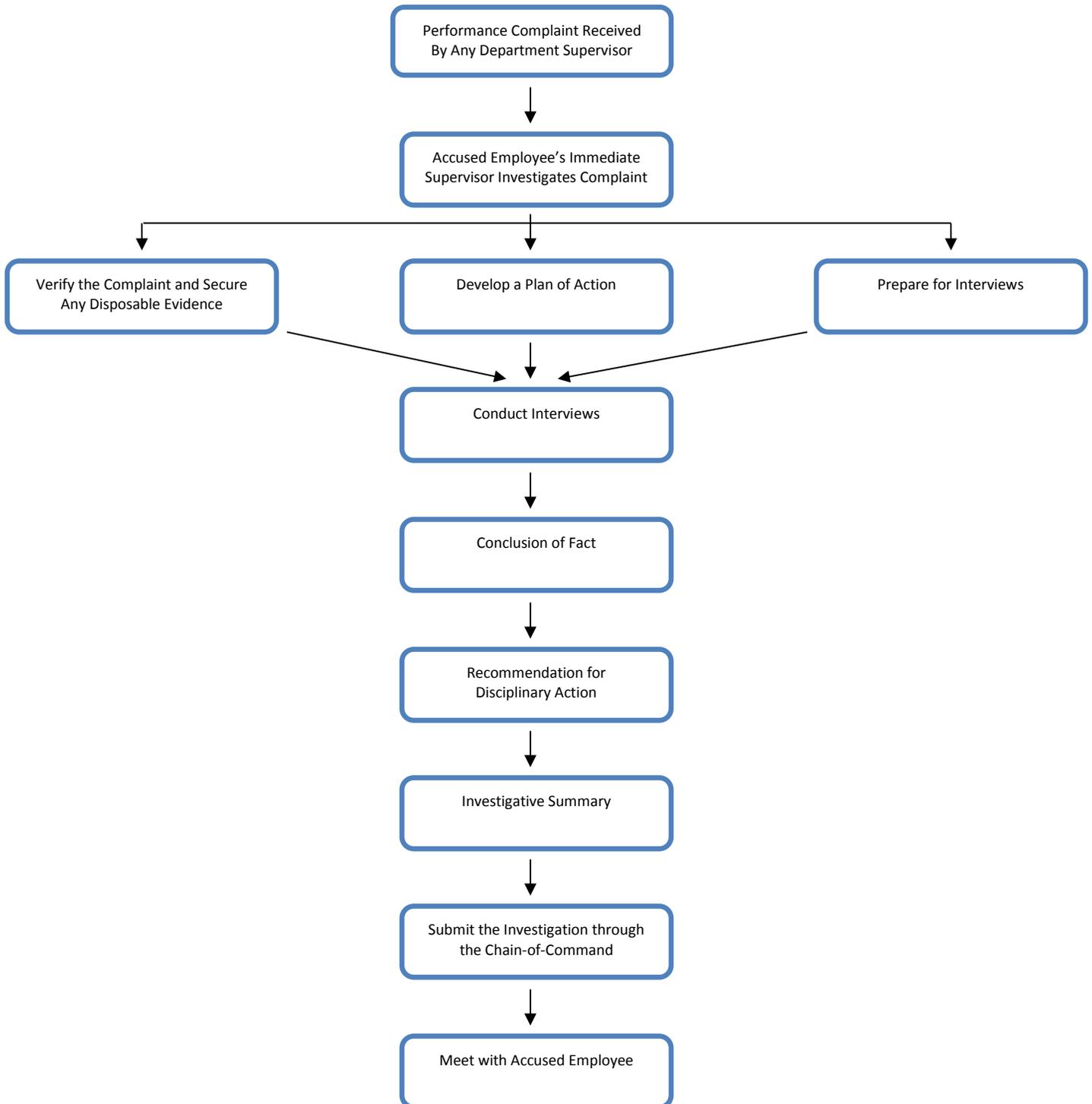
- A brief summary of the complaint being investigated, how the complaint was received and how and when you were assigned to investigate it.
- The investigative steps taken to investigate the complaint and any documents or other evidence being submitted with the investigative summary.
- An incident summary that details what you believe to have happened based on your investigation; this summary should include what you know to have happened as well as any specific information that is debated or otherwise unclear.
- A brief summary of each interview conducted (to include when and where conducted, whether the interview was recorded, and any noteworthy information related to sustaining or disproving the complaint).
- Your finding as to each policy violation in the complaint and the basis for each finding.
- A recommendation for disciplinary action if appropriate based on your findings (see above).

- A conclusion that offers any other information not already included in the investigation summary. This may include any summary comments as to the complaint or complainant, your investigation and/or your findings.

Concluding a Performance Complaint Investigation

- All documentation and materials related to the internal investigation are to be forwarded through the chain-of-command to the Chief of Police and then to the Internal Affairs Administrator. Once the Internal Affairs Administrator has received the completed internal investigation, he or she will ensure that all documentation and related materials from the investigation are secured.
- The complainant will be contacted by the Office of the Chief of Police to advise them that their complaint has been investigated. Under North Carolina General Statute, internal investigations are considered personnel matters and complainants are not entitled to information regarding any disciplinary action taken (or not taken) involving Department employees.
 - o This contact shall be made in writing by mail. A copy of the letter will be included with the investigation documentation.

Performance Complaint Flowchart



SUPERVISOR-OBSERVED PERFORMANCE COMPLAINTS

While some performance complaints will originate with citizens or Department employees, many performance complaints will be actions or behaviors that are observed by Department supervisors. In these cases an interview and investigation, which is normally needed to evaluate what in fact occurred, is not necessary because the supervisor directly observed the behavior (in person or via video).

In the event that a Department supervisor observes behavior (action or inaction) by an employee they directly supervise that constitutes a policy violation that would otherwise be a performance complaint but involves an issue not previously addressed that can be addressed through counseling and/or remedial training, it is not necessary for the supervisor to generate a performance complaint in the Administrative Investigations Management (AIM) system. It is also not necessary to provide the employee with Garrity warnings or a notice of complaint (unless requested by the employee) as the supervisor can immediately address the issue based on his/her observation of the policy violation. Any policy violation addressed outside the AIM system shall be documented as employee feedback in the performance appraisal software.

(Note – if, during the course of a performance complaint investigation, a supervisor observes behavior (action or inaction) by an employee they directly supervise that would meet the above criteria and is not directly related to the alleged policy violation in the performance complaint, the violation is to be addressed in the existing performance complaint as an additional allegation).

Supervisors shall, however, generate an AIM performance complaint on any observed policy violation which is a repeated policy violation by an employee. It is still not necessary to provide the employee with Garrity warnings and a notice of complaint unless requested by the employee. In the event that a Department supervisor observes behavior (action or inaction) by an employee they directly supervise that constitutes a policy violation that would otherwise be a performance complaint and the supervisor determines that a written warning or other more severe punitive disciplinary action is warranted, the supervisor is to create a new performance complaint case in the Administrative Investigations Management (AIM) software and notify the employee's Division Lieutenant by the next business day. The complaint should then be handled in accordance with the guidelines set forth in this manual for performance complaint investigations.

ALLEGATION OF SERIOUS MISCONDUCT INVESTIGATIVE PROCEDURES

It is critical that the Department address all allegations of serious misconduct in a consistent manner. The following procedures are designed to guide supervisory actions when investigating an allegation of serious misconduct, including administrative investigations of criminal offenses.

Immediate Actions

Upon being assigned to an allegation of serious misconduct internal investigation, the supervisor should consider and/or address the following as soon as is practical:

- Verify that you are conducting an administrative internal investigation and not a criminal investigation

You must know whether you are conducting an administrative investigation or a criminal investigation before taking any other action in the investigation. Although many allegations of serious misconduct do not constitute criminal conduct, some unfortunately do.

If there is a criminal investigation being conducted, the Chief of Police will determine whether the administrative internal investigation you are assigned to will be conducted concurrently with the criminal investigation or if the administrative internal investigation will be delayed until the conclusion of the criminal investigation.

If you have any question as to exactly what your responsibility is, you should immediately seek clarification from the Internal Affairs Administrator or, if he/she is unavailable, from the Chief of Police.

- Know what you are investigating

It is ultimately the investigating supervisor's responsibility to determine if the accused employee(s) violated a Department and/or Town policy or policies in an administrative investigation. In order to effectively do this, you must identify and understand the policy or policies alleged to have been violated. (These policy violations may also constitute criminal acts; however, when assigned to an administrative internal investigation, you are only responsible for the administrative policy violations).

Prior to taking any investigative action, you should review the involved policy or policies. If you have any questions regarding policy, you should seek clarification from the Internal Affairs Administrator. If for any reason you do not feel comfortable with conducting the investigation, you should communicate this to the Internal Affairs Administrator.

- Notify the involved employee

Normally, the accused employee should be notified as soon as possible that an allegation of serious misconduct has been made against them. When investigating an allegation of serious misconduct, this notification will normally have been completed by the Internal Affairs Administrator (and the assigned Internal Affairs Investigator should be provided with a copy of the *Notice of Internal Affairs Complaint* form). If the accused employee has not been given notification of the allegation once you are assigned to investigate, you should contact the Internal Affairs Administrator prior to making any notification to the employee.

- Contact the complainant

You should contact the complainant by phone (or in writing if you are unable to reach the complainant by phone) to inform them that you are investigating the complaint, to verify that you have all the details you need from them and that you have current contact information from them. If the investigation goes more than seven days, the complainant should be re-contacted on a weekly basis to provide updates and to let them know that the matter is being addressed.

- Secure any known evidence that may be disposable

The most common evidence in an allegation of serious misconduct is some type of recording, including (but not limited to) the in-car audio and/or video from a police vehicle or body camera, an officer's department-issued or personally-owned recording device or a recording made by a member of the public (either the complainant or a witness). As a reminder, you should always identify every police vehicle that was on the scene when the incident resulting in the complaint occurred; this includes Garner vehicles and vehicles from other agencies (assuming the other agency will allow you to view their video). You have an obligation to review (or attempt to review) the audio and/or video from all vehicles and officers present.

It is the responsibility of the investigating supervisor to determine what other evidence may exist depending on the nature of the allegation. The supervisor should consider all possibilities in terms of evidence that may be disposable and need to be identified and secured as part of the internal investigation.

Developing a Plan of Action

Supervisors who are assigned to investigate allegations of serious misconduct are expected to approach the investigation utilizing the same procedures they would use in a criminal investigation to ensure that all individual rights are protected and the truth is discovered. This should involve taking the time to ensure that you are aware of all the details of the complaint, have identified all persons known or suspected to be involved and have recovered any available evidence prior to conducting interviews or otherwise actively pursuing the investigation.

A supervisor assigned to an allegation of serious misconduct investigation should consider and address the following when preparing a plan for the investigation:

- Communicating with the accused employee(s)

Assuming that the employee is made aware of the investigation, the supervisor should explain to the employee the process he or she expects to undertake in investigating the complaint so that the employee understands the process being used. If the investigation lasts beyond seven days, the supervisor should re-contact the employee at least on a weekly basis to update them on the status of the investigation (unless such communication would negatively impact the investigation for any reason) and to attempt to answer any questions the employee may have. Any updates should be documented in the "Notes" section of the Administrative Investigations Management (AIM) software.

The supervisor should ensure that they have accurate contact information for the employee and that the employee has the supervisor's contact information. The supervisor should remind the employee that they are to notify the supervisor if they will be unavailable for an extended period of time during the investigation and that the employee is not to discuss the incident with anyone else other than family, personal attorney, spiritual advisor, a therapist or the Chief of Police without prior permission from the assigned Internal Affairs Investigator, the Internal Affairs Administrator or the Chief of Police.

- Identifying Potential Witnesses

As with any investigation, it is critical that you identify and attempt to interview all individuals who may be involved with or have information related to the circumstances surrounding the allegation.

Just as it is important to get statements from those individuals who allege they witnessed or have knowledge of the allegation, it is equally important to identify those individuals who are somehow linked to the allegation yet claim to have no knowledge of or involvement with it. Securing these statements during your investigation will minimize the likelihood of someone coming forward after the fact to allege something contrary to your ultimate finding of fact.

- Determining the Order of Interviews

Although investigators take different approaches from time to time, it is recommended in internal investigations (especially those of a serious nature) to interview the accused employee(s) twice – as the first and last interview in the investigation. This approach allows the investigator to understand the employee's perspective regarding the complaint through the initial interview while also addressing issues raised during the investigation with the employee in the final interview.

Other interviews should be conducted in an order determined by the supervisor conducting the internal investigation. The following factors merit consideration when determining the order of interviews:

- It is normally best to interview sworn personnel prior to civilians. Sworn personnel will often be more forthcoming and detailed in their statements, thus allowing you to better prepare questions to gather details from other witnesses.
- Witnesses who are expected to be uncooperative are best kept to last; this will allow you to gather details to ask them specific questions rather than relying on them to offer information.
- The availability of a witness may need to be considered to ensure that any absence does not unnecessarily delay the investigation.

- Setting Interview Times and Locations

When interviewing the accused employee(s), the supervisor should attempt to schedule the time of the interview so that it is convenient to the employee, especially if they remain on active duty. Whenever possible, the interview should be scheduled during the employee's regular work schedule unless the employee requests otherwise. The employee interview should take place in a private setting where the interview will not be interrupted; when possible, the employee interview should be held at a Department facility, but one where the employee will not have to interact with other employees due to the circumstances of the interview.

When interviewing the complainant and witnesses, the supervisor should attempt to schedule the time of the interview so that it is convenient to the interviewee. Non-employee interviews should be scheduled for a Department facility or, if necessary, a “neutral” location. You should avoid conducting interviews in a complainant or witness’ home, office or attorney’s office.

If interviewing a Department employee, the interview should be scheduled during the employee’s regular work schedule unless the employee requests otherwise. It is important to keep in mind that not all complainants and/or witnesses will be eager participants in this process; increasing their comfort level will likely increase their willingness to cooperate. As a reminder, some individuals will prefer not to come to police department facilities. It is also recommended that the supervisor travel to civilian interviews in an unmarked vehicle whenever possible.

- Preparing for Interviews

Just as you would for a criminal interview, the supervisor conducting interviews in an internal investigation must take time to prepare for those interviews. It is important to remember that the purpose of any internal investigation is to determine the truth by seeking information, challenging assertions and probing individuals not only for false responses but also for incomplete responses. The best way to do this is to prepare questions that will address specific points of contention and to anticipate how individuals may respond to those questions so that you are also prepared with follow-up questions. If you as a supervisor are unsure as to how to best proceed in this regard, you are encouraged to consult with the Internal Affairs Administrator.

General Interview Guidelines

Regardless of who you are interviewing, you must remain neutral in order to maximize the potential for cooperation and honesty; keep in mind that this can include your body language and your overall demeanor in the interview. You should avoid forming any opinion regarding the person being interviewed and instead focus on obtaining as much information and evidence as possible. You should also avoid expressing your opinion as to how the case will or should be decided.

All interviews should be conducted individually and privately. However, keep in mind that we do not have control over civilian witnesses and they may elect to have someone else present during an interview. This should be allowed if necessary to conduct the interview.

Although the nature of the allegation may make the interview uncomfortable, do not avoid asking the questions that need to be asked. Specifically, ask pointed questions that address the elements present in the allegation. Also, challenge the interviewee on points that need to be challenged or clarified.

As a reminder, it is your responsibility as the investigating supervisor to evaluate all available information to make a determination as to the validity of the allegation. You must collect the information in order to evaluate it.

When interviewing non-police personnel, use caution to avoid the use of police terminology that could confuse or frustrate the interviewee. Use terms and concepts that are familiar to the public and take extra effort to ensure that the interviewee understands what you are asking of them.

Always make sure that you have current contact information for the complainant(s) and all witnesses. Let the individuals that you interview know that you may need to follow-up with them if necessary to clarify information you gather after speaking with them. Also encourage witnesses not to talk about the interview or the incident with anyone else out of fairness to all persons involved.

Guidelines for Conducting Employee Interviews

When conducting an allegation of serious misconduct investigation, the investigating supervisor is to verify that the accused employee has been given a *Notice of Internal Affairs Complaint* form (GPD form 320.1-C). The investigating supervisor is to advise any accused employee interviewed of their *Garrity* warnings prior to beginning the interview. This is to be accomplished by the supervisor completing a *Statement for Internal Investigation and Administrative Purposes* form (GPD form 320.1-E) and reviewing it with the employee. Witness employees should be reminded verbally of their duty to answer the questions fully and truthfully. The witness employees are also to be instructed not to discuss the internal affairs investigation with other employees.

(Note – if for any reason an employee refuses to answer questions after being advised of their *Garrity* warnings, the employee is to be immediately placed on Emergency Relief from Duty (if the employee is on Active or Modified Duty at that time) and the supervisor is to immediately notify the Internal Affairs Administrator).

The supervisor should specifically review the four bulleted points on the form that relate to the following:

- The employee is being ordered to make a statement and/or answer questions directly related to their performance. All questions you ask are to be in regard to actions or inactions taken or observed by the employee in their work performance or that impact work performance. Questions should seek factual information; employees should not be asked to give their opinion or to speculate as to the actions or inactions of another employee. Employees are not to be asked about their behavior outside of their work performance unless it relates to the allegation being investigated.
- The employee is required to answer all questions fully and truthfully; keep in mind this is not necessarily the same as “telling the truth” or “not lying.” It is not just that we require what the employee says to be truthful; we also require the employee to tell the “whole truth” – i.e. the employee should not tailor the information to adequately respond to the line of questioning. The employee is expected (and required) to share all information they have that is relevant to the investigation.
- The employee is making the statement solely and exclusively for internal investigative purposes and administrative purposes related to their actions or inactions. However, while an employee’s statement will not and cannot be used against them by anyone in any criminal investigation, information they provide under *Garrity* may be used against other employees in administrative and criminal investigations. They can be ordered to make a statement and the information they provide may be used against an accused employee in administrative and criminal investigations. While employees maintain their Fifth Amendment right against self-incrimination in criminal matters, they have no such protection in regard to incriminating other employees in administrative or criminal investigations.
- The employee is reserving their right to remain silent as provided under the Fifth and Fourteenth Amendments and is relying on the protections set forth in *Garrity v. New Jersey* and *Gardner v. Broderick*. This statement protects the employee should any information they provide of a self-incriminating nature be used in a criminal proceeding against them. Any such information should be deemed inadmissible at criminal trial as the Department cannot order a statement as an employment requirement and then use the information gathered in violation of the employee’s Fifth Amendment rights.

In accordance with both Town and Department policy, employees are not entitled to have legal representation (or anyone else) present with them during an administrative internal investigation. Employees may not refuse to answer questions without a lawyer present so long as you have directed them to answer questions related to an administrative internal investigation (in accordance with *Garrity*).

Recording Interviews and Statements

When investigating allegations of serious misconduct, policy requires that all interviews be audio recorded and that all employee statements be written or typed. The purpose behind recording all interviews and statements is to allow for a complete review of all components of the investigation by Department personnel or others authorized to review the investigation at a later time. Recording also avoids discrepancies as to what exactly was said by anyone involved and minimizes the likelihood of misinterpretation of information.

There is no requirement for complainants or witnesses (other than Department employees) to give a recorded or a written statement in order for their statement to be considered in the allegation of serious misconduct investigation. However, you are encouraged to record all interviews with members of the public as well. The most effective approach is to inform complainants and witnesses that you intend to record the interview to ensure accuracy; you do not have to seek permission to record a member of the public in this circumstance.

Employees do not have the right to record their participation in an administrative internal investigation interview and are not to be allowed to do so. The interview is a component of the internal investigation; employees do not have the right to review active internal investigation records regardless of whether or not they are the subject of the investigation. You should confirm with an employee being interviewed that they are not recording the interview prior to beginning.

Members of the public should be discouraged from recording interviews as internal investigations are considered part of an employee's personnel file (see N.C.G.S. §160A-168) and are therefore not subject to the North Carolina Public Records Act and are not available to the public. However, if a member of the public insists on recording their interview as a requirement for the interview taking place, the supervisor should consider the value of the information sought in the interview and in most cases should consent to the recording.

Regardless of whether or not you record an interview, you should be prepared to provide a summary of every interview conducted as part of the internal investigation. The interview summary should include the following information:

- The name of the interviewer, the name of the interviewee and the name(s) of anyone else present
- The date, time and location of the interview
- Your perception of the interviewee's demeanor, willingness to cooperate, and overall responsiveness
- A summary of the interviewee's most relevant statements and responses, to include any admissions
- Anything else you deem noteworthy from the interview

As the investigating supervisor and interviewer, you must maintain all audio recordings and all written statements as part of the investigation. While it is not necessary to have all audio recorded interviews transcribed in their entirety, there are some cases where complete transcription is warranted. A recorded interview should be transcribed in any of the following circumstances:

- If there is information from the interview that establishes an element of the allegation did or did not occur and the information conflicts with another interview or statement.
- If the supervisor feels that transcription is necessary to gather specific details from the interview.
- If deemed necessary by the Chief of Police, the Internal Affairs Administrator or a representative of the District Attorney's Office.

Gathering Additional Information

In addition to conducting interviews as part of the internal investigations process, there are a number of other steps that may have to be taken in order to gather information relevant to the allegation. The following guidelines should be adhered to when the course of the investigation requires the supervisor to seek, compile and secure additional information:

- Employee Expectations of Privacy

As defined in Department policy, employees do not have an expectation of privacy in the workplace resulting from their employment with the Department. Policy specifically states that property belonging to the Department is subject to inspection when there is reasonable suspicion to believe that evidence of work-related misconduct would be found.

Therefore, if it becomes necessary to seek out potential evidence in an internal investigation, the supervisor conducting the investigation has the right to examine (and search if necessary) any Department-owned property the employee utilizes and/or has access to. Property includes, but is not limited to: computers, desks, file cabinets, phones, storage lockers and vehicles.

Unless the employee is not aware of the internal investigation or the presence of the employee would inhibit the search or the investigation, it is recommended that the employee be present for any such search as described above. This enhances the professionalism of the investigation as well as the perception of fairness on the part of the employee.

It may also become necessary for the supervisor to conduct a search of an on-duty employee's person related to an internal investigation. Prior to conducting a search of an employee's person, the supervisor should contact the Internal Affairs Administrator to discuss the circumstances. While it is reasonable to conduct an administrative search of an employee's person for possible evidence in an administrative internal investigation, this may be considered intrusive by the employee and should only be done with the approval of the Internal Affairs Administrator.

If exigent circumstances exist where evidence could be disposed of, the employee should be directed to a secure area and the Internal Affairs Administrator should be contacted immediately. If the Internal Affairs Administrator cannot be reached for any reason, the Chief of Police should be contacted.

Once a decision is made to conduct a search of an employee's person, the employee is to be ordered to comply with the search. If a search is being conducted by a supervisor who is of the opposite sex of the employee, a second supervisor must be present. If the employee refuses to consent to a reasonable search of their person, they are to be placed on Emergency Relief from Duty and notification is to be made to the Internal Affairs Administrator and up the employee's chain-of-command.

- External Records

In the course of an internal investigation, the supervisor may find it necessary to obtain employee medical records that exist outside of Town or Department records. If this occurs, the supervisor should present the employee with a *Consent to Release Medical Information* form (GPD form 320.1-F).

By signing this form, the employee grants consent to the Department (and to the assigned internal affairs investigator) to receive “protected health information” only for the purpose of the internal investigation. The Department agrees to pay any costs associated with acquiring this information. Once the form is signed, the supervisor should contact the individual or office holding the record(s) in question and arrange to provide a copy of the release so the information can be provided.

If the employee refuses to sign the consent form, the supervisor should note the refusal on the form and include the form as part of the investigative case file. The investigating supervisor should then consult with the Internal Affairs Administrator to determine whether or not to seek a court order to obtain the records in question. Refusal to consent on the part of the employee will be considered an unwillingness to cooperate in the internal investigation in violation of Department policy.

▪ Special Examinations

As outlined in Department policy, any employee subject to an administrative internal investigation may be required to undergo certain special examinations designed to provide information relevant to the allegation being investigated. Such examinations must be approved by the Chief of Police and include, but are not limited to:

- CVSA, polygraph or other truth verification examination;
- Medical or laboratory examinations to include, but not be limited to: breath or blood chemical analysis, DNA sampling, urine testing, and psychological evaluations;
- Photographs may be taken and the employee may be directed to participate in a photographic and/or physical line up;
- Submission of financial disclosure statements when they are material to a particular investigation; and
- Any other non-testimonial procedures judged appropriate by the Chief of Police.

If the supervisor believes it is necessary to have an accused employee undergo a special examination as outlined above, the supervisor is to consult with the Internal Affairs Administrator to verify the need and to seek approval from the Chief of Police.

Refusal to submit to any ordered examination will be considered gross personal misconduct and may subject the employee to punitive disciplinary action, up to and including termination.

- Alcohol and/or Drug Screening

When there is reasonable suspicion to believe an employee has used a prohibited drug or alcohol in violation of the Town's Substance Abuse Policy, a supervisor may order the employee to immediately undergo drug or alcohol testing. Reasonable suspicion is defined in Town policy as when a supervisor can substantiate specific contemporaneous, articulable observations concerning appearance, behavior, speech or body odor or other physical indicators of probable drug or alcohol use. By way of example and not limitation, any one or a combination of the following may constitute reasonable suspicion:

- Slurred speech,
- The odor of marijuana or alcohol about the person,
- Inability to walk a straight line,
- Involvement in an accident while on duty,
- Participation in a physical altercation,
- Participation in a verbal altercation,
- Behavior which is so unusual that it warrants summoning a supervisor or anyone else in authority; (i.e., confusion, disorientation, lack of coordination, marked personality changes, irrational behavior), and/or
- Possession of drugs.

The Town's Substance Abuse Policy testing protocol is to be followed in regard to testing timeframes and documentation in any case where a policy violation is suspected.

If you are faced with a situation where it is appropriate or required by policy to have an employee tested for drugs or alcohol, the employee should be taken to the Town's contracted vendor, NextCare Urgent Care located at 811 U.S. Highway 70 East (779-5010). If NextCare is closed, the employee should be taken to WakeMed Hospital at 400 U.S. Highway 70 East in Garner (919-350-8000). The medical facility should be informed that you are conducting an employee screening and that all results are to be forwarded directly to the Internal Affairs Administrator at the Police Department.

Refusal by an employee to submit to any ordered alcohol or drug screen will be considered gross personal misconduct and may subject the employee to punitive disciplinary action, up to and including termination.

Conclusion of Fact

When your investigation of an allegation of serious misconduct is complete, it is your responsibility to reach a conclusion of fact for each policy violation alleged. Unlike a performance complaint investigation, your role as the internal affairs investigator is only to be a fact finder and not to recommend disciplinary action.

You are to assign one of the following dispositions to each policy violation addressed by the investigation:

- **Exonerated**: The incident occurred as alleged but was lawful and proper. This means that the facts of the allegation were accurate but that the action (or inaction) by the accused employee was not a violation of policy or the law.
- **Not Sustained**: There is insufficient evidence to either prove or disprove the allegation. This is not the same as “not guilty” but instead means that the information you were able to develop through your investigation is inconclusive as to whether or not the employee violated policy. This finding should not be used if one of the other options can be justified based on your investigation.
- **Policy Failure**: The allegation occurred as alleged but the action(s) taken by the employee was within policy. Although rare, it is possible that an employee could be acting in compliance with a policy that resulted in unfair or inappropriate treatment of a member of the public. This is much more likely to be found in an allegation of serious misconduct than in a performance complaint.
- **Sustained**: There is evidence sufficient to prove the allegation. This may be thought of as “beyond a reasonable doubt” in the context of a criminal investigation. A sustained finding indicates that you believe that the accused employee in fact violated policy in a manner consistent with or similar to the allegation made against them.
- **Unfounded**: The allegation is found to be false or not factual. This may be thought of as “not guilty” of a policy violation based on disproving the facts presented in the allegation.

Investigative Summary

Once you have taken the appropriate investigative steps to gather all the available information related to the allegation of serious misconduct it is your responsibility to summarize your investigation and to document your finding as to each policy violation in the complaint.

However, prior to completing the investigative summary you are responsible for ensuring that the following has been addressed:

- All evidence has been identified, collected and considered.
- All witnesses have been identified and interviewed.
- The involved officer has been interviewed and has been afforded his or her rights.
- All investigative actions have been documented and a finding has been reached in accordance with policy.

Once you are confident that the above steps have been addressed and your investigation is complete, you will complete an investigative summary. The purpose of the investigative summary is to allow any member of the command staff or another supervisor who is unfamiliar with the complaint to be able to review the investigation and the justification for the finding(s).

The investigative summary should include the following:

- A brief summary of the complaint being investigated, how the complaint was received and how and when you were assigned to investigate it.
- The investigative steps taken to investigate the complaint and any documents or other evidence being submitted with the investigative summary.
- An incident summary that details what you believe to have happened based on your investigation; this summary should include what you know to have happen as well as any specific information that is debated or otherwise unclear.
- A brief summary of each interview conducted (to include when and where conducted, whether the interview was recorded, and any noteworthy information related to the sustaining or disproving the complaint).
- Your findings as to each policy violation in the complaint.
- A conclusion that details any other information not already included in the investigation summary. This may include any summary comments as to the complaint or complainant, your investigation and/or your findings.

Concluding an Allegation of Serious Misconduct Investigation

Once the investigative summary is completed, you are to forward the summary and all documentation and materials related to the investigation to the employee's Division Lieutenant for review. The Division Lieutenant may elect to have you meet with them to review your investigative methods and/or findings.

Command Staff Review

It is the responsibility of the Division Lieutenant to review the investigative summary to ensure that all appropriate investigative steps have been taken, that the policy violations alleged have been addressed and that the findings are supported by the investigation.

If the finding is “exonerated”, “not sustained” or “unfounded” the Department may not assign discipline to the accused employee as there is no finding that they in fact violated policy. If the finding is “policy failure” the Department may not assign discipline to the accused employee; although the employee may have acted (or failed to act) as described in the allegation, the action (or inaction) was not a violation of policy. The fault instead lies with the Department.

If the finding is “sustained” for any alleged policy violation, the Division Lieutenant will review the accused employee’s personnel file for similar incidents or other disciplinary action that might be considered when deciding on disciplinary action for this allegation.

If the Division Lieutenant determines that punitive disciplinary action is not warranted, he or she will issue appropriate discipline in the form of disciplinary counseling, remedial training, a written warning and/or other non-punitive disciplinary action. The Division Lieutenant may consult with the Operations Captain when determining appropriate non-punitive disciplinary action.

If the Division Lieutenant determines that punitive disciplinary action is warranted, he or she will meet with the Operations Captain to present the investigative summary and any findings from his or her review. It is the responsibility of the Operations Captain to then make a recommendation on punitive disciplinary action to the Chief of Police and to schedule the accused employee for a pre-disciplinary conference.

When making a determination as to disciplinary action, the Division Lieutenant and/or the Operations Captain should consider the following:

- The nature and seriousness of the allegation.
While some employee behavior can be adequately addressed through counseling or remedial training, other more serious violations may require a written warning in order to deter future similar behavior by the accused employee and/or other employees.
- The employee’s willingness to take responsibility for his or her actions (or inactions).
An employee’s willingness to acknowledge that their performance was not in accordance with the values of the Department is a key component to avoiding recurrences in the future.

- The employee's work and disciplinary history in the context of the Town's progressive discipline plan.

Progressive discipline is intended to encourage employees to make permanent corrections to performance deficiencies and minor problems relating to personal conduct. Progressive discipline may be based on repeated performance deficiencies or detrimental personal conduct of the same or of a different nature. Progressive discipline shall involve consideration of all previous disciplinary actions, if any, whether for unsatisfactory job performance or for detrimental personal conduct. In determining the appropriate level of discipline for unsatisfactory job performance, consideration shall also be given to the time elapsed since the last warning for unsatisfactory performance or detrimental personal conduct, if any.

- Past disciplinary action against other employees in similar situations.

It is critical that we treat employees fairly. However, this does not necessarily mean treating all employees the same – there is nothing more unfair than treating two employees who are not similarly situated in a similar manner. This means that two employees who commit the same policy violation may not receive the same disciplinary action depending on their prior work and disciplinary history, their level of cooperation and their willingness to take responsibility for their actions.

Concluding the Allegation of Serious Misconduct Investigation

If there is not punitive disciplinary action taken against the employee, the Division Lieutenant will meet with the employee to inform them of the findings of the investigation and, if necessary, to issue the disciplinary action. Notice of the findings and any non-punitive disciplinary action will be provided in writing by the Division Lieutenant. The Division Lieutenant will then forward all documentation from the internal investigation through the chain-of-command to the Chief of Police and then to the Internal Affairs Administrator.

If there is a recommendation for punitive disciplinary action to be taken against the employee, the Chief of Police will normally conduct a pre-disciplinary conference with the employee, the Division Commander and/or the Operations Captain and the assigned Internal Affairs Investigator. The pre-disciplinary conference is recommended by Town policy; although the Town of Garner is an "at will" employer as authorized by North Carolina General Statute, the Department typically conducts a pre-disciplinary conference to ensure employees are treated in a fair and consistent manner.

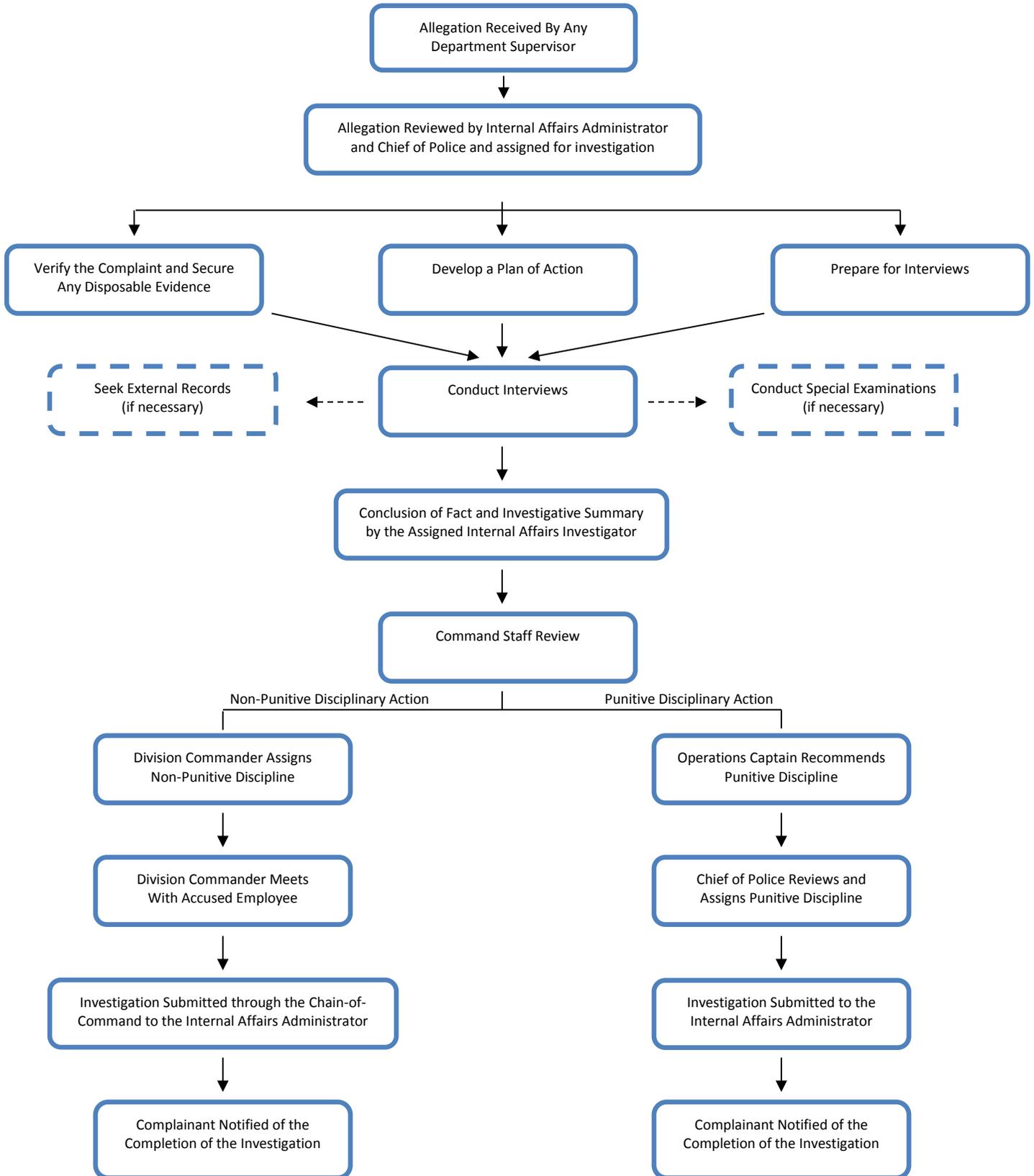
The North Carolina Department of Labor describes “employment at will” as follows: “The term ‘Employment-at-Will’ simply means that unless there is a specific law to protect employees or there is an employment contract providing otherwise, then an employer can treat its employees as it sees fit... and the employer can discharge an employee at the will of the employer for any reason or no reason at all.” Thus, in an “at will” state employees have no property interest in their job as they can be hired and dismissed without cause so long as the dismissal is not illegal (i.e. based on a protected category including but not limited to gender, race, age, etc.). The fact that the Department normally conducts a pre-disciplinary conference in these situations is not intended to construe any type of employment contract or employee “right” to their position.

After the conclusion of the pre-disciplinary conference (or after a review of the investigation by the Chief of Police if no pre-disciplinary conference is held), the Chief of Police will then make the final decision on issuing punitive disciplinary action, reducing the recommendation to non-punitive disciplinary action or dismissing any disciplinary action against the accused employee.

The Chief of Police will provide the accused employee with his or her findings in writing. The Chief of Police will then forward all documentation from the internal investigation to the Internal Affairs Administrator.

- Once the Internal Affairs Administrator has received the completed internal investigation, he or she will ensure that all documentation and related materials from the investigation are secured. The Internal Affairs Administrator will also notify the complainant that the allegation has been investigated and handled in accordance with Department policy. This contact shall be made in writing by mail. A copy of the letter will be included with the investigation documentation.

Allegation of Serious Misconduct Flowchart



EARLY INTERVENTION SYSTEM (EIS)

The Garner Police Department recognizes that our employees are our most valuable asset; we are committed to providing assistance and support when it is asked for. More importantly, we are committed to proactively monitoring employee actions and behaviors as a means of identifying symptoms of job stress and/or personal problems that could negatively impact the employee and their work performance.

The Department's Early Intervention System (EIS) is a structured non-disciplinary system that is intended to identify employees who may need assistance outside the scope of normal supervision and training. The early identification of employees who are engaging in a pattern or practice of problematic behavior or are experiencing underlying issues that are affecting their job performance is imperative. Providing a method for identifying performance deficiencies, taking corrective actions, making appropriate referrals and monitoring subsequent behavior increases the department's accountability and offers the employee a better opportunity for individual success and fulfillment of the department's mission and values.

** Note – the existence of an automated EIS process is not intended to dismiss supervisory responsibility for monitoring day-to-day and long-term employee performance, for addressing problematic or concerning behavior or for initiating a performance complaint or allegation of serious misconduct based on a single incident.

The EIS is a component of the Department's Internal Affairs System and is therefore confidential in nature. Internal Affairs records that are reviewed, compiled or created for the purpose of addressing an EIS alert or a related issue are considered confidential as part of the Internal Affairs System (see the "Confidentiality" section of this manual). (Note – other existing Department records that are not considered confidential may be reviewed as part of an EIS review; their review does not change their individual status as protected or unprotected records outside the EIS review).

As the EIS is a part of the Internal Affairs System, it is managed by the Internal Affairs Administrator. The automated EIS process is a component of the Department's internal affairs tracking software; as with other components of the software, employees have access to their EIS status at any time by logging into the internal affairs tracking system using their unique ID and password.

EIS Employee “Alert” Criteria

The EIS system automatically tracks and reviews information that is entered into the Department’s internal affairs tracking software. The following events or incidents are defined as “triggering events” for the EIS:

- Being the subject of an allegation of serious misconduct,
- Being involved in a motor vehicle crash on-duty,
- Being the subject of a performance complaint,
- Being involved in a reportable use of force incident,
- Being involved in a vehicle pursuit, and
- Witnessing a use of force by another agency.

Each of these are considered triggering events because they involve employee behavior, are documented and investigated as part of the Department’s internal affairs system and could result from or be indicative of diminished employee performance.

The internal affairs tracking software allows the Department to define the specific combinations of these criteria that trigger an alert for an individual employee. An “alert” indicates that a Department employee has sufficient triggering events within the prescribed timeframe for the pre-determined criteria to require a review.

The current list of criteria can be found in the addendum to GPD Directive 310.11 – *Early Intervention System*. The list of criteria is reviewed at least annually by the Internal Affairs Administrator as part of his EIS annual report and also by the command staff as a part of their review of the EIS annual report. The criteria may also be reviewed at any time upon the request of a Department employee who feels the criteria is too rigid or not rigid enough or who expresses any other concern with the criteria (see “EIS System Review”).

The EIS system is programmed to review or “look back” at triggering events that have occurred for up to 365 days in the past. This is commonly referred to as a “rolling calendar” in that the first day of the 365 days reviewed today is no longer reviewed tomorrow as it “rolls off” and is replaced by the most recent day. Once a triggering event is entered into the internal affairs tracking software, it is considered as a triggering event by the EIS system until it has been 366 days since it occurred. However, each of our criteria has a specific time frame included with it that restricts how long each triggering event is considered in the context of that specific criterion.

As an example, one alert criterion could be three (3) reportable use-of-force incidents in a ninety (90) day period; in this case, any use-of-force event would only be considered for ninety (90) days rather than 365 days. At the same time, we could have an alert criterion of five (5) of any of the aforementioned triggering events in a six (6) month period; in this case, that same use-of-force event would be considered for a six (6) month period. Thus an individual event will often be considered as part of the alert criteria for multiple alerts, with each alert considering the event differently in the context of timeliness.

Administrative Review Guidelines

The EIS software conducts an automated periodic review of all employees in the internal affairs tracking software and all triggering events they are directly involved with to determine if any of the pre-determined EIS alert criteria have been met. In the event that the EIS issues an alert based on this review, the Internal Affairs Administrator is responsible for the initial administrative review of the alert. The administrative review will normally be completed in no more than three (3) business days.

The purpose of this initial review is to determine if a full supervisory review of the alert by the employee's immediate supervisor is warranted. The Internal Affairs Administrator will consider the following in making this determination:

- If the alert is “legitimate” – i.e. are all the triggering events entered correctly, are there any duplicate entries, are all the dates on the events correct, etc.
- If the employee has already had an EIS alert administrative review that included the majority of the triggering events in the new alert and there was no supervisory review assigned.
- If the employee has already been subject to an EIS alert supervisory review that included the majority of the triggering events in the new alert. The Internal Affairs Administrator will compare the most recent triggering event(s) to the existing supervisory review.
 - Consideration will be given to the recency of the completed EIS alert supervisory review, the findings of that review and the nature of the most recent triggering event(s) as compared to the prior triggering events.
 - The existence of a prior supervisory review will not serve as the only factor in dismissing the current EIS alert (i.e. just because a supervisory review has been completed recently, it does not automatically dismiss the need for another review).

- If the employee is currently the subject of an EIS supervisory review when a “new” alert is sent due to an additional triggering event(s), the Internal Affairs Administrator will contact the assigned supervisor and add the new event(s) to the supervisory review already in progress.
- If the employee is currently the subject of an internal affairs investigation, the supervisory review may be delayed until such investigation is completed.

The Internal Affairs Administrator may also consult with the involved employee’s immediate supervisor and/or Division Commander, the employee’s Bureau Commander, the Chief of Police or any other Department personnel he deems appropriate in making this determination. As the Internal Affairs Administrator is not directly involved with the day-to-day work of the majority of Department personnel, he will likely not be familiar with some issues that might merit consideration when determining whether or not to assign an EIS alert for supervisory review. Any such consultation is deemed confidential and will not be discussed outside the scope of the EIS alert review process.

Once the Internal Affairs Administrator has considered all available information, he will determine whether or not a supervisory review is warranted. Unless there is justification for dismissing the completion of a supervisory review, the review will be assigned (see “Supervisory Review Procedure”).

If the Internal Affairs Administrator determines that the EIS alert does justify a supervisory review, he will notify the involved employee and the employee’s chain-of-command (up to and including the Chief of Police) of the review assignment.

- The employee will receive a form letter that informs them of the triggering events, provides an overview of the purpose of the EIS alert supervisory review, identifies the supervisor assigned to conduct the review and the process they will undergo and gives the employee the timeframe for the expected completion of the review process. (Note: the assigned supervisor will follow-up with personal contact - see below).
- The assigned supervisor will receive a form letter that informs them of their assignment and directs them to meet with the Internal Affairs Administrator to start their review. The assigned supervisor will also receive a copy of the letter to the employee.
- The employee’s chain-of-command will receive a copy of the letter to the employee and a copy of the letter to the assigned supervisor.

If the Internal Affairs Administrator determines that the EIS alert does not justify a supervisory review, he will document his administrative review process, including the justification for not assigning a supervisory review, in the EIS system. The Internal Affairs Administrator will then notify the employee's Bureau Commander (who will in turn notify the Chief of Police) of his findings. Both the Bureau Commander and the Chief of Police must approve of the justification and the non-review. If either feels a review is necessary, a review will be completed. Once the non-review is approved, the Internal Affairs Administrator will notify the involved employee and the employee's chain-of-command up through the Division Commander of the non-review.

Supervisory Review Guidelines

The supervisory review of an EIS alert will normally be conducted by the involved employee's immediate supervisor (this does not normally include Platoon Leaders – Patrol Sergeants will conduct supervisory reviews for their personnel; Platoon Leaders may assist with the process based on their knowledge of the employee and as a supervisory training opportunity). A Platoon Leader may, at the discretion of the Division Commander, complete a supervisory review in the absence of the Patrol Sergeant.

The purpose of an EIS alert supervisory review is to consider the "totality of the circumstances" surrounding the involved employee's behavior and performance. While each individual triggering event in the internal affairs tracking system has been investigated and/or reviewed, it is unlikely that the collective triggering events from the EIS alert have been considered together. The supervisory review also ensures that other potential factors and issues are considered in an effort to assist the employee (see below).

The assigned supervisor will have up to thirty (30) days to complete their EIS alert review. However, the review should be completed as soon as is practical. The alert review itself can result in stress for the involved employee, especially if they have not previously been subject to the review process. If the review cannot be completed in thirty (30) days for any reason, the assigned supervisor must notify their immediate supervisor to request permission for an extension. The immediate supervisor must in turn notify the Internal Affairs Administrator of any extension granted.

Supervisory Review Procedure

Upon being assigned to conduct a review of an EIS alert, the assigned supervisor will meet with the Internal Affairs Administrator to review the EIS alert and the triggering events, to gather any relevant documentation for review and to discuss the process for the supervisory review.

The assigned supervisor will schedule a meeting with the Internal Affairs Administrator and the involved employee to review with them the EIS alert that has occurred and that he/she has been assigned to conduct a supervisory review. The Internal Affairs Administrator will attend the meeting to state the purpose of the review and the purpose of the EIS system. The IA Administrator will be available to answer any questions the employee or supervisor has about the process of the EIS review, but will not be present for discussion of the employee's behavior or work performance. Once the employee notification has been made, the supervisor shall review each of the following related to the EIS alert and the involved employee's behavior and work performance:

- Each of the triggering events in the internal affairs tracking software;
- The involved employee's most recent completed performance appraisal and any performance documentation since that appraisal for any noted issues or concerns that may be related to the alert;
- Any sick leave or unscheduled absences by the employee in the 365-day review period;
- Any referrals to the Employee Assistance Program (EAP) in the past 365 days; and
- The employee's recent behavior, with an emphasis on identifying behavior that may be indicative of alcohol abuse, substance abuse and/or personal problems that are impacting work performance.

The supervisor may seek assistance from any of the following individuals to ensure that all necessary information is gathered and reviewed – the Internal Affairs Administrator (internal affairs information), the Records Manager (EAP referral information, recent performance appraisals and sick leave information), the Town Human Resources Director (EAP referral information if unavailable internally) and other Department supervisors (employee behavior and performance).

When conducting this information review, the supervisor shall consider the following in the context of understanding and/or explaining the involved employee's behavior and work performance:

- Any patterns or trends in the cumulative behavior that are indicative of a need for additional or remedial training to prevent citizen complaints or avoidable use of force in the future.
 - The supervisor should consider whether the employee's behavior or performance is the result of a lack of knowledge and/or understanding of Department policy and procedure.
 - It is also entirely possible for the employee's performance in all of the triggering events to be in compliance with the law and Department policy; however, the question to be considered is not necessarily whether the employee was right or wrong but rather could they (or should they) have considered a different approach or utilized a different skill set to accomplish the same goal?
- Any changes in behavior related to overall efficiency or productivity, sick leave taken, tardiness, etc. This should be an area that the employee's immediate supervisor and platoon leader are already familiar with as they normally work with the employee on a daily basis. While changes in behavior can occur in any employee due to a variety of factors, significant changes (typically decreases) in efficiency and productivity, excessive or patterned use of sick leave, tardiness and/or other minor performance issues can be indicative of a larger issue or problem.
- Any indicators of stress impacting the employee's performance, including but not limited to recent changes in work assignment (or non-selection for transfer or promotion), exposure to a critical incident, family / personal issues, false or misleading accusations against the employee, etc.

As mentioned above, this is another area where day-to-day interaction should allow supervisors to note changes that may be contributing to an elevated amount of stress for the employee. Studies have shown that stress (both positive and negative) can have a significant impact on an individual and it must not be overlooked in the context of the EIS and employee wellness.

Note: Supervisors are to keep in mind that they may in fact be one source of stress for the employee, especially if the employee has recently been subject to an internal affairs investigation and disciplinary action.

- Any indicators of alcohol abuse and/or controlled substance use or abuse. Supervisors must be familiar with indicators of both alcohol abuse and controlled substance use in order to identify the problem and provide assistance to the employee. Additional information and training is available to supervisors through the Town's contracted EAP provider.
- How the employee's internal affairs and performance history compares to other similarly situated employees. The supervisor should consider the involved employee's history as compared to other employees who work in similar assignments, not necessarily to all other employees. The nature of the employee's assignment may inherently involve a greater likelihood of citizen interaction, enforcement actions and/or other behaviors that typically result in internal affairs incidents.

At the same time, the fact that the involved employee has a greater number of triggering events in a given period of time may be symptomatic of an issue with their work group rather than the individual employee. If the employee's level of internal affairs activity is consistent with their work group peers but that level is consistently above the majority of the Department, the work group should be examined as a whole (note – this type of concern should be addressed to the affected Division Commander).

- Any other factors the supervisor knows or suspects may be contributing to employee performance. Supervisors know (or should know) their employees the best of anyone in the Department; it is the supervisor's responsibility to recognize changes in behavior and performance and to seek out whatever it is personally and/or professionally that may be negatively impacting the employee.

Keep in mind that when reviewing an employee's behavior and performance, it may be necessary to consider issues or matters that are not work-related but are contributing to a change in work performance. Supervisors must be careful to restrict any questioning or intervening in non-work related issues to those that are impacting work performance unless the employee seeks assistance for other personal issues.

Additionally, it is possible that while conducting an EIS review the supervisor could identify a policy violation or other issue that necessitates a performance complaint or allegation of serious misconduct against the employee. While this is not the intent of the EIS, such a finding may not be overlooked simply because it was discovered while conducting an EIS alert review. It is the responsibility of the supervisor to address the issue in accordance with the Department's existing policy.

Once the above review is complete, the supervisor shall make a determination as to what, if any, issues have been identified that require further discussion with the employee and possible action and/or referral.

Supervisor – Employee Meeting

Once the supervisor has completed his/her review of the available information described above, the supervisor will schedule a meeting with the involved employee to discuss the EIS alert and subsequent review. Prior to conducting that meeting, the supervisor shall prepare for the meeting by doing the following:

- Reviewing the original EIS alert to ensure familiarity with those triggering events and with the criteria that was met for the alert.
- Preparing a list of the relevant information gathered during their review that is to be discussed with the employee. The supervisor should be prepared for both agreement and disagreement by the employee as either or both could occur. Discussions centered around employee behavior and performance can be emotional and even volatile at times; this aspect can be diminished by remaining professional and focusing on facts related to employee performance.

The employee meeting should be conducted at a time and place that allows for privacy and avoids interruption. The meeting should be held during the employee's on-duty time unless the employee requests a time outside their normal work hours.

When conducting the employee meeting, the supervisor will ensure that the following is addressed:

- Review the purpose of the Department's EIS and the process undertaken by the supervisor to complete the review. It is important that all employees understand (and be reminded) that the EIS is a structured non-disciplinary system that is intended to identify employees who may need assistance outside the scope of normal supervision and training. It is also important for employees to understand the sources for and the steps taken to gather the information being used in the review.

- Review the alert and the triggering events with the employee, including an appropriate emphasis on any identified patterns of behavior or other concerns. Although the employee should already be aware of the individual triggering events, he or she may not have considered them in the context of a group of events and may not have recognized any patterns of behavior on their own.
- Discuss any other information, issues or concerns identified in the review and seek feedback from the employee for their perspective. Use caution not to assume anything until after you have talked with the employee; not unlike other issues you deal with in law enforcement there are always at least two sides to a story and it is important that you give due consideration to the information provided by the employee.
- Give the employee the opportunity to discuss any other personal or professional issues or concerns that might be related to their overall performance. Always be prepared for the fact that the employee may not be comfortable discussing these types of issues with the supervisor who conducted the review. The supervisor should be prepared to offer the employee the opportunity to talk with another supervisor or a professional counselor if needed.
- If appropriate, offer resources and/or services to assist the employee (see the section on “Actions and Referrals” below). Depending on the tenor of the conversation, it may be useful to ask the employee if there is anything they feel would assist them rather than immediately offering alternatives to them. Employees (and people in general) are more likely to be committed to a solution if they develop or contribute to the plan of action.

Supervisors may recommend one (or more) of the following based on their review and conclusions and employee input:

- *No additional action necessary.* This indicates that although the alert was legitimate in the sense that it met the established criteria, the supervisory review has found no indication of problematic behavior or other issues that should be addressed. The triggering events are justified and are the result of normal law enforcement actions.

- *Supervisor - employee counseling.* The supervisor may elect to provide informal (and non-disciplinary) counseling to the employee regarding general practices for citizen interaction, day-to-day performance or any other topic that the supervisor deems relevant. If the supervisor does not feel they have the appropriate training or expertise or feels that another supervisor would be more effective in counseling the employee, the other supervisor may be asked to assist.
- *Referral to the Town's contracted Employee Assistance Program (EAP).* The Town has an Employee Assistance Program (EAP) to help employees resolve a wide range of personal problems that have a negative effect on their job performance. This confidential counseling service is available to employees and their family members. Town employees are encouraged to use the EAP when they are experiencing problems that impact their ability to be productive at work. (Note: employees participating in the EAP are still required to meet job performance standards).
- *Referral to a Police Chaplain.* The Department provides local volunteer chaplains to provide counseling and guidance to those employees who wish to speak to a member of the clergy. Speaking with a chaplain is voluntary and is not tracked by the Department. Supervisors may also encourage employees to speak with their own clergy if they prefer.
- *Alcohol/Drug Screening based on reasonable suspicion.* Any such testing must be done in accordance with existing Town and Department policy.
- *Remedial training.* The supervisory review may identify areas where the employee's behavior could be modified and/or performance improved with remedial training. Remedial training may be done externally through courses that address the specific topic(s) identified in the review or may be done internally by an employee with the appropriate knowledge and experience. Internal remedial training should be conducted with consideration given to protecting the employee's privacy and avoiding undue embarrassment. All remedial training should be conducted in a timely manner.
- *Leave of absence.* In extreme cases, the supervisor may recognize that the employee is dealing with issues that make it unsafe for the employee to be at work or the employee may be unable to effectively address personal issues while also working. A leave of absence is voluntary on the part of the employee and requires either the use of the employee's leave time or an unpaid leave of absence if the employee does not have paid leave time available (or chooses not to use it).

Refer to Part VII – “Holidays and Types of Leave”, Section 17 – “Leaves of Absence” of the Town of Garner Personnel Policies and Procedures Manual for more information.

- *Transfer or reassignment.* The supervisor may determine that the employee’s current assignment and/or work group are contributing factors to any behavior or performance concerns with the employee. Transfer / reassignment should not be taken lightly and will not be used by a supervisor as a means of avoiding dealing with and/or assisting an employee.
- *Completion of a medical and/or psychological fit-for-duty examination.* If the supervisor believes there are medical and/or psychological issues impacting the employee’s behavior and/or performance at work, they have an obligation to seek a fit-for-duty examination for the employee. The purpose of a fit-for-duty examination is to identify treatable medical and/or psychological issues with the long-term goal of treating those issues so that they are no longer negatively impacting the employee. Fit-for-duty examinations will be conducted by the Town’s contracted vendor and will be coordinated through the Internal Affairs Administrator’s office.

At the conclusion of the employee meeting, the supervisor should seek an acknowledgement from the employee (and ideally agreement with) the issues discussed, any specific areas of concern and a tentative plan of action for addressing any concerns, to include their recommendation for any further action and, if appropriate, the development of a goal(s).

Any goal(s) must be closely related to the issues or concerns identified in the supervisory review. The goal(s) should include employee input as a means of encouraging commitment and success. Any goal(s) established as a part of an EIS review should be developed using the “S.M.A.R.T.” model:

- **Specific** – a “specific” goal answers the questions of “who, what, where, when and why.” A specific goal has a much greater chance of being reached than a non-specific goal.

Example – a non-specific goal would be to “get in better shape” whereas a specific goal would be “the employee will join a gym or fitness center and will exercise for at least thirty minutes three times a week over the next six months to reduce their body weight by twenty pounds and improve their body mass index (B.M.I.) by ten percent.”

- **Measurable** – a goal should establish concrete criteria for measuring progress toward the attainment of each goal that is set for the employee. When an individual measures their progress they are more likely to stay on track, reach their target dates, and experience a sense of achievement.

Measurable goals allow the employee to answer questions such as “how much” or “how many.” Objective goals are typically more effective than subjective goals in this regard.

As noted above, the employee would be able to compare their actual gym attendance and progress with their goal of attending three times a week, having weight loss and improving their B.M.I. A goal of “get in better shape” is subjective and is not measurable by clearly defined criteria.

- **Agreed Upon** – a goal should be agreed upon by the supervisor and the employee to increase the likelihood of success. An employee is much more likely to commit to a goal that they suggest or help to create as opposed to a goal that is perceived as “forced” on them by a supervisor.

In this example, the employee should be encouraged to select a fitness routine that they believe is something that they want to do and that they will commit to because it benefits them, not because they have to.

- **Realistic** – a goal should challenge the employee to achieve something they have not achieved, but must be something that the employee can in fact do with the appropriate commitment, support and effort. A goal must be realistic based on the issue at hand and the employee’s personal and professional attributes and resources.

In our fitness example, a goal of losing one hundred pounds in the next three months is not attainable as it is not realistic (and not healthy). However, a goal of losing twenty pounds in six months is much more realistic, especially if the employee is provided with resources to assist them in the process.

- **Timely** – there are several aspects to the timeliness of goal setting. Goals should be established in a timely fashion as part of the review process so that the discussion of and justification for the improvement plan for the employee is still fresh in the minds of those involved. Goals should also be timely by including deadlines for completion of various steps and a due date for ultimately achieving the goal.

In our fitness example, the goal might include monthly check-in dates to verify attendance and evaluate the employee's progress. The goal already includes a specific goal of six months.

Remember, a "S.M.A.R.T." goal is effective when it serves to motivate the employee to improve their performance by addressing the issues and/or concerns identified. Clearly defining and then following-up on these goals is a critical component of an effective EIS.

At the conclusion of the employee meeting, the supervisor is to inform the employee of the additional steps that will be taken in the review process and remind the employee that the supervisor will be following up with them once the review has gone up the chain-of-command.

Supervisor's Summary

Once the review and employee meeting have been completed, the supervisor will document his/her findings by completing an *EIS Review Summary* (GPD form 310.11-A). The form includes general information on the involved employee, notifications made related to the review and the initial list of triggering events. The "Triggering Events" section may be addressed by attaching the EIS printout provided by the Internal Affairs Administrator. The supervisor must also indicate what steps they took in their review in the "Review Process" section to ensure a thorough review was completed. If any of the boxes are left blank this must be explained in the summary narrative (as indicated on the form, each box should be checked if that component was reviewed, even if no information was found).

The supervisor's summary narrative may be typed into the summary form or may be included as an attachment in memorandum format with a reference to the attachment on the form. The summary will include the following:

- Documentation of the triggering events, to include a brief summary of any noteworthy information from each as well as any identified patterns or other concerns when the events are considered as a group.
- Actions taken by the supervisor in the review process, to include what information was reviewed, who was consulted with and any actions, patterns or trends identified that warrant further action and/or a referral to assist the employee.

- A summary of the employee meeting, to include specific issues raised by the supervisor, any information presented by the employee, the willingness of the employee to discuss any issues or concerns (if applicable) and any consensus on further action and/or referral to assist the employee.
- Any recommendation(s) for counseling, training or other actions to be taken based on the information gathered and considered during the supervisory review.
- Any goals established to assist the employee in addressing behavior or performance concerns and improving future performance.

As a reminder, the overarching intent of the EIS is to provide assistance to an employee who may be experiencing personal and/or professional problems that are impacting their work performance. More specifically, the goal of an EIS alert review is to review, identify and address issues the involved employee may be facing at the time of the alert.

Chain-of-Command Review

The completed summary will be submitted up the chain-of-command by the supervisor for review and approval. The completed summary will include the EIS review summary form (signed by the employee and reviewing supervisor) and any documents gathered, prepared and/or reviewed in the review process. The reviewing supervisor's next level of supervision is primarily responsible for ensuring that a thorough review has been completed and shall return the review if it is not completed in accordance with this policy.

Once the summary has been reviewed and approved through the chain-of-command to the Chief of Police, the summary will be forwarded to the Internal Affairs Administrator. The Internal Affairs Administrator will notify the employee's immediate supervisor and the next level of supervision of the approval of the alert review and recommendations. The Internal Affairs Administrator will include the approved summary and all related documents and other information in the EIS alert file.

The supervisor will meet with the employee to discuss the approved review. If there is no further action to be taken, the supervisor will inform the employee that the review is completed and considered closed. The Internal Affairs Administrator will then send formal notification to the employee (with a copy to their Department personnel file) that the EIS review has been closed.

If there is further action required, the supervisor will review the recommendations, the goals (including deadlines) and the employee's responsibilities going forward. The supervisor will also explain the process for post-review monitoring (see below).

Post-Review Monitoring Process

In the case of a recommendation for further action to be taken, the involved employee's supervisor shall monitor the employee's behavior for a minimum of six (6) months following the EIS alert review. (Note: the six (6) month review period begins once the EIS review is approved and the supervisor meets with the employee). The purpose of the post-review monitoring process is to ensure that the Department supports the employee in addressing any identified issues or concerns prior to the need for disciplinary action.

The employee's immediate supervisor is responsible for the following during this period:

- Ensuring successful completion of any mandated evaluation, training or other action(s) in the time period prescribed. While the employee has the primary responsibility for fulfilling their responsibilities in this regard, the supervisor should monitor the employee's progress both to demonstrate continued support for the employee and to ensure compliance. Failure of the employee to successfully complete any mandated actions may result in disciplinary action.
- Monitoring employee behavior, to include any noted improvement or any regression toward behavior or performance that is unsatisfactory or constitutes a policy violation. In addition to ensuring compliance with mandated actions, it is the responsibility of the supervisor to monitor employee performance to encourage employee growth and to discourage inappropriate behavior. The fact that the employee is being monitored for an EIS alert does not dismiss the possibility of disciplinary action for post-review actions.
- Meeting with and/or counseling the employee on an as-needed basis. Effective communication is one of the keys to a successful supervisor-employee relationship; this is especially true for employees who may be facing personal and/or professional challenges.

Supervisors have an obligation to communicate positive feedback as well as areas of concern and unsatisfactory performance to the employee so they are aware of what they are doing well and what they can do to improve. Supervisors should never assume that an employee knows what the supervisor knows unless they have personally informed the employee.

- Meeting with the employee at the conclusion of the monitoring period to review their progress (including goal attainment), to discuss any remaining behavior or performance issues and to determine if the employee desires or requires any further assistance from the Department.

Supervisors shall document all formal meetings with the employee related to the post-review monitoring period. All such documentation will be included in the final EIS review file.

At the conclusion of the monitoring period, the supervisor will complete a memorandum outlining their observations and actions (if any) as well as the employee's achievement of or progress toward any goals established as part of the EIS review. The supervisor will recommend either closure of the alert based on the employee's progress or, in limited and unique circumstances, an extension based on a belief that a specific period of time (not to exceed six (6) additional months) will allow the employee the opportunity to complete a specific activity or program.

The memorandum (and all relevant documentation) will be forwarded up the chain-of-command for review and approval. Once approved by the Chief of Police, the approved memorandum will be forwarded to the Internal Affairs Administrator for inclusion in the EIS system. Once the alert is closed, the Internal Affairs Administrator will then send formal notification to the employee (with a copy to their Department personnel file) that the EIS review has been closed; the notification will also include documentation as to the employee's participation in any mandated and/or recommended actions.

EIS System Review

Review of the Department's Early Intervention System is an ongoing process and is the responsibility of all Department supervisors. As supervisors review employee performance, internal affairs incidents and EIS alerts they should be giving consideration to the existing alert criteria, the factors recommended for consideration in the review process, the actions and referrals available and the review process itself. All suggestions for change are welcomed and should be forwarded up the chain-of-command for review.

The Internal Affairs Administrator is responsible for conducting an annual review of the Department's Early Intervention System. The annual review will consist of the following:

- A review of the alert criteria used during the year, to minimally include the criteria most often met and any criteria not met.

- A review of all alerts, to include those assigned for review as well as those not assigned. This will minimally include a review of the number of alerts, the number of alerts administratively reviewed but not assigned, the triggering events involved in those assigned versus those not assigned, and the age, experience and assignment of the employees involved in the alerts.
- A review of all recommendations resulting from EIS alert reviews, to minimally include analysis of alert criteria met versus the recommendation, the number of “no further action” recommendations versus other actions taken, and the number of actions recommended or referrals made per category. The Internal Affairs Administrator will consider whether any additional or remedial training assigned through the EIS review process is appropriate for all Department personnel.

The Internal Affairs Administrator will complete a report documenting any findings related to the operation of the system, the current alert criteria and the actions and referrals available. The report will also include any recommendations for changes to the EIS and/or any Department policies or training based on review findings. The completed report will be submitted to the Chief of Police who will review and approve it. Once approved, the report will be shared with and discussed by the Command Staff and Department supervisors.

CONFIDENTIALITY

It is of the utmost importance that all internal investigations and EIS reviews conducted by the Garner Police Department be handled in a confidential manner both internally and externally. As an Internal Affairs Investigator you have an enhanced ethical obligation to yourself, to any employee involved in the investigation or review and to the Department as a whole. A significant aspect of this obligation is maintaining confidentiality when conducting an internal investigation or review.

Internal confidentiality is critical to the effectiveness of the Department's internal affairs function. It is also critical to your reputation and to the trust that Department employees will be willing to place in you whether in your role as an Internal Affairs Investigator or as a Department supervisor and leader. The information you gather and assess during the investigation of a performance complaint or an allegation of serious misconduct is to be shared with no one during an investigation other than the Internal Affairs Administrator, the Chief of Police or anyone that the Internal Affairs Administrator or the Chief of Police directs you to share the information with. If for any reason you were to share this information with other persons within the Department, you would be risking your viability as a trusted employee and supervisor and you would be subject to disciplinary action.

External confidentiality is equally critical to the effectiveness of the Department's internal affairs function. External confidentiality is guided by North Carolina General Statute 160A-168, *Privacy of Employee Personnel Records*. This statute establishes internal investigations as part of an employee's personnel record and defines such information as confidential. This statute also establishes criminal violations for the unlawful release of this information as follows:

- §160A-168 (e) - A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as is permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not more than five hundred dollars (\$500.00).
- § 160A-168 (f) - Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined in the discretion of the court but not in excess of five hundred dollars (\$500.00).

Any requests that you receive for information regarding any internal affairs investigation should be directed to the Internal Affairs Administrator.

CONCLUSION

The Garner Police Department is committed to maintaining professional standards in part through the thorough and impartial investigation of use of force, vehicle pursuit and complaints against employees. Department supervisors play a crucial role in these investigations and thus are expected to maintain the standards set forth in this manual. This role requires a consistent focus on the following key components:

- Confidentiality – you have a moral and a legal obligation to maintain confidentiality out of respect for our employees, our policy and the law.
- Documentation – your documentation must be accurate, concise and thorough so that there is no question at the conclusion of an investigation as to what anyone did or said during the incident in question or the subsequent investigation.
- Fairness – you must treat everyone involved in the investigation fairly, respecting their rights and explaining their responsibilities through each step of the investigative process.
- Knowledge – you must know the law, Department policy and what your role is when assigned to an internal investigation. Do not wait until after you have been assigned to your first investigation. Do not hesitate to ask if you have questions.
- Responsibility – you must recognize that when conducting an internal investigation you have an obligation to our employees, to the Department and to the community – but first and foremost your responsibility is to discover the truth.

Internal Affairs investigations should be approached in the context of our Department Mission Statement and our Values:

The Garner Police Department is dedicated to excellent police service through partnerships that reduce crime, create a safe environment, build trust, and enhance the quality of life in our community. We are committed to delivering quality service in an effective, responsive, and professional manner.

- You must have a COMMITMENT to conducting fair and thorough internal investigations.
- You must maintain your INTEGRITY at all times when conducting internal investigations.
- You must demonstrate PROFESSIONALISM in all your actions related to the completion of the internal investigation.

APPENDIX A – DOCUMENTATION GUIDELINES

The following guidelines are intended to assist supervisors in ensuring that appropriate documentation is completed when conducting Use of Force and/or Vehicle Pursuit Internal Affairs investigations:

Use of Force Only

The following documentation is to be completed anytime that there is a reportable use of force incident (with no vehicle pursuit and no policy violations requiring performance complaint or allegation of serious misconduct investigations) involving Garner Police Department officers:

- *Use of Force* form(s) (GPD form 710.1-A)
 - To be completed by any officer who uses “reportable” force, excluding the intentional pointing of a firearm or a Taser.
 - To be reviewed by the investigating supervisor for accuracy, completeness, and consistency with other related documentation.
- *Use of Force by Intentional Pointing* form(s) (GPD form 710.1-B)
 - To be completed by an officer who intentionally points a firearm or a Taser.
 - To be reviewed by the investigating supervisor for accuracy, completeness, and consistency with other related documentation.
- Witness officer memorandum(s)
 - Any officer who witnesses a reportable use of force (other than an intentional pointing) but does not use force themselves is required to complete a memorandum to the investigating supervisor documenting their observations.
- Investigating Supervisor’s *Use of Force Supervisory Investigation Summary* form (GPD form 710.1-C)
 - The summary form will include an incident overview, summaries of officer and witness statements, any noteworthy evidence, and any potential liability incurred by the Department.
 - The summary must allow an independent reviewer the ability to understand what occurred in the use of force incident with no other information or knowledge.

The following should also be included in the investigation:

- Any photos from the investigation.

- Any audio and/or video files from in-car cameras, body cameras, interviews, or other sources.
- Copies of all incident reports and arrest documentation.

Vehicle Pursuit Only

The following documentation is to be completed anytime that there is a vehicle pursuit incident (with no use of force and no policy violations requiring performance complaint or allegation of serious misconduct investigations) involving Garner Police Department officers:

- *Vehicle Pursuit* form(s) (GPD form 810.2-A)
 - To be completed by any officer who is directly involved in the vehicle pursuit.
 - To be reviewed by the patrol supervisor for accuracy, completeness and consistency with other related documentation.
- Patrol Commander's Investigative Summary
(Note – if only one officer is involved, this can be submitted on the 810.2-A or as a separate memorandum; if more than one officer is involved, it should be a memorandum that addresses the entire incident and can be included with each separate vehicle pursuit form).
 - The summary will include an incident overview, summaries of officer and witness statements, any noteworthy evidence and any potential liability incurred by the Department.
 - The summary must allow an independent reviewer the ability to understand what occurred in the vehicle pursuit incident with no other information or knowledge.

The following should also be included in the investigation:

- Any photos from the investigation.
- Any audio and/or video files from in-car cameras, body cameras, interviews, or other sources.
- A copy of all radio traffic from RECC.
- Copies of all incident reports and arrest documentation.

Use of Force and Vehicle Pursuit

In the event that a use of force and a vehicle pursuit occur during the same incident, they will still need to be documented separately as they will, in all likelihood, be investigated separately according to Department policy.

Use of Force and/or Vehicle Pursuit with Performance Complaint(s)

In the event that you are investigating an incident that involves a reportable use of force and/or a vehicle pursuit and you identify a policy violation that constitutes a performance complaint, the incidents may all be included in one Internal Affairs investigation if investigated by the same supervisor.

(Note – if the complaint or policy violation constitutes an allegation of serious misconduct, the allegation will not be assigned to the supervisor conducting the use of force and/or vehicle pursuit investigation. It will be assigned to a member of the command staff and investigated independently of the use of force and/or vehicle pursuit investigation).

The documentation for a “combined” internal affairs investigation is as follows:

- *Use of Force* form(s) (GPD form 710.1-A and/or GPD form 710.1-B)
- *Vehicle Pursuit* form(s) (GPD form 810.2-A)
- Witness officer memorandum(s)
- Investigating Supervisor’s *Use of Force Supervisory Investigation Summary* form (GPD form 710.1-C) (excluding the narrative) and an Investigative Summary Memorandum:
 - The summary will still include details on your investigation of the use of force and/or vehicle pursuit that occurred.
 - The summary will also include the language that would otherwise be included in the performance complaint in regard to your investigation and finding(s) as to the performance complaint(s) allegations and any recommendation for non-punitive disciplinary action.
 - The two summaries can be combined to avoid repetition of the same or similar information in two separate supervisory summaries.

Anytime that a single incident includes a use of force and a vehicle pursuit, there must be two separate (but “linked”) entries into the Administrative Investigation Management (AIM) software for tracking and statistical purposes. Each AIM entry will include the documentation and evidence normally required for use of force or vehicle pursuit investigation, including the “combined” Investigative Summary.

** The combining of use of force, vehicle pursuit and performance complaint investigations is acceptable because all three are included under the “umbrella” of internal investigations and are not part of incident reporting or personnel files. The information remains protected as part of Department Internal Affairs files. **