 <p>CD-031800</p>	<h1>NEW MEXICO CORRECTIONS DEPARTMENT</h1> <p>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always." Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</p>	
	ISSUE DATE: 11/26/84	REVIEWED: 06/28/18
	EFFECTIVE DATE: 12/15/84	REVISED: 06/28/18
TITLE: Office of Professional Standards (OPS), Personnel Investigations and Staff Misconduct Reporting		

AUTHORITY:

- A. NMSA 1978, Sections 9-3-5, 12-6-6, and 31-1-6, as amended
- B. State Personnel Board Rule 1.7.11 NMAC.
- C. Prison Rape Elimination Act of 2003, 42 USCA § 15601 et seq.

REFERENCE:

- A. Policy CD- 023500, *Financial Violations*
- B. Policy CD-035000, *Law Enforcement Commissions for Certain Corrections Department Employees*
- C. *Policy CD-150100, Offender Protection Against Abuse and Sexual Misconduct; Reporting Procedures; PREA*
- C. Audits of Governmental Agencies 2.2.2 NMAC.
- D. Garrity v. New Jersey, 385 U. S. 87 (1967).
- E. NLRB v. J. Weingarten, Inc. 420 U.S. 251 (1975)
- F. Piotrowski v. State Police Merit Board, 406 N.E.2d 863 (I11. App. 1980).
- G. Justice v. City of Casa Grande, 567 P.2d 1195 (Ariz. App. 1977).
- H. Prison Rape Elimination Act of 2003, Standards §115.21, §115.34, §115.61, §115.65, §115.67, §115.71, §115.72.
- I. Graham v. Connor, 490 U.S. 386 (1989).
- J. Whitney v. Albers, 475 U.S. 312, 319 (1986)
- K. Hudson v. McMillian, 503 U.S. 1, 6-7 (1992)

PURPOSE:

To establish uniform guidelines to ensure that allegations of personnel misconduct are investigated as appropriate while ensuring that the rights of staff and others involved are safeguarded during the process.

APPLICABILITY:

This policy applies to all New Mexico Corrections Department (NMCD or Department) employees, all contractor employees working for the Department, and all inmates within the custody of or offenders under the supervision of the Department.

FORMS:

- A. *Referral of Alleged or Suspected Staff Misconduct Form (CD-031801.1)*
- B. *Investigative Case Assignment Form (CD-031801.2)*

ATTACHMENTS:

None

DEFINITIONS:

- A. Complainant: A person who makes an accusation of misconduct against an employee of the Department. A Complainant may also be referred to as an Accusant.
- B. Administrative Investigation: A non-criminal, Departmental investigation. Some of the possible outcomes of such an investigation include an employee being exonerated of the allegation of misconduct, the allegation of misconduct against the employee may or may not be sustained; or, in an employee being reprimanded, suspended, demoted, or dismissed.
- C. Chief Administrative Officer (CAO): For purposes of this policy, the position(s) that supervise the Disciplinary Authority as defined by this policy. Specifically, as applicable, the Division Director of the Adult Prisons Division, the Division Director of the Probation and Parole Division, Deputy Cabinet Secretaries and the Office of Professional Standards (OPS) Director.
- D. Chief Investigator: A commissioned investigator, at the Bureau Chief level or higher, appointed by the Secretary of Corrections to manage the Office of Professional Standards on a statewide basis. The Chief Investigator has delegated authority from and reports directly to the designated OPS Director and/or the Secretary of Corrections.
- E. Commissioned: Law enforcement commissioned to act as a peace officer on a limited basis and carry and use department issued firearms, in accordance with NMCD Policy CD-035000.
- F. Disciplinary Authority: The position within an organizational unit of the Department which is ordinarily responsible for taking formal disciplinary action with regard to an employee within that organizational unit, including but not limited to, a Warden of a facility, Division Director of Adult Prison Division, Division Director of the Probation and Parole Division, a Region Manager of the Probation and Parole Division, the Bureau Chief of the Health Services Bureau and the Bureau Chief of the Education Bureau, the Division Director of the Training Academy Division, the Division Director of the Administrative Services Division, the Division Director of the Corrections Industries Division, and the Chief Special Agent of the Office of Professional Standards.
- G. Employee: Any person employed by the NMCD in an emergency, temporary, full-time, part-time, probationary or career status, but excluding persons providing services to the Corrections Department under the provisions of a professional services contract.
- H. Equal Employment Opportunity Officer: The assigned attorney or other designated person serving under the auspices of the NMCD Office of Equal Opportunity and specializing in civil rights law, training and liability mitigation.
- I. Financial Violations: Any matter dealing with intentional overpayments, misappropriations, fraudulent activities, etc., involving state funds.
- J. Interview: To question formally and systematically during an investigation of misconduct.

- K. Interrogation: A type of interview associated with the questioning of a Subject or Accused Employee formally and systematically during an investigation of misconduct, usually in an accusatory manner.
- L. Investigation: Any inquiry sanctioned by the Corrections Department into the alleged misconduct of staff, or any other matters relevant to the Corrections Department.
- M. Investigations Officer: A person assigned by a Disciplinary Authority or the OPS Chief Investigator to perform an investigation and prepare a report as provided for by this policy.
- N. Knowledge: The point in time at which an OPS Investigator or designated Investigations Officer or Supervisor or other authority has obtained corroborating evidence/information indicating that a violation of law or policy occurred, including a self-admission of culpability. In general, an OPS Investigator or designated Investigations Officer does not acquire knowledge that misconduct (a violation of law or policy) has occurred until he or she has interviewed all witnesses and/or the accused employee, has reviewed all relevant documents, and/or then, based on a pre-ponderance of the evidence, forms the deduction that misconduct has occurred.
- O. OPS: Office of Professional Standards, a bureau within the NMCD Office of the Secretary.
- P. OPS Director: The Secretary of Corrections or a specific designee, at a Division Director level or higher, assigned in writing to provide oversight to the day-to-day activities of the Office of Professional Standards. The OPS Director, when delegated, reports directly to the Secretary for matters pertaining to OPS investigations.
- Q. Polygraph Examination: An instrument for recording a person's physiological reactions to questioning on a particular subject; a "lie detector" test.
1. Court Qualified: A polygraph examination that qualifies for court and may be used as evidence in court proceedings, pursuant to the Rules of Evidence.
 2. Non-Court Qualified: A polygraph examination that does not qualify for and cannot be used as evidence in court proceedings, pursuant to the Rules of Evidence.
- R. Polygraph Examiner: A person trained and certified in the administration of a polygraph examination.
1. Staff Polygraph Examiner: A Polygraph Examiner who is an OPS employee of the Corrections Department.
 2. Law Enforcement Polygraph Examiner: A Polygraph Examiner who is an employee of an external Law Enforcement Agency.
 3. Contract Polygraph Examiner: A Polygraph Examiner who does or will have a contract with the Corrections Department to conduct polygraph examinations.
- S. Preliminary Investigation: An informal, fact finding inquiry directed or conducted by the Chief Investigator to gather information, where there has been an allegation of wrongdoing against a NMCD employee or inmate, and when sufficient information does not exist to initiate a subject investigation.

- T. Preponderance of the Evidence: The incident being investigated more likely than not occurred. There is a greater than 50% (ex. 51% v. 49%) chance that something is true or that something happened.
- U. Probable Cause: Facts and circumstances that would lead a reasonable person to believe that misconduct or a crime has been or is being committed.
- V. Reasonable Suspicion: Belief based on training, experience, or observation that misconduct or a crime may be in progress or has occurred.
- W. OPS Senior Investigator(Investigator Supervisor: A qualified, commissioned employee assigned to the Office of Professional Standards to oversee and conduct complex administrative and criminal investigations of matters pertaining to the Corrections Department, to include supervision of all such investigations, typically within a specifically defined geographical area. A Supervisory Investigator regularly supervises other (junior) OPS Investigators as well as designated Investigations Officers at the facility or division level in the course of investigations and provides oversight over internal investigations and internal affairs operations for a geographical region. OPS Supervisory Investigators answer directly to the Chief Investigator and are responsible and accountable for the direct supervision and management of OPS personnel and OPS operations and activities as assigned by the Chief Investigator.
- X.. OPS Investigator: A qualified, commissioned employee assigned to the Office of Professional Standards to conduct complex administrative and criminal investigations of matters pertaining to the Corrections Department. An OPS Investigator regularly supervises designated Investigations Officers at the facility or division level in the course of investigations.
- Z.. Subject or Accused Employee: A person who is accused of misconduct.
- AA.. Subject Investigation: A formal, detailed investigation authorized to investigate allegations of misconduct or illegal or prohibited activity pertaining to or affecting the Corrections Department.
- BB. Under Investigation: When an employee who is suspected of misconduct has been notified that he or she is the subject of an investigation.

POLICY:

- A. The Department will investigate alleged or suspected employee misconduct to ensure that any misconduct is afforded appropriate discipline or other corrective action. While endeavoring to protect its employees from spurious and frivolous allegations, NMCD will keep confidentiality a priority with respect and concern for those involved and for their families.
- B. All investigations will be handled in a confidential, professional manner.
- C. There is a zero tolerance policy prohibiting any retaliatory acts against anyone who has reported allegations of staff misconduct or criminal acts. Any employee who engages in substantiated retaliatory behavior is subject to dismissal.


- D. Employee conduct involving allegations of sexual misconduct, sexual assault or any other alleged violations of the criminal law shall be referred to local law enforcement for consideration for prosecution. These referrals shall be made even if the employee resigns or retires during or prior to the NMCD's investigation. NMCD reserves the right not to rehire any former employee whose allegations of violations of the criminal law are substantiated or who resigned during any investigation.
- E. The departure of an inmate from the custody or control of the facility or agency shall not provide a basis for terminating and investigation. All inmate complaints will be accepted and evaluated based on their merit and investigated accordingly in accordance with this policy.
- F. The use of polygraph examinations shall occur only after witness interviews and all other reasonable investigative techniques have been exhausted. The use of this investigative tool shall remain at the sole discretion of NMCD for seeking resolution in any matters involving any allegations of misconduct.
- G. If deemed necessary, an employee may be required to submit to a polygraph examination. If the employee refuses to submit to and complete a polygraph examination or it is conclusively determined that the employee untruthfully or deceptively answered any polygraph questions, the employee is subject to dismissal.
- H. Any employee who fails to fully cooperate in any NMCD investigation, such as refusing to answer any questions posed by an OPS Investigator, other designated Investigations Officer or Polygraph Examiner is subject to dismissal.
- I. Any employee conclusively determined to have been deceptive or untruthful during any part of an NMCD investigation is subject to dismissal.
- J. Pre-employment polygraph examinations may be administered to those persons applying for correctional officer, probation and parole officer or OPS Investigator positions.



David Jablonski, Secretary of Corrections
New Mexico Corrections Department

06/28/18

Date

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AUTHORITY:

Policy *CD-031800*

PROCEDURES:

A. Reporting:

All supervisors are responsible for reporting all allegations of staff misconduct or suspected staff misconduct to the applicable Disciplinary Authority. All Disciplinary Authorities are in turn responsible for immediately reporting all Level-1 suspected or alleged misconduct to the applicable Chief Administrative Officer(s) (CAO) and to OPS and the appropriate NMCD Administrative Staff.

In those instances when the Level-1 allegations involve serious or potentially serious criminal conduct, high-ranking NMCD staff, or may generate a high media interest, OPS shall be telephonically appraised by the Disciplinary Authority as soon as possible and ordinarily prior to the submission of the written referral.

In other unusual or extraordinary circumstances involving the conduct of NMCD Staff, contact with OPS shall be made. If for any reason the Disciplinary Authority is not available to the supervisor, the supervisor shall notify both the CAO and the OPS Bureau Chief of any Level-1 suspected or alleged misconduct. Inmates, family members, volunteers and contractors may also report allegations of staff misconduct to the applicable Disciplinary Authority or any employee. An OPS referral form will be completed and forwarded to OPS if appropriate. (NOTE: The below listed Level 1 criteria only indicates those situations/allegations that require referral to OPS. The decision regarding the disposition of the referral is ultimately subject to the discretion of the OPS Bureau Chief, designated OPS Director, and/or the Cabinet Secretary.)

1. **“LEVEL-1”**

Is alleged or suspected misconduct which must be reported to the CAO and OPS; it includes the following:

- a. Any criminal conduct
- b. Misconduct involving high-ranking NMCD staff including, but not limited to:

- Captains or above
 - Probation and Parole Officer Supervisors or above
 - Bureau Chiefs or Deputy Bureau Chiefs
 - Division Directors or Deputy Directors
 - Deputy Cabinet Secretaries
 - Cabinet Secretary
- c. Incidents of misconduct, which may generate a high media interest.
- d. Conduct, which may create significant liability or exposure for the Department.
- e. All undue familiarity with inmates, parolees, or probationers.
- f. All sexual misconduct (staff or inmate contact)
- Sexual abuse (includes rape)
 - Sexual contact
 - Use of sexually explicit language
 - Kissing
 - Embracing or inappropriate touching
 - Other physical contact of an intimate nature
 - Any sexual activity between staff and inmates, parolees, or probationers including consensual
- g. Physical abuse (staff on staff and staff on inmate)
- Life threatening
 - Serious injuries
 - Excessive use of force
- h. Introduction of contraband (serious only)
- Weapons
 - Escape paraphernalia (including cell phones, etc.)
 - Money
 - Drugs or alcohol
- i. Serious on-duty misconduct that would warrant consideration of dismissal, demotion, or suspension of five (5) days or more
- j. Serious off-duty misconduct (or conduct which reflects negatively upon the Department)
- k. Misconduct related to an escape or attempted escape
- l. Misconduct related to any inmate death
- m. Personnel prohibitions include:
- Threatening or intimidating employees
 - Falsifying employment records

- Use of illegal drugs
 - Inappropriate relationship between a supervisor and a subordinate
- n. Fiscal violations include:
- Serious theft
 - Falsification or fraud
 - Misuse of funds or state equipment
 - Conversion
 - Misuse of a State vehicle
- o. Investigative violations such as altering or destroying any evidence, documents, video or audio files or interfering with or impeding an investigation, or failing to cooperate or being less than fully truthful during an investigation or the disclosure or release of an OPS investigative report outside the agency, except if authorized by the Office of General Counsel or if being provided to an employee as documentary evidence in the employee's proposed or final disciplinary action. Such violations are subject to discipline up to and including dismissal.
2. All OPS Level-1 referrals are to be made via the OPS *Referral of Alleged or Suspected Staff Misconduct Form* (CD-031801.1). Each field in the referral form must be filled with complete and accurate information. OPS will initiate data entry from information provided in the referral form. When completed, the Disciplinary Authority (or designee) will concurrently email this form to the appropriate CAO as well as OPS. This will ensure prompt notification to all appropriate parties. When submitting the *Referral of Alleged or Suspected Staff Misconduct Form*, any existing witness or victim statements supporting the referral should be included. All other documentation supporting the referral, such as any existing memorandums, incident reports, medical reports, *etc.*, should also be e-mailed (the preferred method) . The existing supporting documents are related to the initial reporting of/inquiry into the allegations, and do not constitute the completed investigation.
3. Ordinarily, once it has been determined that the matter meets the criteria for a Level-1 incident, no further investigation, interviews or interrogation should take place until the Level-1 referral has been made and the OPS Bureau Chief has determined the course of action for the case and assigned an OPS Investigator or other Investigations Officer to the case if necessary.

Extreme caution must be exercised to guard against potentially compromising Level-1 investigations prior to OPS involvement. However, if it is imperative that some investigation or interviews take place to preserve evidence or to obtain statements before the opportunity is lost (such as interviewing inmates who may have just witnessed an assault) then the Local or Division Level Investigation Officer(s) should proceed to preserve such evidence and to take such statements.

4. All allegations of criminal conduct, including any criminal sexual penetration or criminal sexual contact of an inmate by a staff member, must be reported to the appropriate law enforcement authorities, in addition to completing an OPS referral. In addition, during such Prison Rape Elimination Act (PREA) related investigations, the assigned OPS Investigator or designated Investigations Officer shall request that the

outside law enforcement agency's investigators follow the requirements of PREA standard 115.71. [§115.71]

PREA investigations that allege non-forcible contact or conduct between inmates will typically be handled at the Local Level, and may be assigned to personnel other than Investigations Officers (*e.g.*, Correctional Officer Lieutenants).

B. Investigations Officer:

1. “OPS Level”

Office of Professional Standards:

The OPS Investigator/Bureau Chief of the Office of Professional Standards is responsible for overseeing the assignment and investigation of all OPS Level (*i.e.*, Level-1) investigations throughout the Department. The Bureau Chief shall report directly to the OPS Director. The Bureau Chief shall supervise all OPS Investigators, as well as all Investigations Officers at the Local and Division levels throughout the investigative process of OPS assigned cases. The OPS Chief Investigator is on call at all times and can be reached through OPS for assistance or direction. The OPS Bureau Chief, or designee, will respond to any incident deemed necessary (*e.g.*, inmate death, sexual assault, or any incident which may create significant liability or exposure for the Department).

2. “Division Level”

Division Director Assignment:

Each Division Director shall have the discretion to designate one or more Investigations Officers to conduct investigations under circumstances when it would not be appropriate for the investigation to be conducted at the Local Level or when it is not necessary to have the investigation conducted at the OPS Level.

An Investigations Officer need not necessarily serve as an investigator in a full-time capacity. However, the Investigations Officer shall report directly to the OPS Bureau Chief throughout the investigative process regarding assigned cases from the OPS. The Investigations Officer shall also keep open communication with the appropriate Disciplinary Authority and CAO regarding investigation of matters within their sphere of authority.

Division Level Investigations Officers may conduct a Level-1 investigation, as assigned by OPS, under the direction of the OPS Bureau Chief. The Bureau Chief, in his or her sole discretion, has the right to remove a Division-level investigations officer for cause (*e.g.*, insubordination, incompetence, failure to complete assignments, failure to follow instructions, deficient quality, untimely submissions, *etc.*).

3. “Local Level”

Prison Facility or Probation and Parole Region Office:

Each prison facility and PPO Region Office shall have the discretion to designate one or more Investigations Officers to conduct non-Level-1 investigations or to conduct

Level-1 investigations as assigned by the OPS Bureau Chief. Prison facility Investigations Officers are typically chosen amongst eligible Correctional Officer Captains for general caseloads. An Investigations Officer need not necessarily serve as an investigator in a full-time capacity. However, the Investigations Officer shall also keep open communication with the appropriate Disciplinary Authority (CAO) regarding investigations of matters within their sphere of authority. The Local Level is also known as the Facility Level.

The Investigations Officer shall report directly to the OPS Bureau Chief, or his or her designee, throughout the investigative process regarding assigned cases from the OPS. Each prison facility shall appoint at least (1) Investigations Officer at the Deputy Warden level or equivalent to function as an Equal Employment Opportunity Coordinator. Such selectee will be subject to assignment of less complex Level-1 cases with a nexus to NMCD Office of Equal Opportunity (OEO) cases involving topics such as alleged unlawful employment discrimination, sexual harassment, *etc.*, under OPS oversight. OEO-type cases may not be delegated downward for any reason (below the level of Deputy Warden or equivalent). Similarly, within the Probation and Parole Division (PPD) these types of cases not assigned to an OPS Investigator may be handled by a Region Manager or higher at the Local Level, under OPS oversight. OEO-type cases may not be delegated downward for any reason.

Local Level Investigations Officers may conduct a Level-1 investigation, as assigned by OPS, under the direction of the OPS Bureau Chief or his or her designee. The Bureau Chief, in his or her sole discretion, has the right to remove a Local Level investigations officer for cause (*e.g.*, insubordination, incompetence, failure to complete assignments, failure to follow instructions, deficient quality, untimely submissions, *etc.*).

4. “Other”

Outside law enforcement or other agency:

In cases involving alleged criminal law violations and off-duty misconduct cases, an investigation is often conducted by an outside law enforcement or other agency.

C. Investigations Training, Special Requirements and Conditions:

1. OPS Investigators and Investigations Officers shall attend such requisite Department approved training as the OPS Bureau Chief directs. Specifically, at a minimum all OPS Investigators and Investigations Officers shall complete a 40-hour administrative investigations training course conducted by the NM Corrections Department Training Academy (NMCTA); PREA training for investigators; civil rights training for investigators; and labor relations training. Unless exempted or extended by the OPS Bureau Chief, all such training must be completed within six (6) months of assignment, promotion or other qualifying event.
2. Within the Adult Prisons Division, no uniformed personnel below the rank of Correctional Officer Captain at public/non-contracted NMCD facilities may be utilized as Investigations Officers where staff involvement is known or suspected (Correctional Officer Lieutenants, for example, cannot conduct staff misconduct investigations). Within the Probation and Parole Division, Probation and Parole Officer Supervisors or

higher may be utilized as Investigations Officers; but, no personnel below that level shall be used.

3. Security Threat Intelligence Unit (STIU) personnel, regardless of rank, may specifically assist OPS Investigators as necessary in the course of any assigned investigation in gathering evidence. An OPS Management Analyst may accompany and/or assist OPS Investigators in the field during investigations; and, may conduct research and investigations utilizing specialized, secure databases.
4. Due to the sensitive nature of OPS activities and deliverables, OPS Investigators shall be selected by a process approved by the OPS Director and may be law enforcement commissioned in accordance with NMCD Policy, CD-035000. OPS Investigators and other authorized OPS personnel shall be issued a badge and credentials of unique design distinguishing them from other divisions, bureaus or other entities within NMCD. An Investigations Officer or other employee shall not without proper authorization identify him or herself as part of OPS, as a "Special Agent", "Special Investigator" or "Agent." It shall be a violation of policy to falsely hold oneself out by words, a badge, business card or other device as an OPS Investigator or employee, and such actions will subject the employee to disciplinary action.
5. Any and all inquiries into open and active cases of external law enforcement agencies, with the exception of the Secretary of Corrections and his or her Deputy Secretaries, shall be made only by authorized OPS or STIU personnel.
6. OPS Investigators shall lock up firearms in their trunks or lockable container (to include a mechanical gun lock) within their vehicles upon entry into a secure facility/facility complex. Long guns (*i.e.*, rifles and/or shotguns) may be secured out of sight, preferably with the firearm action locked, if a trunk or lockable container is unavailable. Available lockbox facilities at the correctional institutions may be used at the OPS Investigator's discretion, in lieu of securing firearms in a trunk or lockable container. All ammunition must be secured in the vehicle out of exterior view. OPS Investigators are authorized to retain non-firearm defensive equipment and restraints within secured facilities, at their discretion, for self-protection.
7. OPS Investigators shall have the right of access at all times to the facilities, property, vehicles, books, papers, records and other documents of the NMCD or any of its bureaus, divisions, units or other administrative subdivisions, in conjunction with authorized investigations. An OPS Investigator is a direct representative of the Cabinet Secretary/OPS Director; he or she acts with delegated authority of the OPS Bureau Chief and may issue such directives as appropriate to facilitate the timely collection of evidence, to ensure cooperation with investigative processes; or, as otherwise necessary to complete his or her investigative assignment. OPS may also assist external law enforcement partners with gaining covert or confidential access to correctional facilities, as necessary.
8. OPS Investigators have the power to summon employees of the NMCD as witnesses pursuant to a lawful internal affairs investigation, including the delegated authority granted in Section 33-2-11 NMSA 1978 to cause the issuance of subpoenas to compel attendance of witnesses and to administer oaths.

D. Investigation Assignment:

1. Upon review of the OPS Level-1 *Referral* and related documents, OPS will determine an investigative strategy. OPS will determine who shall conduct the investigation. This determination will be documented by the OPS Bureau Chief on the *OPS Investigative Case Assignment Form* (CD-031801.2). OPS will e-mail this case assignment form to the applicable Disciplinary Authority and the appropriate CAO.
2. The Bureau Chief provides oversight and is responsible for the tracking, monitoring, and review of all Level-1 investigations. Investigative staff shall maintain frequent contact with OPS to share information and obtain guidance when needed during the investigative process.

E. Conducting the Investigation:

1. Upon determination that a subject investigation is to be conducted, all witnesses, victims, and others who may have information related to the incident or allegations are to be interviewed. Normally, victim, witness, and informational interviews are to be conducted prior to conducting the subject interview. In most cases, the subject interview should be the last interview conducted during the investigation.
2. If, in the process of conducting an investigation at the Local Level concerning what was believed to be a non-Level-1 matter, it is determined that a more serious offense has occurred, the Local Level investigation must be suspended and contact must be made immediately with OPS. OPS will then determine if an alternative investigation method or separate assignment is necessary.
3. Prior to conducting any interviews, the OPS Investigator or designated Investigations Officer shall familiarize himself or herself with the specific allegations of the complaint, review all documentation and evidence provided, and plan a strategy to interview all relevant persons involved in the incident/complaint in a systematic and controlled manner prior to conducting any interviews.
4. Contact the complainant to verify that there is in fact a complaint. If the complainant is a third party complainant, the OPS Investigator or designated Investigations Officer shall contact and interview the aggrieved party.
5. The OPS Investigator or designated Investigations Officer shall interview the complainant. The interview shall be conducted in a thorough, predetermined, and systematic manner regarding all of the allegations.
6. Contact all witnesses and schedule an interview with them. The interviews shall be conducted in a thorough, predetermined, and systematic manner regarding all of the allegations.
7. When conducting interviews with staff members, the OPS Investigator or designated Investigations Officer shall ordinarily digitally record the interview. At the onset of the digitally recorded interview, the OPS Investigator or designated Investigations Officer should ensure that the following information is provided to the interviewee:
 - a. Date and time of the interview (*e.g.*, “Today’s date is February 7, 2015, the time is approximately 1000 hours”); and,

- b. Name and position of the OPS Investigator or designated Investigations Officer and any other persons present during the interview; and,
 - c. State the name and position of the staff member being interviewed; also, advise the person being interviewed that the interview is being digitally recorded and have them acknowledge the recording; and,
 - d. The purpose of the interview should be stated to the staff member being interviewed; and,
 - e. Advise the staff member being interviewed that he or she is required to provide full, truthful, and accurate statements and responses regarding the alleged or suspected misconduct.
8. When interviewing persons other than NMCD employees, Investigators should evaluate the situation and try to have the interview digitally recorded; but, not at the expense of compromising the interview.
 9. The OPS Investigator or designated Investigations Officer shall gather and examine all physical and documentary evidence including reports, records, photographs, equipment, or any other pertinent information.
 10. The Subject or Accused Employee (or employee Complainants and Witnesses) shall be provided with an *Advisement of Investigation Letter* advising him or her that there will be an administrative investigation regarding alleged misconduct. The *Advisement of Investigation Letter* shall be from the assigned OPS Investigator or designated Investigations Officer for the case. Technical consultations with managers and/or subject matter experts not directly involved with the investigation need not be placed under *Advisement*.
 11. The Subject or Accused Employee shall ordinarily be required to provide a written statement regarding his or her response to the allegations against them, if one has not already been provided at the time of the interview (or as otherwise directed by the OPS Investigator or designated Investigations Officer).
 12. The Subject or Accused Employee shall be interviewed in a thorough, predetermined, and systematic manner regarding all relevant matters. Upon request, an employee who is suspected of misconduct shall be given a reasonable opportunity to ask for another individual to attend his or her interview. The assisting individual may not unduly interfere with the interview process. The OPS Investigator or designated Investigations Officer should prepare a list of questions derived from the specific allegations and all other pertinent information obtained during the course of the investigation. However, the OPS Investigator or designated Investigations Officer reserves the right to expand on these questions.
 - a. Each interview session shall not exceed two (2) hours unless the parties mutually consent to the continuation. This consent must be documented in the audio recording, if the interview is being digitally recorded.
 - b. There shall be no more than two (2) interview sessions within a twenty-four (24) hour period, unless the parties mutually consent to additional sessions. Regardless

of consent, there shall be at least a one (1) hour rest period between the interview sessions.

- c. The combined duration of an employee's shift and any interview session shall not exceed fourteen (14) hours within a twenty-four (24) hour period, unless the urgency of the investigation requires otherwise.
 - d. Normally, there should be no more than two (2) interviewers present at any given time during the interview session.
 - e. An employee shall be allowed to attend to physical necessities as they occur during the course of an interview session.
 - f. An OPS Investigator or designated Investigations Officer shall not direct any offensive language towards any employee. An employee may only be subjected to offensive language (*i.e.*, cursing) as it is reasonably necessary to verify potential quotes and/or statements. While an employee, inmate or other person may be interrogated, they shall not be subjected to any form of illegal coercion.
 - g. The complete OPS interview of the employee shall be recorded. There shall be no *off the record* questions or statements initiated by the OPS Investigator or designated Investigations Officer. All recesses called during the questioning shall be noted on the record.
 - h. Prior to the commencement of the interview questions, the employee under or participating in an OPS investigation shall be informed of the nature of the OPS investigation. If it is known that the employee being interviewed is a witness only, he or she should be so informed.
13. Upon completion of the investigation, a written report shall be prepared by the OPS Investigator or designated Investigations Officer using the format designated by the OPS Bureau Chief. The report shall detail the allegations made, the facts revealed during the investigation and state which, if any, policies and procedures, rules and regulations, or laws that were violated by the employee.
- a. The evidentiary standard/burden of proof applied to all investigations subject to this policy shall be the "Preponderance of The Evidence."

14. PREA Investigations (Special Considerations)

- a. OPS Investigators shall gather and preserve (or cause to be gathered and preserved) direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator. [§115.71]
- b. The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person's status as inmate or staff. No agency shall require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an allegation. [§115.71(e)]

- c. Investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse [§115.71(f)(1)]
- d. When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.[§115.71(d)]
- e. Investigators shall ensure that any employee contractor or volunteer who engages in sexual abuse is prohibited from contact with inmates and is reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies as appropriate. [§115.77(a) Any complaint made to a licensing body shall be noted in the investigative report and the documentation of the complaint shall be included with the investigative case file. Any subsequent requests received for additional information from the licensing body related to a submitted complaint shall be referred to the NMCD Office of General Counsel.
- f. Investigators shall accommodate any request from a victim to have a victim advocate, qualified agency staff member or qualified community-based organization staff member present during any and all investigatory interviews. For clarification regarding what individuals qualify in this regard investigators should consult the local PREA Compliance Manager, agency PREA Coordinator or Inspector General. [§115.21(e)]
- g. Investigators should also refer to NMCD Policy 150100 (Offender Protection Against Abuse and Sexual Misconduct; Reporting Procedures; PREA) for additional guidance concerning the handling/investigation of PREA or PREA related cases.

15. Use of Force Investigations (Special Considerations)

- a. For cases involving personnel performing their duties in a community setting (*i.e.* probation and parole officers and STIU fugitive investigators), OPS investigators shall familiarize themselves with and consider the 4th Amendment constitutional standard of “objective reasonableness” in evaluating use of force cases. [Graham v. Connor, 490 U.S. 386 (1989)]
- b. For cases involving facility personnel and inmates confined to a correctional facility (*i.e.* correctional officers, facility STIU personnel), OPS investigators shall familiarize themselves with and consider the 8th Amendment constitutional standard of cruel and unusual punishment. [Whitley v. Albers, 475 U.S. 312, 319 (1986), Hudson v. McMillian, 503 U.S. 1, 6-7 (1992)]

16. Subject Matter Expert (SME) Consultations

- a. PREA Cases
The below listed circumstances required that a consultation be completed with the Department designated PREA subject matter expert. The SME consultation should be the last investigative activity engaged in and shall consist of the investigator providing the SME with the complete case pertinent facts and information. In cases involving PREA, the SME will

render an opinion concerning whether or not any aspect of the case constitutes a PREA violation and will provide the reasoning or information to support the opinion. In PREA cases the SME will also provide feedback concerning the handling of the case to help ensure compliance with all PREA standards.

- (i) Investigations meeting one of the below criteria will require the completion of a Subject Matter Expert (SME)

Consultation:

- Sexual assault (any penetration or rape)
- Criminal charges involved
- Pending litigation
- At the direction of the Inspector General or OPS Bureau Chief

b. Use of Force (UOF)

In all cases involving allegations relative to UOF, a consultation must be completed with the Department designated UOF subject matter expert (UOF SME's are normatively designed by the NMCD Training Academy). The SME consultation should be the last investigative activity engaged in and shall consist of the investigator providing the SME with the complete case pertinent facts and information. The SME will then render an opinion concerning the validity and/or appropriateness of the UOF and any issues identified (based on established training, policy and applicable case law and constitutional standards) and will provide the reasoning or information to support the opinion.

- (i) Investigations meeting one of the below criteria will require the completion of a Subject Matter Expert (SME)

Consultation:

- Serious injury or death
- Criminal charges involved
- Pending litigation
- At the direction of the OPS bureau Chief

c. EEO Cases

In all cases involving allegations relative to EEO, a consultation must be completed with the Department designated EEO subject matter expert (the designation will normally fall to the designated EEO officer within the NMCD Office of General Counsel or the State Personnel Office). The SME consultation should be the last investigative activity engaged in and shall consist of the investigator providing the SME with the complete case pertinent facts and information. The SME will then render an opinion concerning whether or not any aspect of the case constitutes a violation of EEO provisions and will provide the reasoning or information to support the opinion. The SME can also provide direction to ensure the proper handling and/or addressing of the allegations in accordance with any EEO obligations or best practices.

- (i.) Investigations meeting one of the below criteria will require the completion of a Subject Matter Expert (SME)

Consultation:

- All cases involving an EEO nexus will require briefing, notification and consultation with the designated attorney within the NMCD Office of General Counsel or the State Personnel Office.

- d. OPS will maintain a list of the approved/designated SMEs and will provide the information for use during investigations upon request.

F. Investigative Techniques:

In performing an investigation, all legal and appropriate investigative techniques may be used by the OPS Investigator or designated Investigations Officer including the following.

1. A Polygraph Examination may be used, subject to the procedure set forth in Paragraph G of this procedure.
2. A Urinalysis Examination may be used, subject to the procedure set forth in Policy CD-037900, *Drug Free Workplace*.
3. Field surveillance is subject to prior approval from the OPS Chief Investigator or OPS Director. Electronic surveillance is subject to prior approval from the Secretary of Corrections or OPS Director. When conducting electronic or field surveillance, the assigned OPS Investigator(s) will adhere to established departmental procedures and applicable local, state, or federal laws. Documentation of the date(s) and times when the field surveillance was conducted will be included in the investigative report. The OPS Investigator will notify any appropriate law enforcement agency when practical or appropriate prior to conducting said surveillance.
3. Acquire, mark, and secure evidence for laboratory analysis or field analysis.
4. Particular attention should be paid to documenting and maintaining the chain of custody of evidence.
5. Follow guidelines including federal and state laws and regulations and NMCD policies and procedures.

G. Polygraph Procedure:

The Corrections Department requires honesty and integrity of its employees. The Department therefore reserves the right to require its employees to submit to polygraph examinations, as further explained below:

1. All reasonable investigative techniques shall be exhausted prior to the Department requiring a Department employee to submit to a polygraph examination.
2. An allegation must be raised or misconduct suspected which, if proven true, would constitute grounds for employee discipline. The allegation must relate to the employee's job performance or the employee's fitness or qualifications to continue in the service of the Department, or otherwise have a sufficient nexus to the employment relationship to the Department.

3. The allegation must be corroborated or otherwise reasonably believed to be reliable, or, there must be some reasonable basis to believe the employee has engaged in misconduct.
4. If the allegation rests solely upon the accusation of an inmate/offender or another staff member, the Department will require, whenever practical or feasible, that a sworn statement be provided by the complainant, except as noted below.
 - a. If the complainant refuses to sign a sworn statement, the investigation will be terminated unless the OPS Chief Investigator determines that other sufficient, credible evidence or other consideration exists to pursue the investigation further. However, it is not required to receive a sworn statement to initiate a subject investigation, particularly in instances of PREA cases containing inmate allegations of staff sexual misconduct. At no time will an inmate or offender be required to complete a sworn statement as a condition for an investigation to proceed into allegations of sexual misconduct against staff.
 - h. If the complainant is an employee of the Department and refuses to sign a sworn statement, the employee is subject to dismissal.
5. After all other reasonable investigative techniques have been exhausted, the complainant may, in the Department's discretion, be required to submit to a polygraph examination to verify the allegations leveled against the employee. If the complainant refuses to submit to a polygraph examination, the administrative action will be terminated, unless the OPS determines that other sufficient, credible evidence exists to pursue the administrative action further. (This section does not apply to complainants who are inmates/offenders that have made a PREA complaint against a staff member.)
6. If the complainant is an employee of the Department and refuses to submit to a polygraph examination or it is conclusively determined that the complainant gave false or deceptive answers during any polygraph examination, the employee is subject to dismissal.
7. If the complainant is an employee of the Department, signs a sworn statement, takes a polygraph examination and the results show conclusively that the complainant was not truthful in his or her allegations, the employee is subject to dismissal.
8. If the OPS Chief Investigator or the NMCD General Counsel elects to require an employee who is suspected of misconduct to submit to a polygraph examination, then before the polygraph examination is administered, the OPS Chief Investigator or appropriate Disciplinary Authority or CAO shall ensure that:
 - a. The employee has been provided a written statement required by sub-paragraph G.2. of this procedure; and,
 - b. The employee receives a brief written summary of the allegation(s) against him or her, if applicable.
9. If the Department deems it appropriate, the polygraph examination may be provided in a language other than English.

10. If the employee suspected of misconduct refuses to submit to the polygraph examination allowed by this policy, or refuses to comply with any conditions set forth by the polygraph agent to conduct the polygraph examination, he or she is subject to dismissal.
11. When an employee suspected of misconduct is required to take a polygraph examination, and it is conclusively determined that the employee was deceptive or untruthful when answering the questions posed during the polygraph, that employee is subject to dismissal.

H. Cooperation with Law Enforcement and Judicial Authorities:

1. When, during the course of an investigation, the assigned OPS Investigator or designated Investigations Officer becomes aware that the facts discovered indicate a violation of criminal law, the OPS Investigator or designated Investigations Officer shall immediately report the violation to the OPS Chief Investigator, and the appropriate Disciplinary Authority and CAO.
2. If an OPS Investigator or designated Investigations Officer determines *reasonable suspicion* or *probable cause* exists to believe that a violation of state or federal criminal law has occurred, the OPS Chief Investigator shall be notified, and he or she shall direct that the OPS Investigator or designated Investigations Officer immediately notify an appropriate external law enforcement agency having jurisdiction.
3. The OPS Investigator or designated Investigations Officer shall serve as a liaison between the NMCD and the appropriate law enforcement agency during the course of any continuing investigation. The OPS Chief Investigator reserves the right to communicate to external law enforcement agencies primarily through OPS Investigators, as is deemed appropriate.
4. The OPS Chief Investigator, the NMCD General Counsel or the OPS Director may determine that the Investigative Report be submitted to the appropriate law enforcement agency for possible criminal prosecution.
5. The OPS Investigator or designated Investigations Officer shall be required to be adequately prepared to testify in hearings or a court of law regarding investigations conducted.

I. Criminal Prosecution or Administrative Investigation:

1. In any investigation when it appears that alleged staff misconduct, if proven, would also constitute a violation of criminal law, the OPS Investigator or designated Investigations Officer shall advise the OPS Bureau Chief. The OPS Bureau Chief may consult with the OPS Director (who may, at his or her discretion, consult with the appropriate CAO) and make a determination whether to proceed with the administrative investigation, or whether to defer such investigation or discipline while the criminal investigation proceeds, or whether to proceed with both investigations and actions concurrently subject to the restrictions on the use of evidence (i.e. compelled statement and the information they produce) provided for by this policy and procedure.
2. If a determination is made to pursue the matter through administrative investigation, the employee suspected of misconduct must be advised in writing that:

- a. The employee is required to provide statements and responses which are full, truthful, and accurate relating to his or her employment, including providing responses to a polygraph examination; and
 - b. The penalty for refusing to provide full, truthful, and accurate statements or take a polygraph examination, if requested, is dismissal; and
 - c. ANY STATEMENT MADE CANNOT BE USED AGAINST HIM OR HER IN SUBSEQUENT CRIMINAL PROCEEDINGS (except if the employee willfully and knowingly makes false statements).
3. If a determination is made to initially pursue only a criminal investigation or prosecution, the employee shall not be required to submit to a polygraph or provide statements as a condition of continued employment until the criminal investigation is completed. Administrative action shall be deferred until the criminal investigation is completed.
 4. If during an administrative or criminal investigation, the Disciplinary Authority, CAO or OPS Bureau Chief determines that it is in the best interests of the Department that the employee be removed from his or her assigned position, the employee may be:
 - a. Temporarily placed on paid Administrative Leave subject to the procedures set forth in Policy CD-037800, *Disciplinary Action for Classified Employees*; or
 - b. Temporarily reassigned to a position where he or she may function without threat to personal safety, the safety of others, or the orderly operations of the Department.

Such employee(s) may also be temporarily restricted from certain buildings or locations for the protection of putative victim(s) and/or from having any direct or indirect contact with such persons.
 5. In the event there is an investigation regarding allegations of misconduct, which if proven true would constitute a crime, the employee will not be allowed to resign in lieu of administrative action or referral for criminal prosecution unless approved by the Deputy Secretary of Operations or Deputy Secretary of Administration, or equivalent, as applicable.
 6. Nothing in this procedure is intended to limit the use of evidence obtained through an administrative investigation in a criminal prosecution other than statements compelled as a condition of continued employment. The OPS Bureau Chief or CAO may pursue both administrative and criminal investigations simultaneously, subject only to the limitations set forth in this policy. The OPS Director shall be the approval authority, in consultation with the Office of General Counsel (OGC), on what specific investigative files, if any, may be released.

J. Financial Violations:

Any material financial violations shall be referred to the Administrative Services Division (ASD) Director, pursuant to CD-023500, for the ASD Director to notify the State Auditor.

External law enforcement authorities will be notified by the State Auditor as he or she determines.

K. Investigative Report Writing Format:

Investigative written reports shall be standardized throughout the NMCD. The investigative report format shall be consistent with the Standard Investigation Format as developed and approved by the OPS Bureau Chief, and is currently on file with the OGC.

1. The OPS Investigator or designated Investigations Officer shall prepare the investigative report in the sequential order contained in the standardized format.
2. The Investigative Report shall contain the specific allegations as listed and referenced in the *Referral of Alleged or Suspected Staff Misconduct* form.
3. The Investigative Report shall include detailed information in all of the specific fields as specified in the standardized format.
4. The Investigative Report shall include a section allowing for the characterization of findings for each specific allegation. For each specific allegation, the assigned OPS Investigator or designated Investigations Officer will provide one of the below listed findings:
 - a. **SUBSTANTIATED:** The administrative investigation determined that the employee violated NMCD Policy as alleged (State the specific NMCD Policy and/or law if applicable); or
 - b. **UNSUBSTANTIATED:** The administrative investigation produced insufficient information to clearly prove or disprove the allegation (Note: in this case the Department reserves the right to re-open the case in the event that new or additional adverse or exculpatory information is obtained); or
 - c. **EXONERATED:** The administrative investigation clearly established that the incident occurred but the actions of the employee were proper did not violate any NMCD Policy; or
 - d. **UNFOUNDED:** The administrative investigation clearly established that the allegation did not occur; or
 - e. **MISCONDUCT NOTED:** The administrative investigation determined that an employee violated NMCD Policy not alleged in the initial allegation(s).
 - f. **POLICY FAILURE:** The administrative investigation determined that improper conduct occurred due to a policy failure, that is the rule or policy violated was either statutorily outdated, ambiguously worded or not clear, or inconsistent with practical department operation, or a policy did not exist to provide sufficient direction to the employee. (Note: In the event this is the finding by the investigator, the investigator shall include recommendations for correcting the policy issue)

In rare cases, the following special finding/characterization may be made:

- g. **ADMINISTRATIVELY CLOSED:** The administrative investigation was administratively closed. This is a non-standard characterization reserved for use by the Office of Professional with authorization from the OPS Bureau Chief when, during the course of the investigation, an issue(s) including, but not limited to, the following, occurs:

- The complainant withdraws the complaint;
- The complainant cannot be located;
- The complainant is uncooperative;
- The case analysis suggests that the complaint is a duplicate allegation and/or the event has already been investigated and a finding rendered;
- The accused member separates from the Department before the conclusion of the investigation and solvability factors suggest another characterization of finding may not be able to be reached through the assigned OPS Investigator or designated Investigations Officer.
- The allegations, even if true, do not constitute misconduct; and/or
- The investigation cannot be conducted because of the lack of information in the complaint, and further investigation would be futile. Such complaints may be reopened if additional information becomes available.

Notwithstanding the above situations, if enough information has been collected to close the investigation with a standard classification, the Administratively Closed classification will not be used. Additionally, administrative closures at all levels of an investigation must be screened by the OPS Bureau Chief . Personnel at the Division and Local Levels shall not have the discretion to administratively close investigations.

5. During the investigation, if an OPS Investigator or designated Investigations Officer personally observes or determines that an employee violated an NMCD Policy not alleged in the initial allegations, said misconduct shall be documented as “Other Misconduct Noted” and a finding shall be made for each instance of misconduct.

OTHER MISCONDUCT NOTED:

C/O John Doe failed to file a use of force report. Violation of NMCD Policy CD-000000.

K. Completed Investigations:

The completed Report of Investigation should typically include all documents, materials, and evidence in the investigation file. Normally, the completed Report of Investigation should be forwarded to OPS within the time limits established in the *OPS Investigative Case Assignment Form* (CD-031801.2), specified as the “Target Date” for completion. Extensions to the Target Date may be made at the discretion of the OPS Bureau Chief. OPS shall ensure that the investigative report submitted for the approval of the OPS Chief Investigator by an OPS Investigator or designated Investigations Officer is sent to the OGC for review for cases involving adverse findings. Once final, a copy of the report shall also be forwarded to the appropriate Disciplinary Authority and CAO.

1. Legal Review

Prior to a completed investigative report being finalized, if the report contains adverse findings, the report will be sent to OGC or its designee for a legal sufficiency review. During the course of the legal sufficiency review, if discrepancies are apparent, or further investigation is suggested warranted, the reviewing attorney shall immediately contact the OPS Investigator or designated Investigations Officer and request, in writing via a "Legal Sufficiency" finding, specific steps requested to clarify or bolster the investigative information gathered. The assigned attorney and the OPS Investigator or designated Investigations Officer will work together to resolve any issues in order to render the investigative report legally sufficient for dissemination. If agreement as to what changes or additions in the report are necessary cannot be reached between the investigator and the attorney, the decision as to how to proceed will be made by the OPS Bureau Chief in consultation with the OPS Director and the General Counsel. In all cases, the Secretary of Corrections will serve as the final/ultimate authority on the resolution/handling of cases.

The OGC shall normally complete the legal review within ten (10) working days of receipt from the Office of Professional Standards.

Upon the determination of legal sufficiency or completion of the legal review process, the report is considered final. The final report is then disseminated to the appropriate Disciplinary Authority for review and resolution. The Disciplinary Authority shall return documentation to the Office of Professional Standards notifying concerning what discipline, if any, was imposed, whether no discipline was imposed, or if another alternative resolution was pursued within ten (10) working days of the report being final.

2. Closure Letters

In cases with non-adverse findings, the Disciplinary Authority will draft closure letters utilizing a template provided by OPS. The closure letter will advise the accused employee of the outcome/characterization of the case. The completed closure letter will be provided to OPS for inclusion in the case file. Additionally, in cases where a complainant has made a complaint that renders them a victim, those complainants will also ordinarily be provided with a letter advising of the conclusion and outcome of the investigation.

3. Confidential Nature of OPS reports.

All OPS reports or investigations are confidential, and are normally protected from disclosure by, including but not limited to, the attorney client and work product privileges. All requests for copies of OPS reports and/or attachments, other than when an NMCD employee requests an OPS report which has been used as supporting evidence in his or her contemplated or final disciplinary action, must be referred to the Office of General Counsel for review and response.

L. Liaison to Legal Representatives:

1. In all personnel action resulting in a suspension, demotion, or dismissal of an employee, in career status, the Personnel Office for the institution or division shall be responsible for following the personnel action from its initiation through any appeal to the State Personnel Board or through any arbitration regarding union employees, and subsequently, any court.

2. The Personnel Officer for the institution or division shall be responsible for ensuring that all procedural requirements are complied with for personnel actions taken by the institution or division.
3. The Personnel Officer for the institution or division shall serve as a liaison between the institution or division and the NMCD General Counsel, which provides representation. The Personnel Officer, in conjunction with the OPS Investigator or designated Investigations Officer, shall ensure that the NMCD General Counsel is provided with all materials necessary to provide competent representation at any and all levels.
4. The OPS Investigator or designated Investigations Officer shall provide all necessary and relevant results of the investigation to the NMCD General Counsel upon request and shall be available for testimony in such cases upon the request of such legal counsel.
5. Upon the conclusion of a personnel action, through its final stage, the Personnel Officer for the institution or division shall review the final determination and prepare a brief summary of the ruling indicating whether the Department's personnel action was upheld, modified, or reversed.
6. If the action was modified or reversed, the personnel officer in conjunction with the OPS Investigator or designated Investigations Officer, as necessary or appropriate, shall prepare a brief statement of the reasons for modification, or reversal by the authority involved.
7. The summary of the Personnel Board or Court ruling will be forwarded to the Human Resources Bureau of the Department for analysis and compilation into future training materials, so that the Department's future personnel actions will comply, to the greatest extent possible, with the holdings of appropriate authorities.

M. Additional Guidance:

1. Inmate Misconduct: Level-1 cases handled by OPS personnel shall not assign code violations to inmates; rather, such determinations shall be remanded to the purview of the correctional facility warden.
2. Media Contacts: When, in the course of an investigation, there is information obtained that is reasonably believed may generate a high media interest the OPS Investigator or designated Investigations Officer shall immediately brief the OPS Bureau Chief. The OPS Bureau Chief shall brief the Department's Public Affairs Director (or cause this action to be taken by assignment to the OPS Investigator or designated Investigations Officer). OPS Investigators or designated Investigations Officers will not unilaterally make contact with external media officials in the course of an investigation without clearance from the OPS Bureau Chief and the Public Affairs Director.
3. Office of Equal Opportunity: Any investigation that is referred by or having any nexus to cases of interest to the NMCD OEO will be worked jointly with that Office. OPS Investigators shall assist with investigations, as assigned, and will assume the lead or oversight role in Level-1 matters. Regardless, assigned OPS Investigator or designated Investigations Officers will consult these cases with the EEO Officer during the case and prior to the submission of a report. In addition,

reports with an OEO nexus will be copied to the EEO Officer at the draft stage at the point of legal review.

4. Probation Violations Reports: Any and all violations by offenders under the jurisdiction of the Department noted in the course of a Level-1 investigation by OPS may be addressed as necessary within the authority of the OPS Investigator; however, shall ultimately be referred back to the PPD for disposition relative to Probation Violation Reports.
5. Prison Rape Elimination Act: All cases with a nexus to the PREA shall be copied to the Department's PREA Coordinator upon distribution.
6. Recommendations: An OPS Investigator or designated Investigations Officer should endeavor to make recommendations to the Disciplinary Authority and/or Training Academy Director when there are issues or events that may, in the view of the investigator, have future, anticipated adverse impacts on the Department. Such recommendations may involve the suggestion to develop or revise pertinent policies and/or to adjust work practices or procedures; and, may include recommendations for more or specialized training for certain employees. However, recommendations of the OPS Investigator or designated Investigations Officer shall not relate to the type or manner of formal discipline to be imposed on any employee.
7. Subpoenas: Pursuant to NM Stat § 33-2-11 (1996 through 1st Sess 50th Legis), the Secretary of Corrections has the power to issue subpoenas and compel attendance of witnesses and to administer oaths. This authority is hereby delegated to OPS Investigators to exercise these powers. In the case of subpoenas, OPS Investigators shall work through the OGC to obtain such processes necessary in the course of an authorized investigation.
8. Senior Investigator in Charge: The OPS Senior Investigator in Charge shall have the authority of the OPS Bureau Chief for all matters involving this policy and associated procedures when left temporarily in command of OPS operations, in writing, by the Bureau Chief or OPS Director.
9. STIU Coordinators and Captains: To maintain a separation of criminal and administrative investigations, STIU Coordinators shall neither conduct administrative investigations nor have access to Garrity-impacted (*i.e.*, compelled and/or protected) materials. Likewise, when an STIU Captain conducts an administrative investigation, he or she shall do so under the direction of and answerable to the OPS Chief Investigator or his or her designee.

N. Case Management:

The OPS Bureau Chief is hereby responsible for the oversight of all OPS Level-1 reported staff misconduct investigations. Upon receiving the initial allegations, OPS will prepare an investigative file containing all information related to the investigation. OPS will track the investigative process through the conclusion of the investigation and document this information as well as the outcome in an OPS managed database.



David Jablonski, Secretary of Corrections
New Mexico Corrections Department

06/28/18
Date

NEW MEXICO CORRECTIONS DEPARTMENT

OFFICE OF PROFESSIONAL STANDARDS REFERRAL OF ALLEGED OR SUSPECTED STAFF MISCONDUCT

FOR OPS USE ONLY:

<input type="checkbox"/> OPS This will be investigated by OPS.	<input type="checkbox"/> LOCAL / DIVISION <input type="checkbox"/> This is to be investigated by the indicated investigator on behalf of OPS.	<input type="checkbox"/> Notification of Incident/Resolution - No further investigation needed - Resolution to proceed at Local level (OPS to assign tracking #) - Documentation/evidence of resolution to be provided to OPS.
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TO: Office of Professional Standards
615 1st St. NW, 3rd floor
Albuquerque, New Mexico, 87102

Fax: 505-383-2975
Telephone: 505-383-2976
e-mail group: NMCD-OPSReferrals

TOTAL PAGES: _____

NOTE: *When sending this document, please include all written statements, memos, incident reports, medical reports, etc. If you have any questions about the referral process, please contact the OPS Bureau Chief.*

FROM: _____ **DISCIPLINARY AUTHORITY:** _____
REPORTING FACILITY/DIVISION: _____
DATE OF INCIDENT: _____ **TIME OF INCIDENT:** _____ **PLACE OF INCIDENT:** _____

SUBJECT/ACCUSED INFORMATION:

Full Name: _____ **NMCD/Offender#:** _____
Title or Status: _____ **DOB:** _____ **Date of Employment:** _____

VICTIM/COMPLAINANT INFORMATION:

Full Name: _____ **NMCD/Offender#:** _____
Title or Status: _____ **DOB:** _____ **Date of Employment:** _____

ALLEGATIONS (a list of the policy names and numbers allegedly violated):

SUMMARY OF INCIDENT/COMPLAINT (who, what, where, when):

ACTION TAKEN LOCALLY PRIOR TO REFERRAL (Admin leave, reassigned, etc.):

LAW ENFORCEMENT/OUTSIDE AGENCIES INVOLVED:

PERSON COMPLETING THIS REPORT:

DATE:

CONFIDENTIALITY NOTICE:

The accompanying facsimile is intended solely for the use of the addressee designated above. Documents transmitted herewith may contain information that is confidential and privileged. Delivery, distribution or dissemination of this communication, other than to the intended addressee, is strictly prohibited. If you have received this facsimile in error, please notify us by telephone at the number above.

NEW MEXICO CORRECTIONS DEPARTMENT
David Jablonski, Secretary

OFFICE OF PROFESSIONAL STANDARDS "OPS"
INVESTIGATIVE CASE ASSIGNMENT

TO: [Facility Warden, Bureau Chief, Division Director, Region Manager, etc.]
DATE:
FROM: **OPS Bureau Chief**
[Current Address, Telephone and Fax Numbers]
REFERENCE: **OPS Case #**[Assigned Number]

This is in reference to the referral of alleged or suspected staff misconduct [name of accused employee and allegations]. This referral has been assigned Case #[XX-YYYY]. Please refer to this case number in future communications regarding investigation of the allegations. The Office of Professional Standards (OPS) has designated this case to be investigated by:

(This section needs to stay and remain included)

Ordinarily, NMCD investigations shall be completed within twenty-five (25) calendar days (if you are unable to submit the completed investigation by the target date noted, you are responsible to contact OPS to discuss the matter). The target date for completion of the final investigative report including all supportive statements, evidence, and related documentation (*e.g.*, personnel actions, resignation letter) should be submitted to OPS no later than [MM/DD/YYYY]. If you are unable to submit the completed investigation by the target date noted, you are responsible to contact OPS to discuss the matter.

For Level-1 cases, the Chief Investigator will review the investigative findings and may request additional information or clarification as appropriate. OPS Investigators Special Agents and designated Investigations Officers shall maintain contact with the Chief Investigator, or his or her designee, during the investigative process to inform him or her of significant findings and seek advice or support as necessary. If you have any questions, please contact this office.

CONFIDENTIALITY NOTICE:

The accompanying documents are intended solely for the use of the addressee designated above. Documents transmitted herewith may contain information that is confidential and privileged. Delivery, distribution or dissemination of this communication, other than to the intended addressee, is strictly prohibited. If you have received this electronic communication in error, please notify us by telephone at the number above.

**NEW MEXICO CORRECTIONS DEPARTMENT
Policy/Procedure Acknowledgement**

**(CD-031800-01, Office of Professional Standards (OPS), Personnel
Investigations & Staff Misconduct Reporting)**

I, _____, acknowledge that I have received a copy of policy (CD-031800) and Procedure (CD-031801) and I further acknowledge that it is my responsibility to become familiar with and know this policy/procedure and recognize that failure to adhere to the provisions of this policy/procedure may result in my removal as an OPS Investigator or Designated Investigations Officer and possible disciplinary action. If I have questions or if I do not understand any provision of this policy/procedure, I will consult the Office of Professional Standards for direction.

_____ **Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting**


Employees Signature

Date

Witness's Signature

Date

Original = OPS
Copy = Employee File & Employee

 <p>CD-031802</p>	<p>NEW MEXICO CORRECTIONS DEPARTMENT</p> <p><i>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always."</i> Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</p>	
	<p>ISSUE DATE: 11/26/84</p> <p>EFFECTIVE DATE: 12/15/84</p>	<p>REVIEWED: 06/28/18</p> <p>REVISED: 06/28/18</p>
	<p>TITLE: Polygraph Testing</p>	

AUTHORITY:

Policy *CD-031800*

PROCEDURES:

A. APPROVAL:

1. The respective Warden or Division Director, or designee, shall review all requests for the use of a polygraph examination within their scope of authority.
2. If the respective Warden or Division Director or designee determines that there is a valid need to pursue a polygraph examination, he or she shall forward the request to the appropriate Deputy Secretary for approval.
3. If an OPS Investigator or designated Investigations Officer determines that a polygraph examination is necessary, the request for a polygraph examination shall be forwarded to the OPS Director or respective Division Director, as applicable, for review unless otherwise directed by the Deputy Secretary or Secretary.
4. The Deputy Secretary, or designee, shall review the request for a polygraph examination:
 - a. If the Deputy Secretary, or designee, determines that the request is valid, he or she shall approve the request and notify the person submitting the request.
 - b. If the Deputy Secretary, or designee, determines that the request is not valid or that further investigation or justification is needed for such an approval, he or she shall return the request to the respective Warden or Division Director for appropriate action.
5. Approve or deny the request for a polygraph examination.
6. If the Deputy Secretary or designee approves the use of a polygraph examination, the requesting Warden, Division Director, OPS Investigator or designated Investigations Officer shall make the necessary arrangement for scheduling the polygraph examination with the appropriate polygraph testing agency or Polygraph Examiner.

The use of a specific Polygraph Examiner or polygraph testing agency shall be at the discretion of the respective Warden, Division Director or the OPS Bureau Chief , subject to established NMCD procedures.

7. There are many considerations in determining the appropriate polygraphist or agency to use on any particular case. This determination shall be made on a case-by-case basis.

B. GENERAL GUIDELINES:

1. The use of polygraph examinations shall typically be considered only after all other reasonable investigative techniques have been exhausted and have failed to produce conclusive results. Consideration shall be given in determining the most appropriate Polygraph Examiner to conduct a particular polygraph examination. Under normal circumstances, the following guidelines shall be adhered to:
 - a. A Staff Polygraph Examiner shall normally be used to administer a polygraph test to an inmate and when deemed appropriate, may also be used to polygraph an employee;
 - b. A Court Qualified Contract Polygraph Examiner shall normally be used to administer a polygraph test to Department employees, when there is reason to believe that the employee may be subject to formal disciplinary action and that the polygraph results might be introduced into evidence. When deemed appropriate, a contract Polygraph Examiner may be used to administer a polygraph test to an inmate;
 - c. A Law Enforcement Polygraph Examiner shall normally be used for Department employees or inmates when the investigation is primarily regarding matters of a criminal nature.
2. When an allegation rests solely upon the accusation of an inmate or a staff member, the Department may require that a sworn statement be provided by the complainant. However, it is not required to receive a sworn statement to initiate a subject investigation, particularly in instances of inmate allegations of staff sexual misconduct. At the discretion of the OPS Bureau Investigator or the OPS Director, an inmate complainant may be required to submit to a polygraph examination to verify the allegations raised against an accused Department employee prior to requiring a Department employee to submit to a polygraph examination.

The results of the polygraph examination, along with any other evidence that exists, shall determine the Department's further course of action.

3. If the complainant/accusant refuses to sign a sworn statement or to submit to a polygraph examination if requested, the investigation may be terminated unless it has been determined that other sufficient, credible evidence exists to pursue further action.
4. If an employee of the Department refuses to submit to a polygraph examination when directed to do so in accordance with CD-031801, or if an employee submits to a polygraph examination and the results of the polygraph examination show

conclusively that the employee was not truthful in his or her statements, the employee is subject to dismissal. A determination by the Polygraph Examiner that an employee subject to a polygraph examination has utilized active countermeasures may result in discipline for impeding an investigation.

5. If an accused employee denies the allegations of misconduct, then takes a polygraph examination and the results show conclusively that the employee is being truthful in denying the allegations, the investigation will ordinarily be terminated. Termination of the investigation will take place, unless other compelling evidence exists that the accused employee engaged in the alleged misconduct or some other misconduct. When the investigation is terminated, the employee will normally be informed that no disciplinary action will be taken against him or her.
6. An employee's refusal to comply with any procedure deemed necessary by the Department, or any Department authorized polygraph examiner in the administration of the polygraph examination, shall be considered a refusal to take the polygraph examination and subjects the individual to dismissal.
7. As a standard practice, all individuals shall be given at least a 24 hour notice prior to them being given a polygraph test. The standard notification form will be available from OPS. In extenuating circumstances, only the Cabinet Secretary or OPS Director can authorize the administering of a polygraph with less than 24 hour notice.

C. POLYGRAPH EXAMINATION:

In all allegations against an employee where a polygraph examination has been deemed necessary, polygraph procedures shall be subject to the provisions of CD-031800, *Office of Professional Standards (OPS) Personnel Investigations and Staff Misconduct Reporting*.



David Jablonski, Secretary of Corrections
New Mexico Corrections Department

06/28/18
Date