



NEW MEXICO CORRECTIONS DEPARTMENT

Cabinet Secretary
Alisha Tafoya Lucero

CD-031800 Office of Professional Standards (OPS), Personnel Investigations and Staff Misconduct Reporting	Issued: 11/26/84 Effective: 12/15/84	Reviewed: 06/03/19 Revised: 06/03/19
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

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 (Ill. 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 the Department.

FORMS:

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

ATTACHMENTS:

Standard Investigation Format Attachment (CD-031801.A) (7 pages)

DEFINITIONS:

- A. Complainant: A person who makes an accusation of misconduct against an employee of the Department.
- 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 or, an employee being reprimanded, suspended, demoted, or dismissed.
- C. Chief Administrative Officer (CAO): For purposes of this policy, the position(s) that supervise(s) 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, the Deputy Secretary of Administration or the Deputy Secretary of Operations.
- D. 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. Specifically, a Warden of a facility, Division Director of Adult Prison 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 Corrections Academy Division, the Division Director of the Administrative Services Division, the Division Director of the Corrections Industries Division.
- E. Employee: Any person employed by the NMCD in an emergency, temporary, fulltime, part time, probationary or career status, but excluding persons providing services to the Corrections Department under the provisions of a professional services contract.
- F. Financial Violations: Any matter dealing with intentional overpayments, misappropriations, fraudulent activities, *etc.* involving state funds.
- G. Investigations Officer: A person assigned by a Disciplinary Authority or the Office of Professional Standards (OPS) Bureau Chief to perform an investigation and prepare a report as provided for by this policy.
- H. Interview: To question formally and systematically during an investigation of misconduct.
- I. Interrogation: To question the suspect of misconduct formally and systematically during an investigation of misconduct, usually in an accusatory manner.
- J. Investigation: Any inquiry sanctioned by the Corrections Department into the alleged misconduct of staff, or any other matters relevant to the Corrections Department.

- K. 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.
- L. Polygraphist: A person trained and certified in the administration of a polygraph examination.
1. Staff Polygraphist: A Polygraphist who is an employee of the Corrections Department.
 2. Law Enforcement Polygraphist: A Polygraphist who is an employee of an outside Law Enforcement Agency.
 3. Contract Polygraphist: A Polygraphist who does or will have a contract with the Corrections Department to conduct polygraph examinations.
- M. Probable Cause: Facts and circumstances that would lead a reasonable person to believe that misconduct or a crime has been or is being committed.
- N. Reasonable Suspicion: Belief based on training, experience, or observation that misconduct or a crime may be in progress.
- O. Subject or Accused Employee: A person who is accused of misconduct.
- P. OPS: Office of Professional Standards.
- Q. 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 Corrections Department will investigate alleged or possible employee misconduct to ensure that any misconduct is accorded appropriate discipline. While endeavoring to protect its employees from spurious and frivolous allegations, the Corrections Department 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 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 no to rehire any former employee whose allegations of violations of the criminal law are substantiated.

- E. The use of polygraph examinations shall occur only after witness interviews and all other reasonable investigative techniques have been used. 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.
- F. 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.
- G. Any employee who fails to fully cooperate in any NMCD investigation, such as refusing to answer any questions posed by a polygrapher or investigator, is subject to dismissal.
- H. Any employee conclusively determined to have been deceptive or untruthful during any part of a NMCD investigation is subject to dismissal.
- I. Pre-employment polygraph examinations may be administered to those persons applying for correctional officer positions.



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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 reporting all Level-1 suspected or alleged misconduct to the applicable Chief Administrative Officer(s) (CAO) and to the Office of Professional Standards (OPS) immediately. OPS will notify 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 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.

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;
 - PPO District Supervisors or above;
 - Division Directors;
 - Bureau Chiefs;

- Deputy Cabinet Secretaries; and
 - 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; and
 - 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; and,
 - Excessive use of force.
- h. Introduction of contraband (serious only).
- Weapons;
 - Escape paraphernalia (including cell phones, etc.);
 - Money; and
 - Drugs or alcohol.
- i. Serious on-duty misconduct that would warrant consideration of dismissal, demotion, or suspension of ten (10) 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; and
 - Misuse of a state vehicle.
- o. Investigative violations such as altering or destroying any evidence, documents, video or audio tapes or interfering with or impeding an investigation.
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 will concurrently fax 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, medical reports, *etc.*, should also be faxed to OPS. The existing supporting documents are related to the initial reporting of the allegations, and do not comprise 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 has assigned an investigator.

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), and then the local investigator(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: "OPS Level"

2. “OPS Level”

There shall be a Bureau Chief of the Office of Professional Standards responsible for overseeing the assignment and investigation of all Level-1 investigations throughout the Department. The Bureau Chief of OPS shall report directly to the NMCD General Counsel. The Bureau Chief of the Office of OPS shall supervise investigators at the local and division levels throughout the investigative process of assigned investigative cases from the OPS. The Bureau Chief of OPS is on call at all times and can be reached through cellular telephone (505-795-4422) for assistance or direction. The Bureau Chief of OPS will respond to any incident deemed necessary (i.e., 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 fulltime capacity. The Investigations Officer shall report directly to the Bureau Chief of OPS 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.

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 Bureau Chief of OPS.

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

4. “Other” Outside law enforcement or other agency:

In criminal cases 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 Bureau Chief of OPS on the “*OPS Investigative Case Assignment*” form, (CD-031801.2). OPS will fax this case assignment form to the applicable Disciplinary Authority and the appropriate CAO.
2. OPS provides oversight and are 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 an 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 investigation must be suspended and contact immediately made with OPS. OPS will determine if an alternative investigation method or assignment is necessary.
3. Prior to conducting any interviews, the 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; verify there is in fact a complaint. If the complainant is a third party complainant, the Investigations Officer shall contact and interview the aggrieved party.
5. The 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 Investigations Officer shall ordinarily tape record the interview. At the onset of the tape-recorded interview, the Investigations Officer should ensure that the following information is afforded to the interviewee:
 - a. Date and time of the interview; (Example: "Today's date is February 07, 2013, the time is approximately 10:00 am."); and
 - b. Name and position of the Interviewer 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 tape-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, evaluate the situation and try to have the interview tape recorded, but not at the expense of compromising the interview.
9. The Investigator 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 shall be provided with a Notice *of Investigation Letter* advising him or her that there will be an Administrative Investigation regarding alleged misconduct and stating the nature of the alleged misconduct in general. The letter shall be from the assigned investigator for the case. The letter shall contain the names of all known complainants unless the Investigations Officer, Disciplinary Authority, CAO or the OPS determines that the identification of the complainant or aggrieved parties shall not be disclosed because it is necessary for the protection of said parties or because disclosure would jeopardize or compromise the integrity of the investigation. When withholding the name of

a complainant or aggrieved party, the assigned investigator shall notify the Bureau Chief of OPS immediately.

11. The Subject or Accused Employee shall ordinarily be required to provide a written statement regarding his or her responses to the allegations against him or her, if one has not already been provided.
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 assistant employee may not unduly interfere with the interview process. The Investigator should prepare a list of questions derived from the specific allegations and all other pertinent information obtained during the course of the investigation.
 - 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 tape recording, if the interview is being tape 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 interviewers present at any given time during the interview.
 - e. An employee shall be allowed to attend to physical necessities as they occur in the course of an interview session.
 - f. An employee shall not be subjected to offensive language or illegal coercion by the interviewer.
 - g. The complete OPS interview of the employee shall be recorded. There shall be no *off the record* questions or statements initiated by the investigator. All recesses called during the questioning shall be noted on the record.
 - h. Prior to the commencement of the interview, 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 Investigator using the format set out in Attachment C. The report shall detail the allegations made, the

facts revealed during the investigation and state any policies and procedures, rules and regulations, or laws that were violated by the employee, if any.

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 Investigations Officer including the following.

1. A Polygraph Examination may be used, subject to the procedure set forth in Paragraph F of this procedure.
2. A Urinalysis Examination may be used, subject to the procedure set forth in Policy (*CD037900*), *Drug Free Workplace*.

Field surveillance is subject to prior approval from the Bureau Chief or Director of OPS. Electronic surveillance is subject to prior approval from the Secretary of Corrections. When conducting electronic or field surveillance, the Investigations Officer will adhere to established departmental procedures and applicable local, state, or federal laws. Documentation of the dates and times when the field surveillance was conducted will be included in the investigative report. The Investigations Officer will notify the 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. 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 Bureau Chief of OPS determines that other sufficient, credible evidence 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 raised against the employee. If the complainant refuses to submit to a polygraph examination, the administrative action will be terminated unless the Office of 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 Bureau Chief of OPS 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 Bureau Chief of OPS or appropriate Disciplinary Authority or CAO shall ensure that:
 - a. The employee has been provided a written statement required by subparagraph H.2. of this procedure; and
 - b. The employee receives a brief written summary of the allegation(s) against him or her, if applicable; and
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.

D. Cooperation with Law Enforcement and Judicial Authorities:

1. When, during the course of an investigation, the Investigations Officer becomes aware that the facts discovered indicate a violation of criminal law, the Investigations Officer shall immediately report the violation to the Bureau Chief of OPS, and the appropriate Disciplinary Authority and CAO.
2. The Bureau Chief of OPS shall consult with the NMCD General Counsel to determine whether *reasonable cause* exists to believe that a violation of state or federal criminal law has occurred and, if so, shall immediately notify the law enforcement agency with the appropriate jurisdiction.
3. The Investigations Officer shall serve as a liaison between the NMCD and the appropriate law enforcement agency during the course of any continuing investigation.
4. The Bureau Chief of OPS, the NMCD General Counsel or the CAO may determine that the Investigative Report be submitted to the appropriate law enforcement agency for possible criminal prosecution.
5. The Investigations Officer shall be required to be adequately prepared to testify in hearings or a court of law regarding investigation cases.

E. Criminal Prosecution or Administrative Discipline:

1. In any investigation when it appears that alleged personnel misconduct, if proven, would also constitute a violation of criminal law, the Investigations Officer shall advise the OPS Bureau Chief. The OPS Bureau Chief shall consult with the NMCD General Counsel and 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 subject to the restrictions on the use of evidence provided for by this policy and procedure.
2. If a determination is made to pursue the matter through administrative discipline, 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 A SUBSEQUENT CRIMINAL PROSECUTION.
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 Bureau Chief of OPS 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.
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, 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 continuing condition of employment. The Bureau Chief of OPS, NMCD General Counsel, and CAO may pursue both administrative and criminal investigations simultaneously, subject only to the limitations set forth in this policy.

F. Financial Violations:

Any material financial violations shall be referred to the Administrative Services Division Director, pursuant to CD-023500, for the ASD Director to notify the State Auditor. Law enforcement authorities will be notified by the State Auditor as he or she determines.

G. 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 provided in (*Attachment CD-031801.A*) (8 pages).

1. The 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 numbered 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 conclude with the findings for each specific allegation. For each specific allegation the Investigations Officer shall provide one of the following findings:
 - a. **SUSTAINED:** The administrative investigation determined that the employee violated NMCD Policy as alleged (State the specific NMCD Policy and/or law if applicable); or
 - b. **INCONCLUSIVE:** The administrative investigation produced insufficient information to clearly prove or disprove the allegation; or
 - c. **EXONERATED:** The administrative investigation clearly established that the actions of the employee did not violate any NMCD Policy; or
 - d. **UNFOUNDED:** The administrative investigation clearly established that the allegation is not true; or
 - e. **MISCONDUCT NOTED:** The administrative investigation determined that an employee violated a NMCD Policy not alleged in the initial allegation(s).

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

EXAMPLE OF FINDINGS:

ALLEGATION:

C/O John Doe used excessive force on Inmate Joe Doe #00000. FINDING: Sustained

OTHER MISCONDUCT NOTED:

C/O John Doe failed to file a use of force report. Violation of NMCD Policy CD000000.

L. Completed Investigations:

The final investigation report should include all documents, materials, and evidence in the investigation file. 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.

A copy of the report shall also be forwarded to the appropriate Disciplinary Authority and CAO. OPS, in consultation with the appropriate CAO, will determine if the investigative effort appropriately substantiates the findings of the investigation as detailed in the report of investigation. If discrepancies are apparent, or further investigation is warranted, OPS will contact the assigned Investigative Officer with additional guidance.

M. Liaison to Legal Representatives:

1. In all personnel actions resulting in a suspension, demotion, or dismissal of an employee, in career status, the Personnel Officer for the institution or division shall be responsible for following the personnel action from its initiation through any grievance actions or appeal to the State Personnel Board, 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 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 Investigations Officer shall provide all necessary and relevant results of the investigation to the NMNCD 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 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 Personnel Management State Bureau of the Department at the Central Office 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.

N. 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 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.

O. Case Management:

OPS is 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 maintained database.

NEW MEXICO CORRECTIONS DEPARTMENT Alisha Tafoya Lucero, Interim Secretary

**OFFICE OF PROFESSIONAL STANDARDS "OPS"
REFERRAL OF ALLEGED OR SUSPECTED STAFF MISCONDUCT**

TO: Office of Professional Standards
615 1st St. NW, 3rd Floor
Albuquerque, NM 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: REPORTING FACILITY / DIVISION:

ADDRESS:

DATE OF INCIDENT:

TIME OF INCIDENT:

PLACE OF INCIDENT:

DISCIPLINING AUTHORITY:

SUBJECT/ACCUSED INFORMATION: Full Name:

DOB: Title: Date of Employment:

ALLEGATIONS: (brief description of each specific allegation and the source of each allegation)

VICTIM/COMPLAINANT INFORMATION:

Full Name:

Title or Status:

SUMMARY OF INCIDENT/COMPLAINT: (brief) (include names of witnesses, use additional sheets if needed)

ACTION TAKEN LOCALLY PRIOR TO OPS REFERRAL: (e.g.: Admin Leave, Segregation, etc.)

LAW ENFORCEMENT AGENCIES INVOLVED:

PROPOSED PERSONNEL ASSIGNED TO INVESTIGATE:

- OPS/Central Office: _____
- OPS has looked at this referral and determined that it is appropriate to be assigned to the Local Level
- Division: _____
- Local: Warden/Director/Region Manager Propose this referral to be AssignedTo: _____
- EEO:
- Other

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 Alisha Tafoya Lucero, Cabinet Secretary

**OFFICE OF PROFESSIONAL STANDARDS "OPS"
INVESTIGATIVE CASE ASSIGNMENT**

TO: Facility Bureau Chief, Division Director, or Region Manager

LOCATION:

FAX NUMBER:

PAGES INCLUDING COVER: _____

FROM: _____, OPS Bureau Chief

NMCD Central Office P.O. Box 27116 Santa Fe, N. Mex. 87502-0116

Telephone # 505-827-8378 / Cell # 505-795-4422 / Fax # 505-827-8685

REFERENCE: Case Assignment ASSIGNED CASE FILE #

This is in reference to the referral of alleged staff misconduct or investigation received by OPS on (Date received by OPS) regarding (Name of Subject). This referral has been assigned Case File Number OPS00-000). Please refer to this case number in future communications regarding investigation of the allegations. OPS has designated this case to be investigated by:

PERSONNEL ASSIGNED TO INVESTIGATE: , at the

- (OPS - Central Office Level
- (Division - Division Director Level
- (Local - Prison Facility (APD / CID), Region Manager (PPD)
- (Other - Law enforcement or other agency

Ordinarily, NMCD Investigations shall be completed within twenty-three (23) Calendar Days unless otherwise determined by the OPS Bureau Chief. 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 the Office of OPS by no later than 00/00/0000. If you are unable to submit the completed investigation by the target date noted, you should contact OPS to discuss the matter.

The OPS Bureau Chief will review the investigative findings and may request additional information or clarification as appropriate. Investigative staffs are encouraged to maintain contact with the OPS Bureau Chief during the investigative process to inform the OPS Bureau Chief of significant findings and seek advice or support as necessary. If you have any questions, please contact this office.

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**FACILITY,
AGENCY, OR
DEPARTMENTAL
LETTERHEAD**

**CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATION**

MEMORANDUM:

TO: NMCD General Counsel

, OPS Bureau Chief

Enter name(s) and title(s) of applicable Deputy Secretary, Division Director, Warden, Region Manager, or Bureau Chief.

FROM: Enter your name and title

DATE: Enter date of report

ALLEGATION(S): Subject of investigation e.g. allegation of use of force, death of an inmate, facility disturbance, etc.

Date of Incident: Enter date of incident

Time of Incident: Enter time of incident

Location of Incident: Enter location of incident

TYPE OF INCIDENT:

List one or more of the following as applicable;

1. Allegations of staff misconduct.
2. Inmate related, and then brief descriptions, e.g., death, assault, injury, escape, etc.
3. Visitor related, then brief description, e.g., contraband, misconduct, etc.
4. Institution related, then brief description e.g., natural disaster, power failure, fire, etc.

REPORTING PARTY OR COMPLAINANT: (If applicable)

Who reported the incident or made the allegation? Include first and last name, title, place of employment. If an inmate, name, NMCD #, and facility location.

INVESTIGATION REPORT FORMAT
PAGE TWO

SUBJECT EMPLOYEE OR INMATE: (If applicable)

If an employee is being investigated, enter name and title. If an offender is being investigated, enter name and NMCD number.

EMPLOYEE(S) INVOLVED IN OR WITNESSING THE INCIDENT: (If applicable)

Enter the name(s) and title(s) of all employees involved in or witnessing the incident.

INMATE(S) INVOLVED IN OR WITNESSING INCIDENT: (If applicable)

Enter the name(s) and NMCD number(s) of all inmates involved in or witnessing the incident.

CONTRACT STAFF OR OTHERS INVOLVED IN OR WITNESSING THE INCIDENT: (If applicable)

Enter the name(s) and other available descriptive information of all contract employees or others involved in or witnessing the incident.

SUMMARY OF INCIDENT OR COMPLAINT:

In this area, briefly describe the incident or complaint. Ensure that you provide enough information in this area that the reader has a good understanding of the incident or complaint. For investigations involving allegations of staff misconduct, document each specific allegation made by the reporting party or complainant. List each allegation separately.

INVESTIGATION

INTERVIEW OF COMPLAINANT OR REPORTING PARTY: (If applicable)

NAME & TITLE:

DATE & TIME:

INTERVIEWER:

PERSONS PRESENT:

LOCATION OF INTERVIEW:

WAS INTERVIEW RECORDED: Yes or No?

INVESTIGATION REPORT FORMAT**PAGE THREE**

After entering the above descriptive information, document your interview with the complainant or reporting party. If the interview is being recorded, be sure to have the person being interviewed acknowledge the fact that it is being recorded. Document the exact allegation and details as told to you. You may wish to include certain statements quoted verbatim. Be specific. Do not include your opinions or your interpretations of what you were told in this section. Be sure and include all relevant information provided by the person being interviewed. Document whether the person interviewed also provided a written statement or report.

INTERVIEW OF EMPLOYEE INVOLVED IN OR WITNESSING THE INCIDENT:

NAME & TITLE:

DATE & TIME:

INTERVIEWER:

PERSONS PRESENT:

LOCATION OF INTERVIEW:

WAS INTERVIEW RECORDED: Yes or No? If so, specify the type and location of tape.

After entering the above descriptive information, document your interview with the witness. If the interview is being recorded, be sure to have the person being interviewed acknowledge the fact that it is being recorded. Document the exact allegation and details as told to you. You may wish to include certain statements quoted verbatim. Be specific. Do not include your opinions or your interpretations of what you were told in this section. Be sure and include all relevant information provided by the person being interviewed. Document whether the person interviewed also provided a written statement or report.

INTERVIEW OF INMATE(S) INVOLVED IN OR WITNESSING THE INCIDENT:

NAME & NMCD NUMBER:

DATE & TIME:

INTERVIEWER:

PERSONS PRESENT:

LOCATION OF INTERVIEW:

WAS INTERVIEW RECORDED: Yes or No? If so, specify the type and location of tape.

After entering the above descriptive information, document your interview with the inmate. If the interview is being recorded, be sure to have the person being interviewed acknowledge the fact that it is being recorded. Document the exact allegation and details as told to you. You may wish to include certain statements quoted verbatim. Be specific. Do not include your opinions or your interpretations of what you were told in this section. Be sure to include all relevant information provided by the person being interviewed. Document whether the person interviewed also provided a written statement or report.

**INVESTIGATION REPORT FORMAT
PAGE FOUR****INTERVIEW OF CONTRACT STAFF OR OTHERS INVOLVED IN OR WITNESSING THE INCIDENT:**

NAME, ADDRESS, & TELEPHONE #:

DATE & TIME:

INTERVIEWER:

PERSONS PRESENT:

LOCATION OF INTERVIEW:

WAS INTERVIEW RECORDED: Yes or No? If so, specify the type and location of tape.

After entering the above descriptive information, document your interview with the contract staff or others. If the interview is being recorded, be sure to have the person being interviewed acknowledge the fact that it is being recorded. Document the exact allegation and details as told to you. You may wish to include certain statements quoted verbatim. Be specific. Do not include your opinions or your interpretations of what you were told in this section. Be sure to include all relevant information provided by the person being interviewed. Document whether the person interviewed also provided a written statement or report.

INTERVIEW OF SUBJECT OR ACCUSED EMPLOYEE OR INMATE: (If applicable)

NAME: (If applicable NMCD number)

TITLE:

DATE & TIME:

INTERVIEWER:

PERSONS PRESENT:

LOCATION OF INTERVIEW:

WAS INTERVIEW RECORDED: Yes or No?

IS SUBJECT SUSPECTED OF A CRIME: Yes or No?

After entering the above descriptive information, document the interview with the subject or accused here. If the subject is suspected of a crime and you are conducting a criminal investigation, subject should be read and acknowledge his or her Miranda rights before interrogation. Be sure to have the subject acknowledge that the interview is being recorded if doing so. The subject should be notified that he or she is suspected of misconduct and given general description of the allegations. Ensure that each allegation is addressed properly and fully. Be specific and detailed. Do not write your opinions, conclusions or interpretations of what you were told in this section. You may wish to include certain statements quoted verbatim. Each interview conducted must be separate from every other interview. Start each interview with the above descriptive information.

INVESTIGATION REPORT FORMAT**PAGE FIVE****INVESTIGATIVE ACTIONS**

In this area identify other investigative actions initiated during the investigation. For example:

1. Photographs or videotape, who took the pictures, the date & time taken, and explain how they relate to the investigation. Include a copy with the investigation packet.
2. Evidence collection or data, who collected the evidence, date and time of collection. Establish a chain of evidence. Explain how the evidence relates to the investigation. Include a copy of the chain of evidence form with the investigation packet.
3. Intelligence gathered, explain what other information you have gathered, how you obtained it, who or what you obtained it from, and how it relates to the investigation.
4. Polygraph Examinations, were any polygraph examinations administered as a result of the incident or allegations. If so, what were the results of the examination. Include a copy of the polygraph report.
5. Any other investigative actions initiated as a result of the incident or allegations.

* **NOTE:** The assigned Investigation Officer shall maintain custody of the original tape recordings, original photographs, and all other evidence unless otherwise instructed by OPS.

INVESTIGATOR'S IMPRESSIONS

If your investigation included conflicting witness statements or evidence, this is the section where you should include your opinion as to which witness was more truthful or credible. Include the basis for your opinion. For example, indicate evasive responses to questioning, inconsistent statements, body language, training, experience, polygraph results, etc. Be specific.

FINDINGS:

First, list your findings for each specific allegation. For each specific allegation you should list one of the findings below.

ALLEGATIONS OF STAFF MISCONDUCT:

SUSTAINED: The administrative investigation determined that the employee has violated NMCD Policy and/or law (site specific NMCD Policy and/or law if appropriate); or

INCONCLUSIVE: The administrative investigation produced insufficient information to clearly prove or disprove the allegation; or

UNFOUNDED: The administrative investigation clearly established that the allegation is not true; or

INVESTIGATION REPORT FORMAT**PAGE SIX****MISCONDUCT NOTED:**

The administrative investigation determined that an employee violated a NMCD policy not alleged in the initial allegation(s).

For each allegation in the "SUMMARY OF INCIDENT OR COMPLAINT" section, a finding must be made. Each finding number must correlate to the same allegation number. For example, if in the summary of allegations, #1 is Excessive use of force, #1 of the findings must be Excessive use of force and then make a finding. Also, document the specific violation of policy or law. For example;

1. Excessive use of force by C/O John Doe, CD Policy #000000: Finding: Sustained

If the administrative investigation determined that other misconduct was noted and not listed within the allegations, then after documenting the findings for all of the listed allegations, document "Misconduct Noted." Then, list each policy violation or violation of law separately, for example:

MISCONDUCT NOTED:

1. C/O John Doe abandoned his post on 00/00/0000. Violation of CD Policy #000000 or Facility Post Order #00.

END OF INVESTIGATIVE REPORT

, Bureau Chief
Office of Professional Standards

ATTACHMENTS:

In this area list all supporting documents attached to this report, e.g., written statements, use of force forms, medical encounter forms, escape flyers, etc.

OUTSIDE LAW ENFORCEMENT AGENCY INVOLVEMENT:

Explain whether outside law enforcement agencies were notified of, or involved in, the investigation of the incident. Provide the status of their investigation.

**INVESTIGATION REPORT FORMAT
PAGE SEVEN**

PROSECUTION REFERRAL:

Will this investigation report be referred for possible criminal prosecution: Yes or No? If so, describe which law enforcement agency the investigation will be referred to and what charges will be filed.



NEW MEXICO CORRECTIONS DEPARTMENT

Cabinet Secretary
Alisha Tafoya Lucero

CD-031802 Polygraph Testing	Issued: 11/26/84 Effective: 12/15/84	Reviewed: 06/03/19 Revised: 06/03/19
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

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 a departmental investigator or other personnel assigned to investigate allegations of misconduct determines that a polygraph examination is necessary, the request for a polygraph shall be forwarded to the investigator's Division Director 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 or investigator shall make the necessary arrangement for scheduling the polygraph examination with the appropriate polygraph testing agency or polygraphist.

The use of a specific polygraphist or polygraph testing agency shall be at the discretion of the respective warden, division director or investigator, subject to established departmental 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 be considered after all other reasonable investigative techniques have been exhausted and fail to produce conclusive results. Consideration shall be given in determining the most appropriate polygraphist to conduct a particular polygraph. Under normal circumstances, the following guidelines shall be adhered to:
 - a. A Staff Polygraphist 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 Polygraphist 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 polygraphist may be used to administer a polygraph test to an inmate;
 - c. A Law Enforcement Polygraphist 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. An inmate complainant shall be required to submit to a polygraph examination to verify the allegations raised against 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 accused 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. 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.
4. 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 there exists other compelling evidence that the accused employee engaged in the alleged misconduct or some other misconduct. When the investigation is terminated the employee will be informed that no disciplinary action will be taken against him or her.

5. An employee's refusal to comply with any procedure deemed necessary by the Department, Polygraph Testing Agency, or polygrapher in the administration of the polygraph examination, shall be considered a refusal to take the polygraph examination and subject to dismissal.

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*.