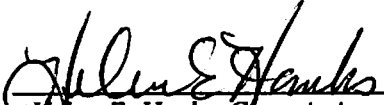


NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE Pursuant to NH RSA 106-L:19	CHAPTER <u>General Administration</u> STATEMENT NUMBER <u>1073.00</u>
SUBJECT: INTERNAL AFFAIRS POLICY PROPONENT: <u>Michael D. Todd, Director</u> <u>Division of Professional Standards</u> <u>603-271-5601</u> <i>Office</i> <i>Phone #</i>	EFFECTIVE DATE <u>09/30/2023</u> REVIEW DATE <u>09/30/2026</u> SUPERSEDES PPD# _____ DATED <u>09/30/2023</u>
ISSUING OFFICER:  Helen E. Hanks, Commissioner	DIRECTOR'S INITIALS _____ DATE _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

- (a) **PURPOSE:**
 To maintain the integrity of the Department by establishing a standardized internal affairs system for investigating allegations of law, rule, or policy violation(s); criminal conduct; or misconduct that is transparent, fair, prompt, objective, and impartial that includes validation of allegations; notifications to staff, leadership, and outside entities; investigation by internal investigators and external entities, and reporting to staff, leadership, and outside entities in compliance with state statutes, administrative rules, department policies and procedures, and collective bargaining agreements. This policy is for the internal governance of the Department and is not intended and should not be interpreted to establish a higher standard of reasonableness in any civil or criminal action than would otherwise be applicable under existing law. Nothing in this policy should be interpreted to supersede any immediate response to an emergency, or threat to safety or property damage as delineated in law, administrative rule, or department policy.
- (b) **APPLICABILITY:**
 This policy applies to all NHDOC employees, contractors, volunteers and those authorized under state administrative rules, specifically Cors, to be on departmental grounds and facilities.
- (c) **POLICY:**
 It is the policy of the New Hampshire Department of Corrections to:
- (1) Ensure that classified and unclassified employees, contractor, vendors and others conduct themselves within the bounds of laws, administrative rules, policies and procedures while on and off duty, including but not limited to their in compliance with PPD 1276 *Rules and Guidance for Departmental Employees*, PPD 1254 *DOC Code of Ethics*, State of New

- Hampshire Respect and Civility in the Workplace Policy (See Attachment), State Domestic Violence in the Workplace Policy (See Attachment), and the Prison Rape Elimination Act.
- (2) Take all allegations of law, rule, or policy violation(s); criminal conduct; or misconduct seriously ensuring both those making allegations and the subjects of allegations are always treated with respect, dignity, and professionalism and that allegations result in confidential, appropriate, fair, and consistent actions by the Department and its employees.
 - (3) Require all employees, vendors, and contractors to comport themselves in a manner that encourages reporting when anyone believes a violation of law, rule, or policy; criminal conduct; or misconduct has occurred.
 - (4) Carry out validation, notification, investigation, and reporting in compliance with all applicable laws, rules, policies, procedures, and collective bargaining agreements.
 - (5) Meet statutory reporting requirements for allegations of misconduct by law enforcement officers as defined in New Hampshire RSA 105:19 and RSA 106-L.
 - (6) Comply with federal Prison Rape Elimination Act standards of investigation as required by federal law and departmental policy PPD 379.00 (Prison Rape Elimination Act Procedures). [PREA Standard 115.71 – 115.73].
- (d) **DEFINITIONS:**
- (1) **Agency Member** – any NHDOC classified or unclassified employee, official, contractor, or volunteer.
 - (2) **Allegation** – a complaint made by any person alleging violation(s) of law, rule, or policy; criminal conduct; or misconduct by an agency member or any other member of law enforcement or public official. All allegations are considered of an unusual and serious nature and pose a liability to the Department.
 - (3) **Chief Executive Officer** – the Commissioner of Corrections is the Chief Executive Officer of the Department of Corrections and is responsible directly to the Governor of New Hampshire, per NH RSA 21-G:9 and NH RSA 21-H:8. No other member of the Department of Corrections can be considered the Chief Executive Officer without proper delegation of authority by the Commissioner of Corrections, per NH RSA 21-H:8(d).
 - (4) **Complainant** – Any person who is making an allegation, valid or not.
 - (5) **Complete Investigation** – An investigation for which the final report has been accepted and signed by the Director of Professional Standards and the Commissioner or the Commissioner's designee, in that order.
 - (6) **Hiring Authority** – Departmental unclassified employees and classified employees with the authority to hire and terminate departmental employees who have been granted this authority by the Commissioner (e.g., Warden, Director).
 - (7) **Investigation** – A Director of the Division of Personnel or Commissioner authorized investigation that involves gathering and verification of facts in response to a developing fact pattern that could result in serious administrative discipline or criminal charges as noticed to the affected person (s). Investigations initiated by a party outside the department will result in notice to the affected person (s).
 - (8) **Investigations Bureau** – The Bureau within the Division of Professional Standards consisting of investigators that are primarily responsible for internal investigations of allegations that if true could result in serious discipline or criminal charges. The Investigations Bureau investigates any allegations of misconduct or criminal conduct, or that could result in serious discipline; including but not limited to improper force as defined in NHDOC PPD 382; improper treatment including but not limited to violations of a constitutional right, civil liberty, State of New Hampshire Respect and Civility in the Workplace Policy (See Attachment), State Domestic Violence in the Workplace Policy (See Attachment), and the Prison Rape Elimination Act,

officer-involved shootings, in-custody deaths, constitutional violations, allegations of racial profiling or discriminatory policing, or racial prejudice, dishonesty, misconduct, interagency cases, cases likely to result in litigation against the agency or its members; allegations of misconduct of command-level personnel with the exceptions of allegations against the agency head or in any instance where there is an apparent conflict of interest. The Investigations Bureau will conduct Internal Affairs investigations.

- (9) **Law Enforcement Officer** – any individual who is:
- a. Employed by a local, municipal, county, or state governmental agency, or public university, in the state of New Hampshire;
 - b. Certified or certifiable by the police standards and training council; and
 - c. Responsible for the prevention, detection, or prosecution of crimes and the enforcement of the laws of the state and of its political subdivisions; and at least one of the following:
 1. Has full general arrest powers, or
 2. Is a certified or certifiable state corrections officer, or
 3. Is a certified or certifiable state probation-parole officer.
- (10) **Misconduct** – Misconduct includes both actions defined as misconduct under RSA 105:19, RSA 106-L, policy violations and violations associated with those licensed and/or certified under other state boards of practice.
- a. Misconduct under RSA 105:19 – Occurs when a law enforcement officer engages in activities including assault, sexual assault, bribery, fraud, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code. A law enforcement officer observing any of these criminal activities committed by another law enforcement officer must report it.
 - b. Misconduct under RSA 106-L– Occurs when:
 1. An officer has been convicted of one or more the following:
 - (i) A crime which constitutes a felony in this or any other state;
 - (ii) A misdemeanor for which there was a sentence of incarceration, regardless of whether all or part of the sentence was suspended;
 - (iii) Driving while intoxicated in this or any other state;
 - (iv) A crime of moral turpitude. "Moral turpitude" means an illegal act involving dishonesty, deceit, theft, or willful misrepresentation, or a crime which tends to bring discredit on the police or corrections service. A crime of moral turpitude shall include but is not limited to theft, assault, driving while intoxicated, criminal threatening, reckless conduct, corrupt practices, falsification of documents or evidence, fraud, sexual assault, public indecency, stalking or criminal violation of protective order, reckless driving, or disobeying an officer (See POL 402.02(a)(4)); or
 2. A sustained finding that the officer has engaged in conduct negatively reflecting on the officer's trustworthiness or credibility, including but not limited to:
 - (i) A deliberate and material lie during a civil, administrative, or criminal proceeding, in a police report, an internal investigation, or an investigation conducted by the New Hampshire Police Standards and Training Council;
 - (ii) A falsification of records or evidence in an investigation or official proceeding; or
 - (iii) A misrepresentation or tampering with official records or reports, tampering with witnesses or falsifying evidence; or

3. A sustained finding that during the course of the officer's official duties, the officer engaged in discriminatory conduct on the basis of age, sex, sexual orientation, gender identity, race, religious creed, color, marital status, familial status, physical or mental disability, or national origin prohibited by RSA 354-A; or
 4. A sustained finding that the officer engaged in conduct, whether on or off duty, that would adversely reflect on their fitness to perform law enforcement or corrections duties to include engaging in racist conduct or making racist statements; or
 5. A sustained finding that the officer engaged in acts or omissions of conduct which would cause a reasonable person to have doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state or nation; or
 6. A sustained finding that the officer knowingly committed an egregious dereliction of duty resulting in a preventable fatality or serious bodily injury or resulting in the deprivation of constitutional rights or leads to the failure of someone to be prosecuted for a felony; or
 7. A sustained finding that during the course of the officer's official duties, the officer engaged in the use of excessive and illegal force.
- c. Misconduct which meets the definition of a violation of departmental policy or state policy and standards as set by state boards of practices (e.g., PPD 1276.00 Rules and Guidance, PPD 1254.00 Ethics, Nursing Standards Act, Board of etc.)
- (11) **Person** – a human being.
 - (12) **Preliminary Review** – The initial steps of factual research and verification of an allegation that without more is insufficiently specific to allow administrators to determine whether there is a reasonable suspicion that serious discipline could result, or misconduct may exist. This is commonly referred to as routine management practices and fact-finding from which a determination is made as to whether an official collectively bargained or statutorily required investigation is necessary.
 - (13) **Resident** – Any person currently incarcerated by or under departmental supervision.
 - (14) **Departmental Supervision** – Supervision provided by the Department over any person and required as part of a sentence, court order, parole or probation agreement, or other state imposition.
 - (15) **Valid Allegation** – A statement in writing made by a person who identifies themselves to an agency member alleging an agency member, member of law enforcement or government official has committed violation(s) of law, rule, or policy; or engaged in criminal conduct or misconduct.
 - (16) **Verbal Allegation** – A verbal complaint made by any person to an agency member alleging an agency member, member of law enforcement or government official has committed violation(s) of law, rule, or policy; or engaged in criminal conduct or misconduct.
- (e) **PROCEDURE:**
- (1) **Confidentiality.**
Investigations are conducted for the internal use of this agency and are to be kept confidential in accordance with law. The agency reserves the right to provide information regarding investigations to obtain legal counsel and comply with reporting requirements including but not limited to: prosecutorial disclosure, notification to the New Hampshire Attorney General's Office Public Integrity Unit, and reporting to Police Standards & Training. Public comment on administrative investigations shall be limited and all inquiry referred to the Commissioner when

and if appropriate and in accordance with law. Investigation files shall be securely maintained and kept separately from employee personnel files. [NH RSA 91-A:5(VI); NH RSA 106-L:22]

(2) Making Allegations

- a. All allegations made by residents will be managed pursuant to state administrative rules Cor 313 Formal Complaints and Grievances by Probationers, Parolees and Residents and in accordance with PREA Standards as applicable to the allegation (s).
- b. All allegations made by or reported by employees (state or contracted) will be managed according to PPD 390.00 Processing Spot, Disciplinary, Incident and Intelligence Reports first and then in accordance with other applicable laws dependent on the content of the allegation.
- c. All allegations made by parties outside the department including volunteers shall be made in compliance with PPD 1003.00 *Citizen Complaint Procedure*. These procedures include NH Department of Corrections: Citizens Complaint Form. All persons remitting a complaint either in person, over the telephone, online or by other means, will be provided a departmental complaint form. If the departments, constituent liaison is triaging the complaint over the phone the information provided by the complainant will be documented on the department's Citizen Complaint Form and the complainant will be asked to confirm and verify by signature or digital confirmation through typed communication (e.g., email) that the complaint is complete and accurate.
 1. Any departmental employee triaging a citizen complaint will be familiar with PPD 1003.00 as to aid people in formalizing their concerns for departmental engagement according to this policy and other state standards.
- d. Persons who knowingly make false allegations may be held liable under all applicable laws, administrative rules, and policies. The department will seek civil and/or criminal prosecution under the fullest penalties allowable under NH law for those making false allegations (e.g., criminal slander).

(3) Preliminary Review of Allegations of Misconduct or Criminal Conduct

- a. A preliminary review is conducted upon receipt of a valid allegation or verbal allegation by a warden, a director, or their designee or an investigator within the department's bureau of investigations (i.e., PREA allegations) in consultation with the warden/director or office of the commissioner.
- b. The information to be vetted to determine if a formal investigation is warranted will include at a minimum:
 1. The content of the allegation,
 2. All other information provided by the complainant or reporting entity;
 3. Review of any and all available electronic surveillance or communication resources;
 4. Review of incidents, statements, departmental records and official reports;
 5. Review of available entries relevant in departmental software systems;
 6. Information resulting from any preliminary factual inquiry needed to make that determination; and
 7. Any other relevant and accessible information or resources applicable to the allegation.
- c. Following the preliminary review, the Warden/Director or investigator shall document the findings on the Preliminary Review Summary Form (Attachment 2) to the Commissioner or designee, which will be tracked and monitored through the office of the commissioner.
 1. If it is determined that no reasonable suspicion exists, no formal investigation will occur, and the allegations will be closed. However, allegations shall not be closed

through preliminary review without the concurrence by the Commissioner or the Commissioner's designee.

2. If reasonable suspicion is found, the process will proceed to notification and formal investigation as described below.
 3. In the event the preliminary review produces sufficient evidence to allow the warden/director or investigator to conclude the allegations of misconduct should be sustained as described in section (6)(c)(6)(i) below, no formal investigation is necessary and the process may proceed directly to the procedures described in subsection 9 below, in accordance with the applicable collective bargaining agreement and relevant state personnel rules.
 - d. The timing of the preliminary review period will be based upon the collectively bargained time periods (i.e., Teamsters 2023 14 workdays, SEA Supervisors 10 business days, etc.) established through State Bargaining for the employee(s) at the center of the allegation.
- (4) **Initiation of Formal Investigation and Notification of Employee**
- a. If a formal investigation into allegations of misconduct, criminal activity or violation of policy of an agency member is required, the warden, director, or investigator who in consultation with the appropriate hiring authority having conducted the preliminary review shall notify the Director of Personnel and Information or the Commissioner.
 - b. The Director of Personnel and Information shall then get authorization to conduct the investigation from the Commissioner and shall get any other authorizations required by administrative rule(s), including when necessary receiving authorization from the Department of Administration: Division of Personnel Director pursuant to *Per 1000 Investigations, Discipline and Non-Disciplinary Removal*.
 - c. The Director of Personnel and Information or designee shall provide the official notice to the designated hiring authority who will present it to the employee(s) effected, stating the allegations, the administrative basis for the request, and state the 45-day mark per the collective bargaining agreement that the investigation is to conclude.
 - d. The Director of Personnel and Information or designee shall send a request for investigation to Investigations Bureau.
 - e. The Director of Personnel and Information and Director of Professional Standards shall schedule a debriefing to correspond with the 45-day investigation completion requirement that will include at a minimum:
 1. The Commissioner or designee,
 2. The Director of Professional Standards,
 3. The Director of Personnel and Information,
 4. Applicable Warden/Director and
 5. The Chief Investigator for the pertinent facility.
 - f. Upon notification to the Investigations Bureau to open an investigation and notwithstanding PPD 1276.00, the Director of Personnel and Information shall remain responsible for providing additional notification to agency members who are the subject of the investigation of:
 1. Updates as necessary in compliance with the governing collective bargaining agreement(s), administrative rules, and policy, and
 2. If due to extenuating circumstances, the 45-day timeframe for completion has been authorized to be extended by the Commissioner and what the extension period is.

(5) **External Notifications**

- a. The Commissioner or the Commissioner's designee shall notify the Law Enforcement Conduct Review Committee in writing within 15 business days if (see NH RSA 106-L:20):
 1. A valid allegation of misconduct has been received alleging misconduct occurring on or after January 1, 2023, and the Department:
 - (i) Is conducting, or has conducted a preliminary review and or a formal investigation of the allegation;
 - (ii) Has an outside law enforcement agency conducting an internal investigation or had an outside law enforcement agency conduct an internal investigation into the allegation; or
 - (iii) Is requesting a valid internal investigation be conducted into the allegation by investigators designated by the Director of Police Standards and Training or the Law Enforcement Conduct Review Committee (CRC) [NH RSA 106-L:20, I(c).
 2. An internal formal investigation has sustained a finding of misconduct; or
 3. An officer resigned from the Department while under investigation for misconduct.
 - b. The Commissioner or the Commissioner's designee shall notify the New Hampshire Police Standards and Training Council (PSTC) in writing within 7 days of receiving a report of misconduct that includes assault, sexual assault, bribery, fraud, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code. See NH RSA 105:19. Any notifications to the PSTC in compliance with NH RSA 105:19 must also be made in writing to the Office of the Attorney General (AGO). (See Attachment 1 – Public Integrity Investigations Policies and Procedures)
 - c. The Commissioner or the Commissioner's designee shall notify the AGO in writing of any complaint alleging criminal misconduct on the part of any state, county, municipal, or local law enforcement officer that after preliminary review the Department determined there was reasonable suspicion to believe that further investigation will result in sustained finding(s) of criminal conduct.
- (6) Formal Investigations of Allegations of Misconduct or Criminal Activity**
- a. The Chief Investigator or the Director of Professional Standards shall review investigation requests and assign an investigator to investigate the allegations.
 - b. Investigations shall be carried out in accordance with all applicable laws, rules, policies, and agency best practices. Investigators shall conduct an investigation that:
 1. Is impartial, thorough, complete, and timely;
 2. Stays within the scope of the alleged violations listed in the Notice of Investigation issued by the department;
 3. Presents discoveries of potential additional allegations or wrongdoing to the Commissioner or the Commissioner's designee to determine if the new discoveries are outside the scope of the current investigation, and whether:
 - (i) the scope of the current investigation shall be expanded to include the new allegation(s); or
 - (ii) the new allegation(s) shall be treated as a separate investigation;
 4. Uses the preponderance of evidence standard in weighing all evidence presented and discovered;
 5. Is well documented in the Department's investigation database such that those unfamiliar with the investigation can gain a thorough understanding of the steps taken by investigators and the facts of the case through document review; and
 6. Determines a finding for each listed allegation as follows:

- (i) Substantiated, meaning the alleged event did occur;
 - (ii) Unsubstantiated, meaning the evidence was insufficient to determine whether the alleged event occurred or did not occur; or
 - (iii) Unfounded, meaning the alleged event did not occur.
- c. All evidence presented or collected shall be maintained by the Investigations Bureau. All evidence must be logged throughout the investigation with detailed descriptions in the Department's investigations database.
 - d. Investigations shall remain open until the final investigation report is accepted and signed first by the Director of Professional Standards or designee and then by the Commissioner or the Commissioner's designee.
 - e. Upon completion of an investigation of misconduct, the Commissioner or the Commissioner's designee shall provide:
 - 1. A copy of all relevant documents associated with the investigation when the person(s) are certified or certifiable law enforcement officers, including the agency's investigative report, and any findings and decisions to the Law Enforcement Conduct Review Committee (see NH RSA 106-L:20) and the Attorney General's Office as required by law, and the attorney assigned to the DOC by the Department of Justice Civil Bureau.
 - 2. The name of the individual who committed any substantiated acts of misconduct and a description of the act(s) of misconduct to the New Hampshire Police Standards and Training Council. See NH RSA 105:19.
 - 3. Any other information to any other agency as required by law, administrative rule, or policy.

(7) Investigation Reports

- a. Each formal investigation shall be documented in an investigation report that is included in the Department's investigation database. Investigation Reports shall:
 - 1. Be impartially written and without bias.
 - 2. Clearly state all relevant facts bearing on the truth of each allegation.
 - 3. Answer each allegation using the preponderance of evidence standard.
 - 4. Include all evidence presented or discovered during the investigation (e.g., photos, recordings, etc.), or include the means for retrieval of evidence that cannot be included.
 - 5. Include contact and identification information for all persons interviewed and for the investigator(s).
 - 6. Include a report summary providing a narrative, summary of facts upon which the findings are based, and findings for each allegation.
 - 7. Be written with clarity, explanations, and sufficient detail such that a reader outside the agency who is unfamiliar with the topic matter is able to understand the basis of the findings.
 - 8. Clearly define specific terminology.
 - 9. Use a standardized format.
 - 10. Identify inconsistencies between statements and physical evidence.
 - 11. Clearly identify other potential violations of law, rule, or policy that fell outside of the scope of the current investigation and the Commissioner's or the Commissioner's designee's determination regarding whether to include those potential violations in the current investigation or treat them as a separate investigation.

(8) Retaliation Prohibited.

Discriminatory, disciplinary, or other retaliatory action against a member of the public or an employee related to the making of a good faith complaint or participation in an internal investigation is strictly prohibited. Such acts will form the basis for charges of misconduct and may result in serious disciplinary action and/or criminal prosecution.

(9) Conclusion of the Formal Investigation or Preliminary Review

- a. Pursuant to the employee's collective bargaining agreement and/or as required by Per 1002, a meeting to review the investigative or preliminary review findings will occur to provide the employee a forum for their due process rights, to comment, refute, and otherwise contribute to the defense or acceptance of the investigation.
- b. The Warden/Director or designee will issue a written determination of outcome in line with state administrative personnel rules [Part Per 1002 – Discipline] up to including:
 1. Dismissal during initial probationary period;
 2. Written warning;
 3. Withholding salary increment;
 4. Disciplinary suspension without pay;
 5. Disciplinary demotion; and
 6. Dismissal
- c. If an employee retires or resigns during the course of an investigation, the investigation will continue and the outcome of the investigation will be presented to the Warden/Director, Director of Personnel and Information, Director of Professional Standards, Commissioner or designee for conclusion and reporting standards as outlined within this policy and according to state and federal laws.
- d. All additional notifications and/or reporting will occur to the certifying or licensing authority or State Agency with statutory oversight based on the findings (e.g., NH RSA 106-L, NH RSA 105:19, NH AGO Public Integrity Unit, Office of Public Licensure and Certification etc.).

(10) Audits.

Audits of this policy and its associated processes shall occur annually or more often if requested by the Office of the Commissioner.

REFERENCES:

Performance-Based Standards and Expected Practices for Adult Correctional Institutions
Fifth Edition (October 2019) - Performance Standards 1C Personnel

Other:

Attachment 1 - Attorney Generals Office – Public Integrity Unit Polices and Procedures

Attachment 2 - NHDOC Preliminary Review Summary Form

NHDOC PPD 1003.00 Citizens Complaints

NHDOC PPD 379.00 Prison Rape Elimination Act Procedures

Federal PREA Standard 115.71 – 115.73

State Administrative Rules – Per 1000 Investigations, Discipline and Non-Disciplinary Removal

NH Revised State 105:19 – Reports of Misconduct by Law Enforcement Officers

NH Revised Statute 106-L – Police Standards and Training Council

State Employee Bargaining Agreements - [Employee Relations | Human Resources | NH Dept. of Administrative Services](#) and sub-unit agreements.

1. Teamsters Local 633
2. New Hampshire Probation and Parole Officers Association
3. New Hampshire Probation and Parole Command Staff Association
4. Internal Affairs Association of NH
5. The State Employee's Association of NH, SEIU Local 1984

[Section 21-G:9 Powers and Duties of Commissioners. \(state.nh.us\)](#)

[Section 21-H:8 Powers and Duties of Commissioner. \(state.nh.us\)](#)