

## O2403 – Arrest and Detention of Juveniles

Effective Date: 03/30/22	Number: O2403
Note: Travelers Papillion APD	CALEA Standards Addressed: 44.1.1, 44.1.2, 44.1.3, 44.2.1, 44.2.2, 44.2.3, 44.2.5, 82.1.2
Issued By: Chief Philip D. Lukens	Signed: 

### I. POLICY

The best interests of a child balanced with the safety of the community are primary concerns when handling cases involving juveniles. When handling a law violation committed by a juvenile, the Department and its officers have available a number of alternatives ranging from outright release with no further action, to referral to the court(s). It is the policy of the Alliance Police Department (A.P.D.) to use the least restrictive alternative balanced with preserving public safety, order, individual liberty, and the best interests of the child. (CALEA 44.2.1 a)

### II. PURPOSE

This order delineates the Alliance Police Department's organizational and operational standards for juvenile operations. In an effort to best address the causes of juvenile behavior and effectively respond to crimes wherein a juvenile is involved, procedures for proactive and reactive measures are outlined in detail.

### III. PROCEDURE

#### A. Juvenile Administration

1. The Alliance Police Department is committed to the development, implementation, and perpetuation of programs designed to prevent and control juvenile delinquency.
2. It is the responsibility of all employees to follow all A.P.D. policies and procedures concerning juvenile matters. All officers are required to maintain a working knowledge of the Nebraska State Statutes and City Ordinances as it pertains to juveniles. (CALEA 44.1.1)

#### B. Juvenile Policy Development

1. The Alliance Police Department encourages review and comment by other elements of the juvenile justice system in the ongoing development of Department policy and procedure relating to juveniles. Input may be sought from: (CALEA 44.1.2)
  - a. Box Butte County Attorney's Office
  - b. Juvenile Probation
  - c. Juvenile Justice Center
  - d. Alliance Public School System and;
  - e. Other stakeholders
2. Review and comment will be evaluated and changes will be considered, as appropriate, at the time of review.

C. Legal Authority to arrest or Detain Juveniles

N.R.S. §43-248 R.R.S. Temporary custody of juvenile without warrant; when, reads as follows:

A juvenile may be taken into temporary custody by any officer of the peace without a warrant or order of the court when:

- (1) A juvenile has violated a state law or municipal ordinance and the officer has reasonable grounds to believe such juvenile committed such violation;
- (2) A juvenile is seriously endangered in their surroundings and immediate removal appears to be necessary for the juvenile's protection;
- (3) The officer believes the juvenile to be mentally ill and dangerous as defined in N.R.S. §71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court;
- (4) The officer has reasonable grounds to believe that the juvenile has run away from their parent, guardian, or custodian;
- (5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger; or
- (6) The officer has reasonable grounds to believe the juvenile is truant from school.
- (7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of N.R.S. §28-801. (Note: Although juveniles cannot be charged with prostitution, they can alternatively be charged with uncontrollable if the situation dictates.)

N.R.S. §43-248.01. Juvenile in custody; right to call or consult an attorney.

All law enforcement personnel or other governmental officials having custody of any person under eighteen years of age who has been arrested, restrained, detained, or deprived of their liberty for whatever reason shall permit the person in custody, without unnecessary delay after arrival at a police station or detention facility, to call or consult an attorney who is retained by or on behalf of such person in custody or whom the person in custody may desire to consult, except when exigent circumstances exist. An attorney shall be permitted to see and consult with the person in custody alone and in private at the place of custody.

D. Legal Authority for Disposition of Juvenile Taken into Temporary Custody

N.R.S. §43-250 Temporary Custody; disposition. An officer who takes a juvenile into temporary custody under N.R.S. §43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

1. The officer shall release such juvenile;
2. The officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court or probation officer of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The officer shall deliver one copy of the notice to such juvenile and require such juvenile or their parent, guardian, other custodian, or relative, or both, to sign a written promise that

such signer will appear at the time and place designated in the notice. Upon the execution of promise to appear, the officer shall immediately release such juvenile. The officer shall, as soon as practicable, file one copy of the notice with the county attorney, and, when required by the juvenile court, also file a copy of the notice with the juvenile court, the officer appointed by the court for such purpose, or the probation officer;

3. While retaining temporary custody, the peace officer shall communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in N.R.S. §43-260.01.
4. When a juvenile is taken into temporary custody pursuant to subsection (2), seriously endangered in their surroundings, or (7), the subject of prostitution, of N.R.S. §43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the Department of Health and Human Services. For procedures, see [O2213](#) Child Abuse/Neglect Investigations.
5. If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3), meets Juvenile EPC criteria, of N.R.S. §43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subdivision 4 of this section. (See [O2409](#) – Mental Health Incidents and Emergency Protective Custody (EPC)).
6. When a juvenile is taken into temporary custody pursuant to subdivision (6), truant from school, of N.R.S. §43-248 (truancy), the peace officer shall deliver the juvenile to the enrolled school of such juvenile.
7. In determining the appropriate temporary placement of the juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

E. Reports and Citations for Juvenile Arrests/Detentions

1. If an officer takes a juvenile into custody, the officer shall make a full written report to the County Attorney prior to the end of the officer's tour of duty.
2. Non-traffic citations issued to juveniles shall be referred to the Juvenile Court by writing "TO BE SET" as the court date. Officers shall then inform the juvenile and their parents, guardian, or custodian that they will be contacted by the Juvenile Court for notification of any court appearance(s). Citations for traffic misdemeanors and infractions shall be given a normal court date. (CALEA 44.2.1 b, c)
3. All misdemeanor City Ordinance citations issued to juveniles, including curfew violations, or other city ordinances shall be referred to the Juvenile Court by writing "TO BE SET" as the court date. Pursuant to N.R.S. §43-246.01 (2), the Juvenile Court has exclusive jurisdiction over all misdemeanor violations committed by juveniles 17 years of age and younger.

F. Burden of Proof Required in Juvenile Cases

1. Officers of the Alliance Police Department shall not arrest, cause an arrest to be made upon any juvenile, or issue any citation to any juvenile with a standard of less than probable cause.
2. Officers who make an arrest of a juvenile shall be responsible for conducting a thorough investigation and follow up and assuring that all reports contain a detailed discussion of the elements of the criminal/delinquent act and clearly delineate the probable cause.

G. Variables to Consider in Determining Further Detention

Officers will ensure that all constitutional rights of all juveniles are protected. Officers shall consider the following variables when seeking to take a juvenile into temporary custody or to cite and release when the juvenile has been charged with one or more law violations: (CALEA 44.2.2 b, c)

1. Whether or not the juvenile has a parent, guardian or custodian who will accept responsibility for the juvenile and who will assure the officer that the juvenile will appear to answer the charges.

For purposes of this and other sections of this order, the word “custodian” may mean any approved caseworker, foster parent, adult relative, or other adult person to whom the parents have legally entrusted care of the juvenile.

2. The nature of the crime: If the nature of the crime is such that the safety of the child or the public will be endangered by the juvenile’s continued freedom, then the officer may consult with a JPO for a detention disposition. If the JPO elects for further detention, the officer shall proceed to detain the juvenile as directed by the JPO.
3. The juvenile’s own history of appearing to answer for charges. If the juvenile has a history of failure to appear then the officer shall consider detention.

H. Detention Location (CALEA 44.2.2 d)

1. Detention: Detention must occur only as the result of legal authorization by a member of the court, JPO, or Department of Health and Human Services caseworker.

I. Interviewing Juveniles as Suspects of a Criminal or Delinquent Act

1. There is at least one opinion from the Nebraska Supreme Court which states that the right to be free from self-incrimination (Fifth Amendment) is a personal right and a juvenile may waive their rights without parental consent. Police officers, however, shall give consideration to the “totality of the circumstances” before considering whether or not to read Miranda and to seek such a waiver without parental consent. Police officers shall consider at least the following elements/issues:

- a. The age of the juvenile;
- b. The hour at which the juvenile is to be questioned;
- c. The anticipated duration of the questioning;
- d. The juvenile’s previous experiences with the juvenile justice system;
- e. The juvenile’s intellectual capacity and ability;
- f. Whether or not the juvenile requested the consultation of their parents (if the juvenile did request parents, the officer shall not seek a waiver of Miranda without parental consent); and



Consultation with a supervisor is required before taking any juvenile away from the school setting for investigation or detention purposes.

L. Police Officer Assigned to the High School

1. A police officer assigned to work at the high school may contact students in the school for purposes of completing an investigation of an incident that occurred at the high school, provided that:
  - a. the incident has been reported to the officer by the principal or their designated representative and the officer has determined that the principal or their designated representative has fulfilled school administration requirements regarding contact with parent(s), guardian(s);
  - b. unless there is reason to believe that the student(s) will flee or represent a danger to the officer or school staff, the officer will request that the principal or their designated representative call students out of class, lecture, activity or other assembly;
  - c. the principal or their designated representative is responsible for notifying the student's parents that a police investigation is being conducted; and
  - d. except when exigent circumstances exist, the officer shall not be used by other officers to conduct investigations or follow up activities on criminal/delinquent acts which did not occur at the school.

M. Photographs and Fingerprints

1. Juveniles under age fourteen (14) cannot be fingerprinted without a court order.
2. For juveniles booked into a juvenile intake facility, photographs and fingerprints will be handled by that facility. (CALEA 82.1.2)

N. Juveniles Arrested on Warrants

When an officer comes into contact with a juvenile who has a confirmed warrant:

1. If the warrant is with Box Butte County or Alliance Police, transport the juvenile to the police department.
2. If the warrant is through any other agency, transport the juvenile to the Alliance police department.
  - a. Once at the APD, notify the on-call Juvenile Probation Officer.
  - b. The JPO will be required to conduct an assessment on the juvenile and may need to communicate with the jurisdiction issuing the warrant to determine a disposition or placement of the juvenile.
  - c. It may come up later that transportation from the APD to another location is required. If that happens, we will assist as available.

O. Detention of Juvenile Status Offenders (CALEA 44.2.2 a)

1. Officers who contact a juvenile status offender (such as runaway, deports, or uncontrollable) shall utilize the following options:
  - a. If a child and parent are at an impasse and in need of mediation, Region 1 Mental Health assists us with these situations. Officers can have a therapist paged out to any scene to assist in this manner.
  - b. If the child is to be charged as an uncontrollable juvenile, pursuant to N.R.S. §43-251.02 and the opinions of the Box Butte County Court, an attempt to get the child counseling must be made prior to a charge. Region 1 Mental Health also exists for this purpose and can be paged out 24/7. If the child is currently receiving counseling or has recently received counseling for the issues causing this contact that should be noted in the Officer's report, if one is made, and in some cases may serve in place of calling out a response.
  - c. If the child is a runaway from any local jurisdiction and chooses to return home and if the parent is willing to receive the juvenile, the child shall be returned home or handed over to the appropriate jurisdiction unless there is an active capias for the juvenile;
  - d. if the child reports abuse/neglect that occurred in Alliance, the officer shall investigate the incident and determine if placement outside the home is appropriate. If so, the officer shall follow General Order [O2213](#) (Child Abuse/Neglect Investigations). If abuse is reported that occurred in another jurisdiction that jurisdiction must be contacted to investigate the matter. An initial report will be taken and forwarded to that jurisdiction. (CALEA 44.2.2 b)
  - e. if the child is a ward of the state and is under the jurisdiction of DHHS, the officer shall contact DHHS for placement; or
  - f. if, while on runaway status, the child has committed a law violation, the officer may consider detention. If the need for detention exists, the officer shall follow all guidelines for detention as established in this General Order.
2. Out of State/Out of County Runaways
  - a. If a runaway is located from out of state or out of county, the officer shall contact a JPO for a detention order.
  - b. Once detention has been authorized, the officer shall transport the juvenile to the location as requested by JPO.
  - c. The law enforcement officer shall be responsible for notifying the juvenile's parent(s), guardian or custodian that the juvenile has been detained, the circumstances and location of the detention.

P. Detention of Juveniles, Adult Charges Requested

1. Based upon the severity of the alleged criminal offense, officers fulfill a critical role when contemplating charging a juvenile as an adult. Such a decision must be made quickly and thoroughly coordinated with juvenile probation and the County Attorney's Office.
2. Any officer requesting consideration to have a juvenile charged as an adult must accomplish the following:

- a. Contact the on-call juvenile probation officer and submit your PC affidavit as you would normally do. The juvenile probation officer will use their screening instrument to determine whether to detain the juvenile, place them in HHS custody, or release them to a parent. If the juvenile is detained, you may be requested to transport the juvenile to an alternative placement (shelter, foster care, etc.).
- b. Coordinate with the county attorney's office and state your reasons for the request. At that time, they will review your statement, the PC affidavit, the statement from the probation officer, the juvenile's prior record, and any other supporting documentation that we have available, and make the decision to either charge as an adult or as a juvenile.

### M1107-1 - Complaints Against Employees, Internal Investigations and Discipline

Effective Date: 02/15/2022		Number: M1107-1	
Note: Travelers Papillion APD	CALEA Standards Addressed: 22.2.2d, 26.1.7, 26.1.4, 26.1.8, Nebraska Crime Commission 26.1.5, Ch 52, 26.1.6 (N.C.C.) O2.5, O2.4		
Issued By:	Chief Philip D. Lukens	Signed:	

#### I. POLICY

It is the policy of the Alliance Police Department to thoroughly and impartially investigate all complaints against the agency and department personnel from known and anonymous sources, provide a formal means to conduct internal investigations, and afford employees due process during the fair and equitable administration of discipline. Disciplinary action, when required, is intended to modify behavior such that negative behaviors or policy violations do not reoccur. Administrative personnel action is not used or intended to be utilized as punishment. (CALEA 52.1.1)

This order and annual statistical summaries based on internal investigations shall be available for public inspection, and upon request, dissemination, and shall be provided to all department employees. (CALEA 52.1.4; 52.1.5) (N.C.C. O2.5, O2.4)

#### II. PURPOSE

The Alliance Police Department is committed to providing an effective process to address complaints involving our employees. Therefore, procedures for complaints, investigations, and disciplinary actions have been established to provide fair, objective, and expeditious dispositions of complaints and line investigations. These procedures establish processes to ensure employee accountability to the public, but are also provided to protect our personnel from false allegations of misconduct. These procedures apply to all employees, whether on-duty or off-duty.

#### III. DEFINITIONS

- A. Complaint: An act of dissatisfaction expressed to an employee's supervisor or commander that generally relates to employee misconduct or departmental operations.

- B. Initial Inquiry: An inquiry to determine the scope and nature of an allegation and to ascertain if further investigation is required. An internal affairs case number will not be issued during the Initial Inquiry unless the matter proceeds to a formal investigation. Instead an initial inquiry number will be issued. (MF237 Initial Inquiry Form)
- C. Complaint Types: There are 2 types of complaints:
1. Formal Complaint: A complaint that is documented in writing by the complainant. (See section IV A of this policy). An employee can also file a formal complaint if there is an allegation that another employee committed a serious violation of department policies (See section IV B of this policy).
  2. Informal Complaint: A citizen complaint that is not documented in writing. (See section IV C of this policy).
- D. Complaint Classifications: There are 2 classifications of complaints:
1. Major Complaint Types: A complaint, if substantiated, that could result in the employee's suspension, demotion, or termination, and for which there is a formal appeal process attached and is investigated by the internal affairs function. Examples include: (CALEA 52.2.1 b)
    - a. Excessive force
    - b. Discrimination/Civil Rights Violations
    - c. False arrest/imprisonment
    - d. Unlawful search/seizure
    - e. Shooting policy/weapons
    - f. Dishonesty
    - g. On-Duty Use of Intoxicants
    - h. Narcotics Violations
    - i. Gross Neglect of Duty (see [M1201](#), paragraph V, N)
    - j. Misconduct, to include:
      - (1) Commission of Criminal Offense
      - (2) Violation of Department General/Special Orders
      - (3) Conduct Unbecoming (see [M1201](#), paragraph V, H)
      - (4) Other major infractions of [M1201](#)
    - k. All other complaints as so directed by the Chief of Police or his/her designate.
    - l. A minor complaint with a documented history of reoccurrence, as identified by the Chief of Police or his/her designate.
  2. Minor Complaint Types: A complaint, if substantiated, that could result in no greater than a written reprimand, and for which there is no formal appeal process attached and is investigated by a Line Supervisor. Examples include: (CALEA 52.2.1 a)

- a. Rudeness
- b. Procedural Questions
- c. Occasional Lateness for Duty
- d. Improper Use of Department Equipment
- e. Omissions in assigned duties
- f. Other minor infractions of department General/Special Orders or other department directives.

E. Investigation Types: There are 2 types of Investigations:

- 1. Internal Affairs Investigation (I.A.): Investigation of any and all formal complaints. If the complaint is not formal, an I.A. shall not be conducted.
- 2. Initial Inquiry (I.I.): An investigation generated within the department involving an employee who may have violated a general or special order or other department or city directive, but does not fit the definition of a formal complaint.

#### IV. COMPLAINT INVESTIGATION PROCEDURE

A. Formal Complaint:

- 1. Any citizen who telephones or appears at the police department and wishes to file a formal complaint shall be referred to the Internal Affairs Officer, or in his absence, available lieutenant or patrol supervisor. In the absence of all the above, any officer may receive the initial complaint. The complainant shall then be given a statement and a MF 237 will be completed.
- 2. Informational material concerning our formal complaint process and Formal Complaint forms shall be available in the police department lobby and our department's website.
- 3. Citizens may also file formal complaints by phone, mail, or e-mail. The complainant shall then be contacted to verify that he/she originated the complaint. Once verified, the complainant shall be mailed a complaint form or invited to come to the department to meet with the internal affairs officer to complete a department complaint form. If the complainant refuses to complete and sign a complaint form, refer to procedure regarding informal complaints.
- 4. An Initial Inquiry (I.I.) number must be obtained by the employee receiving the complaint.
- 5. The employee accepting the formal complaint must notify a lieutenant immediately. If off-duty or otherwise unavailable, the formal complaint shall then be forwarded to the internal affairs officer in a sealed envelope marked "CONFIDENTIAL."
- 6. The internal affairs officer shall review the formal complaint and notify the Chief of Police or their designate. A determination shall then be made to classify the complaint as major or minor, depending upon the circumstances of the incident. The complaint will then be processed as specified in paragraphs IV, E or IV, G of this order. (CALEA 52.2.2)

7. Complaints that involve an employee suspected of criminal violations or any allegation that could result in media coverage, require immediate notification to Chief of Police, or designee. (CALEA 52.2.2)
8. Complainant Correspondence: When a formal complaint is received the Chief of Police or designee will mail or e-mail: (1) written letter of receipt of their complaint; (2) periodic status reports in the event an extension is granted; and (3) notification of the investigation conclusion in compliance with IV, F, 1, e. (CALEA 52.2.4)
9. If necessary, the internal affairs officer will assemble an official complaint file, which consists of the written formal complaint, a complaint processing checklist, and all supporting documentation and materials, including statements, reports, etc. Once the investigation is complete and final disposition is achieved the completed file will be securely stored in the Internal Affairs filing cabinet.
10. The employee shall be notified of the complaint and provided with a copy of the formal complaint, unless the investigation will be compromised as a result.

B. Formal Complaint by an Employee:

1. An employee shall file a formal complaint if he/she has a reasonable belief that a fellow employee committed the following offense (This list is not all-inclusive):
  - a. Excessive Force
  - b. Abuse of Authority
  - c. Sexual Harassment
  - d. Discrimination
  - e. Civil Rights Violation
  - f. Gross Misconduct
  - g. Gross Negligence
  - h. Criminal Act

C. Informal Complaint by a Citizen:

1. Any citizen who telephones or appears at the police department and wishes to file an informal complaint shall be referred to any department supervisor or internal affairs officer. In the absence of the above, any officer may receive the initial complaint. These types of complaints shall also be accepted from any source, i.e. telephone, e-mail, anonymous, etc.
2. Informal complaints shall be documented by the receiving officer and forwarded to a supervisor or internal affairs officer.
3. The supervisor or internal affairs officer may simply handle the complaint by informally speaking to the complainant and accused officer about the complaint. If there is no recommendation for disciplinary action, reports are not generally required.

4. If it appears the complaint is valid and discipline may be warranted, the supervisor or internal affairs officer shall initiate an initial inquiry.

D. Initial inquiry:

1. Supervisors and above have the authority to initiate an initial inquiry. They shall not look to higher authority for initiation of this action.
2. Corrective action taken by supervisors for observed minor violations that will not result in disciplinary action that exceeds a written warning do not need to complete the investigative steps as outlined below. Refer to paragraphs V. A. 1. and 2. and V. B. 2. for guidance.
3. An Incident Inquiry (I.I.) number must be obtained by the supervisor initiating the investigation.
4. The employee initiating the investigation must notify a lieutenant immediately. If off-duty or otherwise unavailable, the documentation shall then be forwarded to the internal affairs officer in a sealed envelope marked "CONFIDENTIAL."
5. The internal affairs officer shall review the complaint and notify the Chief of Police or his designate. A determination shall then be made to classify the complaint as major or minor, depending upon the circumstances of the incident. The complaint will then be processed as specified in paragraphs IV, E or IV, G of this order.
6. The internal affairs officer will assemble an official complaint file, which consists of the written formal complaint, if provided; a complaint processing checklist and all supporting documentation and materials, including statements, reports, etc. Once the investigation is complete and final disposition is achieved the completed file will be securely stored in the Internal Affairs filing cabinet.
7. The employee shall be provided with written notification of the initial inquiry, unless the investigation will be compromised as a result.

E. Major Complaint Investigation

1. Major Complaints shall be investigated by an Internal Affairs Officer, who will be designated by the Chief of Police or his designate via an official charge letter.
2. The subject of a major complaint shall be given written notice of the investigation. Such notice will provide the following: (CALEA 52.2.5)
  - a. A written statement of the allegations, including date.
  - b. The subject's specific rights and responsibilities, including requirement to provide reports and/or submit to an interview, and other information pertinent to administrative vs. criminal action.
  - c. An order not to discuss the investigation with unauthorized personnel.
3. Within 5 working days from notification or by request of the internal affairs officer, the employee shall submit to an interview and/or provide reports regarding the incident.
  - a. All interviews must be:
    - (1) recorded mechanically;

- (2) preceded by a written and oral Garrity Warning if a criminal investigation will result;
  - (3) held at a reasonable hour and when the employee is on duty, unless the investigation dictates otherwise;
  - (4) held no sooner than 12 hours from receipt of written notice of investigation and/or copy of written complaint.
- b. All reports shall contain the following:
  - (1) All pertinent information relating to the allegation and incident in question;
  - (2) A list of all officers and known witnesses;
  - (3) Any other information pertinent to the investigation.
4. A thorough, complete, and impartial investigation shall be conducted by the assigned internal affairs officer. This investigation may include the collection of evidence, acceptance of formal statements, and any other information relevant to the complaint and/or investigation. During the course of any internal affairs investigation all members tasked with conducting the investigation, or performing an internal affairs function has the authority to report directly to the Chief of Police. (CALEA 52.1.3)
5. All internal affairs and initial inquiry's should be completed within twenty (20) days after notice of investigation. Should the investigation dictate otherwise, the assigned internal affairs officer may obtain an extension from the Chief of Police. (CALEA 52.2.3)
6. When the assigned internal affairs officer completes his/her investigation, a findings report shall be forwarded to the Chief of Police. This report should include the following:
  - a. Details: Overview of the investigation.
  - b. Findings or a "conclusion of fact": The following findings are available to the investigator: (CALEA 52.2.8)
    - (1) **Unfounded:** Allegation is false.
    - (2) **Exonerated:** Incident occurred but was lawful and proper.
    - (3) **Not Sustained:** Allegation is not supported by sufficient evidence to clearly prove or conclusively disprove.
    - (4) **Sustained:** Allegation is supported by sufficient evidence.
    - (5) **Finding of Other Violation:** A violation did occur, but it is not directly related to the initial complaint.
    - (6) **Policy Failure:** Incident occurred, but the investigation revealed faulty or flawed policy. If a policy failure occurs, the Administrative Lieutenant may make recommendations regarding policy, procedure, or the modification/expansion of employee training. (CALEA 52.2.8)

F. Major Complaint Disposition

1. The involved employee(s) shall be notified by letter as to the completion of the investigation and a summary of the sustained charges, with copies distributed to the employee's supervisor (unless also the recipient of sustained charges), Mayor, City Administrator, and complaint file.
2. Written notice of a pre-disciplinary "Loudermill" meeting between the Employee, Chief of Police, Internal Affairs Officer will be provided. The employee has the option to include a legal or F.O.P. representative at the meeting. The purpose of the pre-disciplinary meeting is twofold: first, to provide formal notice of the sustained charges to the affected employee; and second, to provide the employee an opportunity to respond to the charges "at a meaningful time and in a meaningful manner."
3. Within a reasonable amount of time after the pre-disciplinary meeting, the Chief of Police shall make determination as to the merits of the sustained charges. Such charges may be deemed as follows:
  - a. To be without merit and not to warrant disciplinary action
  - b. To warrant disciplinary action less severe than removal, demotion, discharge or suspension (with or without pay), such as an oral or written reprimand.
  - c. To warrant disciplinary action to include removal, demotion, discharge or suspension (with or without pay).
4. Once determination is made, the Chief of Police shall provide written notification to the employee, to include recommended disciplinary action, if applicable. If the sustained charges warrant disciplinary action to include removal, demotion, discharge or suspension, the Police Chief shall make such recommendation in writing to the Appointing Authority (City Manager). As required by Civil Service procedures, the Appointing Authority shall uphold, overturn or modify the Chief's recommendation within 5 days. Refer to Civil Service Rules and Regulations and F.O.P. contract for further information and Civil Service Commission process. **(CALEA 26.1.4 c)**
5. Within five working days after receiving the written recommendation of the Chief of Police, the City Manager shall file a letter with the Secretary of the Alliance Civil Service Commission reflecting their decision accepting the misconduct charges or grounds for investigation against the employee set forth in the accusation to be deemed:
  - a. To be without merit
  - b. To not warrant disciplinary action
  - c. To warrant disciplinary action less severe than removal, demotion, discharge, or suspension, with or without pay, such as an oral or written reprimand
  - d. To warrant removal, demotion, discharge, or suspension with or without pay

6. The Alliance Civil Service Commission Secretary will deliver, within 4 hours of the City Manager's filing, a copy of the City Manager's finding to the Police Chief, and employee, via hand delivery or certified mail. A paper copy of this document will be placed in the Officer's personnel file and in the Department Internal Affairs files.
7. If the investigation was the result of a formal complaint, the complainant will be provided written notice of the findings of the investigation, with a copy distributed to the involved officer(s). Such correspondence shall not be distributed until applicable appeal process is exhausted or declined. Although the finding shall be communicated to the complainant, specific disciplinary action taken shall only be released if permitted by applicable personnel law or collective bargaining agreement.
8. If the investigation was the result of a formal complaint alleging criminal acts AND disposition of the case is termed as unfounded, the Chief of Police shall consider recommendation to the County Attorney to file charges of false reporting against the complainant. Such consideration must be measured against the Nebraska statute regarding false reporting and the probable cause standard must be met.

G. Minor Complaint Investigation

1. Once classified as minor and when possible, all minor complaints shall be referred to the employee's immediate supervisor for investigation. The supervisor shall then review all applicable reports, videos, and other pertinent materials, and interview witnesses and the involved officer(s) as appropriate. If the supervisor's investigation reveals new information which could be classified as a major complaint, he/she shall initiate an initial inquiry as specified in paragraph IV, D above. (CALEA 52.2.1 a)
2. Within a reasonable time period, the supervisor shall render his/her written findings to the appropriate division commander as specified in paragraph IV, E, 6, b above. If applicable, he/she shall also provide a recommendation for disciplinary action, which may include any of the following:
  - a. Counseling (oral warning)
  - b. Written Warning
  - c. Written Reprimand

Any recommendation may also include a request for remedial training.

H. Minor Complaint Disposition

1. Once the recommendation is approved by the appropriate division commander, the supervisor shall meet with the affected employee(s) to review the findings. If written disciplinary action is administered, the affected employee will be provided the following:
  - a. An opportunity to sign an acknowledgement of receipt for the action.
  - b. An opportunity to provide written comments on the disciplinary action form/letter or to attach written comments.

- c. A copy of the disciplinary action form or letter.
2. The original disciplinary action form or letter must be routed to the affected employee and a copy will be routed to city hall for inclusion in the employee's personnel file. In addition, "cc" copies shall be distributed to Chief of Police, Command Staff, and supervisor of the affected employee. These "cc" copies should be sent in PDF form via email and will be sent with the message "Once this document has been digested, for records retention purposes, please delete this PDF document. This document is available in the employee's personnel file."
3. If the investigation was the result of a formal complaint, the complainant will be provided written notice of the findings of the investigation, with a copy distributed to the involved officer(s).

I. Complaints - Miscellaneous:

1. Criminal Complaint Allegations: If an employee is accused of a criminal act, the Chief of Police or designate shall refer the case to the Box Butte County Attorney, Nebraska State Patrol, or refer the matter internally for investigation. If referred internally and probable cause exists to arrest an employee, the investigating officer shall confer with the Chief of Police or designate and the Box Butte County Attorney to determine:
  - a. If accused employee should be arrested immediately;
  - b. If legal action should be delayed pending further investigation;
  - c. If matter should be referred to the Box Butte County Attorney's Office for review.
2. Complaints Regarding Interpretation of Law: Complaints relative to differences of opinion between an officer and a citizen over an arrest or the issuance of a traffic citation shall be disposed of within the judicial system. Complaints shall not be investigated unless there is an allegation the officer violated a department policy.
3. Indebtedness Complaints: No employee shall be disciplined for failing to pay an unjust debt; justifiably disputed debt; usurious interest; a deficiency claim for property repossessed by a vendor unless such deficiency has been entered as a court judgment after an opportunity was provided for the debtor to appear and contest the claim; or a debt barred by a discharge in bankruptcy or by the statute of limitations. No employee shall be forced by the department to enter into an arrangement with one creditor that would make it impossible for him/her to pay other creditors a fair and proportionate amount or to reasonably provide his/her family with the necessities of life. An employee may be disciplined for failure to pay just debts.
4. Anonymous Complaints: Anonymous complaint investigations will necessarily be limited, typically based upon the severity of the allegation and the reasonable ability to confirm the information. (CALEA 52.1.1)

- J. Time Constraints: Complaints shall not be accepted and initial inquiries shall not be initiated if received more than 45 days after the alleged violation/incident occurred, except as follows:
1. When the complaint involves a criminal violation, the criminal statute of limitations shall prevail. Such limitations shall not prevent the department from taking administrative action deemed necessary to preserve the integrity of the department.
  2. When the complainant can show good cause for not submitting the complaint within the specified time limit.
  3. When a supervisor/commander can show good cause for not initiating an initial inquiry within the specified time limit.
- K. Court Dispositions: When a complaint stems from an arrest situation, such complaint will not normally be processed until a court disposition is determined.

## V. ADMINISTRATION OF DISCIPLINE

### A. Progressive Discipline

In general, supervisors/commanders shall adhere to the “progressive discipline” standard. This philosophy holds that administrative personnel (disciplinary) actions be meted out in increasingly severe doses to correct (not punish) employee performance deficiencies. However, this general philosophy in no way requires that one form of corrective action be administered prior to any other. Other aspects of individual disciplinary matters shall be considered (seriousness of infraction, criminal vs. non-criminal, mitigating factors, etc.) when considering appropriate disciplinary action. Generally, personnel actions fall into one of five categories (in order of severity) as follows:

1. Counseling (Oral Warning): Very minor infraction where the act was (a) not intentional, and/or (b) involved a slight degree of negligence and the supervisor is convinced that counseling will suffice in correction. Examples of criteria appropriate for counseling include tardiness, report deficiencies, paperwork errors, and vehicle concerns. The procedure for counseling is: (CALEA 26.1.4 b)
  - a. The supervisor will determine a reasonable time and discreet place to meet with the employee one-on-one.
  - b. The Supervisor will outline the actions which resulted in the counseling and advise them of the adverse consequences of their actions.
  - c. If the employee has any questions they will be addressed at that time.
  - d. A memo outlining the counseling will be signed by the employee with the original given to the affected employee and a copy routed to city hall for inclusion in the employee’s personnel file and “cc” copies distributed to City Manager, Chief of Police, Command Staff, Employee Supervisor, Internal Affairs Officer, and the employee. These “cc” copies should be sent in PDF form via email and will be sent with the message “Once this document has been digested, for records retention purposes, please delete this PDF document. This document is available in the employee’s personnel file.”

2. Warning (written): An infraction that was (a) intentional but minor in nature, and/or (b) involved a greater, but not serious degree of negligence, and the supervisor is convinced that a warning to the employee advising that a recurrence will result in reprimands in the future, will suffice. Original and "cc" copies distributed as outlined in V. A. 1. d. above.
3. Reprimand: An infraction that was (a) intentional and serious in nature, and/or (b) involved a serious degree of negligence, and the supervisor is convinced a reprimand is necessary to correct the behavior. The employee is advised that conduct of this nature will not be tolerated and that a recurrence will result in a suspension.
4. Suspension: An infraction that was (a) intentional and severe in nature, and/or (b) involved gross neglect, or (c) the past conduct of the employee demonstrates the infraction is repetitive in nature. The supervisor/commander should feel that a suspension is necessary to correct the behavior.
5. Demotion: An infraction that was (a) intentional and severe in nature, and/or (b) involved gross neglect, or (c) the past conduct of the employee demonstrates the behavior is repetitive in nature. The supervisor/commander must believe that the employee is no longer capable of functioning at a level required in the present rank.

Before any employee is demoted to a lower civil service classification, a vacancy must exist at that level or a temporary position created by the Alliance City Council.

6. Termination: An infraction, or series of infractions, so grave in nature that continued employment would affect the operational effectiveness of the Department and the employee's supervisor/commander is convinced that corrective action is not a possibility. If a non-probationary employee is terminated, the Chief of Police or designee will personally provide the following:
  - a. A letter stating the reason for termination (CALEA 26.1.7 a)
  - b. The effective date of termination; and (CALEA 26.1.7 b)
  - c. A statement of their eligible benefits at the time of termination (CALEA 26.1.7 c)

B. Disciplinary Authority (CALEA 26.1.5)

1. Employees at the rank of Sergeant or above may immediately suspend with pay and relieve from duty any subordinate for insubordination, cowardice, intoxication while on duty, or other violations serious enough to require immediate removal from duty. Immediate notification to the Chief of Police or designate is required. (CALEA 52.2.7)
2. Supervisors at all levels, including non-sworn supervisors, may counsel or issue written warnings. Original and "cc" copies distributed as outlined in V. A. 1. d. above.
3. Disciplinary action of reprimand or greater may be recommended by any supervisor, but such action shall be approved by the Chief of Police or designate.

4. The Chief of Police may discipline any member of the department. Discipline may be of the type appropriate to the situation up to and including a recommendation for termination to the appointing authority (City Manager).
5. All requirements of the Nebraska Civil Service Act and Alliance Civil Service Rules and Regulations shall apply.

C. Training As A Function of Discipline:

All training deficiencies identified during disciplinary proceedings may be assigned to an individual supervisor or a department training function for widespread dissemination, policy review, or individualized training.

1. Criteria for training include: (CALEA 26.1.4 a)
  - a. First time policy violations
  - b. Violations resulting in incidents which rarely occur
  - c. Incident where new methods would have deterred the original violation and department wide training would be useful
2. Procedures for using training as a function of discipline are:
  - a. The Chief of Police will determine if training an individual or department is necessary.
  - b. If approved, the training coordinator will organize the individual or department wide training.

D. Records: (CALEA 52.1.2)

The Police Department will maintain a record of all complaints against the agency and its employees. In order to provide uniform and confidential record keeping the following procedures will be followed:

1. Security:
  - a. In accordance with collective bargaining agreements all complaints, allegations, or personnel actions will be maintained in the employees personnel file at City Hall.
  - b. Internal affairs files are kept within a secure room in the police department.
  - c. Only persons with a need to know shall be provided access. This need must be based upon some part of the specific internal investigation and its relation to the department disciplinary process.
  - d. Digital copies of all records are maintained by the Internal Affairs officer and are access controlled. In the event a first line supervisor is conducting an investigation, they are to keep all "in-progress" documents password protected.
  - e. Final disciplinary records are maintained at City Hall and within the employee's personnel files. These include letters of reprimand, suspension, counseling forms, demotion, and termination.

- f. Internal Affairs evidence which is not in paper form (i.e. tapes and forensic evidence) will be booked into evidence through the standard procedure outlined in GO [O2101](#).
  - g. Evidence booked into the evidence vault will be entered into the records management system. The investigator will write the words "INTERNAL AFFAIRS" on the top of the property sheet. For internal affairs records they will be placed in a designated location in the evidence vault.
2. Retention:
- a. Internal Affairs records, disciplinary actions, and documentation shall be retained by Human Resources in the employee's Personnel File and in the Department's secure Internal Affairs filing cabinet: *Dispose of 10 years after termination*. Schedule 24-41
  - b. The Internal Affairs Officer will be responsible for maintenance of all files, records, and disposal.
3. Disposal ([CALEA 26.1.8](#))
- a. Upon completion of this period, if there have been no other sustained complaints or personnel actions which serve to identify a pattern of behavior, all records and reports may be removed from the employee's internal affairs file and destroyed. It is the employee's responsibility to request such action. The Chief of Police may maintain, at his discretion, a log indicating a description of sustained complaints for the purpose of reviewing continued courses of behavior by individual employees. Any file purged will be destroyed by shredding, or burned in cases of mass purging.
  - b. When files have been approved for disposal, the internal affairs office will request disposal of all logged evidence in the evidence vault and deletion of digital files.

## VI. EMPLOYEE OBLIGATIONS AND RIGHTS

In order to balance the best interest of our community, the department and its employees, it is imperative employees know and understand their obligations and rights if they are the subject or a witness in an investigation. These provisions pertain to all employees and are intended to serve as a standard by which all employees shall conduct themselves in the course of an investigation.

### A. Employee Rights

- 1. An employee may request an investigation if he/she justifiably feels threatened by a false accusation or a contrived situation involving false evidence. This request shall be made to the appropriate division commander.
- 2. Questioning of Employees:
  - a. If an employee refuses to make a statement or answer questions truthfully and completely concerning an investigation, the department can order him/her to do so (Garrity Rule). If an employee fails to comply,

he/she shall be subject to disciplinary action, which may involve job termination.

- b. If Garrity is invoked, any information an employee provides can be used against him/her in a disciplinary action or civil proceeding. However, this information may not be used against him/her in any criminal proceeding.
- c. Voluntary statements or confessions by an employee are admissible in subsequent criminal action against him/her.
- d. Questioning must be specifically, directly and narrowly related to his/her duties or those of another employee.
- e. Miranda rights must be given to an employee if he/she is accused of a criminal matter and is being questioned in a custodial setting.
- f. The accused employee does not have the right to legal counsel during an interview regarding an investigation of non-criminal conduct or when Garrity is invoked. The Sixth Amendment right to counsel does not apply to civil or administrative matters. However, the accused employee is entitled to F.O.P. representation during an interview if the following apply (Weingarten Rights):
  - (1) The employee must reasonably believe the interview shall result in disciplinary action against him/her.
  - (2) The employee must request representation.
  - (3) The right to representation cannot unduly interfere with the legitimate needs of the department.
- g. Employees shall be afforded all other rights as specified in the current collective bargaining agreement.

3. Right to Appeal:

- a. The accused employee may accept the imposed discipline or file an appeal in accordance to the F.O.P. Lodge #51 Collective Bargaining Agreement and Rules and Regulations of the Alliance Civil Service Commission. (CALEA 26.1.6)

4. Miscellaneous:

- a. Equipment Searches. The supervisor, commander, or investigator assigned to conduct an investigation against another employee may perform a warrantless search of department equipment (locker, desk, cruiser, etc.) assigned to the accused employee. Searches must be either routine, for security reasons, or there is a reasonable suspicion that an employee has engaged in misconduct (there must be a nexus between the misconduct and the search).
- b. Special Procedures.
  - (1) An employee may be ordered to submit to the following procedure(s) during an investigation:
    - (a) Psychological Evaluation

- (b) Intoxilyzer Testing
- (c) Chemical Testing
- (d) Any Medical or Laboratory Examination: for situations requiring biological evidence (CALEA 52.2.6 a)
- (e) Photographs: for situations in which identification is needed during an investigation (CALEA 52.2.6 b)
- (f) Physical line-up: for rare conditions when in-person identification is required (CALEA 52.2.6 c)
- (g) Polygraph Examination: A complainant may also be requested to undergo a polygraph examination to help substantiate an allegation against an employee. (CALEA 52.2.6 e)
- (h) Financial records or disclosure statements may be required only with a search warrant or subpoena when conditions exist to suspect financial malfeasance. (CALEA 52.2.6 d)
- (i) Any other procedure permitted by law.

- (2) These procedures must be specifically, directly & narrowly related to the employee's duties. There must also be articulable facts or circumstances that these procedures are needed. Refusal by an employee to submit to any of these procedures may result in disciplinary action, including termination.
- (3) The accused employee may submit a written request to undergo any aforementioned procedure(s) if he/she believes it would be beneficial to his/her defense.
- (4) The results of such procedures are limited to administrative uses except as provided by law.

c. Criminal/Administrative Investigation Information Flow: A criminal investigation of an employee shall be conducted independent of an internal investigation. Personnel from our department or other investigating agencies who are conducting a criminal investigation may not use information obtained from the internal investigation. However, personnel conducting an internal investigation may use information gleaned from the criminal investigation.

## B. Employee Obligations

- 1. An employee who has knowledge or information regarding the validity of a complaint or an investigation shall provide such information to the Administrative Commander as soon as he/she becomes aware of the information.
- 2. All sworn personnel are responsible to understand and follow this policy, and to provide complete and accurate information concerning such to any citizen who

inquires about our department's complaint procedures. Any non-sworn employee shall refer any citizen inquiry to his/her sworn supervisor.

3. All personnel assigned shall carry or have readily available, informational material about the complaint process and Formal Complaint. Any request by a citizen for such informational material or a Formal Complaint form shall be granted.

## VII. EMPLOYER OBLIGATIONS

The City of Alliance provides protection for employees from liability arising from acts or omissions leading to personal injury, death, or property destruction related to their law enforcement function. (CALEA 22.2.2 d)

- A. Indemnification: The city will indemnify and defend any employee against any claim or suit and pay any sums, which the employee shall be legally obligated to pay as a result of that employee's reasonable or lawful activities and exercise of authority within the scope of their duties and responsibilities as an employee of the Alliance Police Department.
- B. Liability Coverage:
  1. Collision, comprehensive, bodily injury and property damage liability insurance coverage is provided for employees when city vehicles are operated.
  2. Liability insurance may be subject to provisions of the collective bargaining agreement, if applicable.
- C. In compliance with LB791, the City of Alliance shall notify the Nebraska Crime Commission and the Nebraska Law Enforcement Training Center of any sworn employee LB 791 who is separated from employment voluntarily or involuntarily due to the following misconduct as described in N.R.S. §81-1456:
  1. Incompetence
  2. Felony violation of state or federal law
  3. Neglect of duty
  4. Violation of oath of office, code of ethics or other statutory duties
  5. Incapacitation
  6. Misdemeanor violation of state or federal law having a rational connection to the individual's fitness or capacity to serve as a law enforcement officer
  7. Dishonesty

## VIII. RECORD OF CHANGE:

12/01/2021	Complete rewrite.
02/15/2022	Update to include LB791