



# Lexington Police Department

Lexington, Kentucky

## GENERAL ORDER

BY THE AUTHORITY OF THE CHIEF OF POLICE

### **G.O. 1973-02J    Disciplinary Procedures of Sworn Officers**

Rescinds: GO 1973-02I

Effective Date: 06/19/17

Distribution

| All Department Officers

Originally Issued: 1973

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### **I. PURPOSE**

The purpose of this policy is to establish disciplinary procedures for all sworn officers of the Lexington Police Department.

### **II. POLICY**

It is the policy of the Lexington Police Department that all officers of the police department are responsible for discipline. Programs having impact on discipline within the department include:

- \* Selection
- \* Recognition
- \* Supervision
- \* Accountability

Since the elements are interdependent, the police department's code of conduct is characterized by a systems approach wherein the positive, as well as the punitive aspects of discipline are addressed.

The following components of the disciplinary system identify the methods to be applied:

- \* Recognition
- \* Counseling
- \* Training
- \* Punitive Action

### **III. AUTHORITY**

The procedures established within this policy are derived from authority provided by KRS Chapter 95, KRS 15.520 and the current collective bargaining agreements.

The attached operational rules (Appendix B) establish specific prohibited conduct and a range of recommended penalties for violations.

#### IV. DEFINITIONS

*Complaint:* An allegation of circumstance(s) or a specific act or omission which, if proven true, would amount to employee misconduct, or an expression of dissatisfaction with policy, procedure, practice, philosophy or service level.

*Formal Complaint (Form #111):* A complaint taken from any individual alleging misconduct on the part of any police officer, taken under oath in the form of an affidavit, signed and sworn to by the complainant and duly notarized. Formal complaints are investigated by the Public Integrity Unit (PIU).

*Informal Complaint:* A complaint taken from any individual alleging misconduct of any police officer and does not require a signed affidavit or possible testimony before the Urban County Council. Informal Complaints received by the Public Integrity Unit will be forwarded via currently approved methods to the affected officer's bureau for investigation. The range of corrective action authorized for a sustained informal complaint is counseling and/or remedial training.

*Information Only:* A complaint taken from an individual who alleges officer misconduct, which is of such a minor nature that the Public Integrity Unit is able to satisfy the complaining party during the initial contact.

*Misconduct:* An act or omission by an officer which, if proven true, would normally result in some form of counseling, training, or punitive action.

*Relieved From Duty:* A change of status ordered by a supervisor that temporarily removes an officer from their assignment. This action is designed to allow an orderly decision-making process to identify appropriate administrative action.

*Unfit For Duty:* May include a physical or mental condition which might, in the judgment of the supervisor, render the officer incapable of adequately performing duties or performing them in such a way as to reflect negatively upon or discredit the department or jeopardize the safety of any person or property.

#### Conclusion of Fact Defined As:

**Proper Conduct:** Allegation is true; the action of the department or the officer was consistent with department policy.

**Improper Conduct:** The allegation is true; the action of the department or the officer was inconsistent with department policy.

**Insufficient Evidence:** There is insufficient proof to confirm or to refute the allegation.

**Unfounded Complaint:** Either the allegation is demonstrably false or there is no credible evidence to support it.

**Policy Failure:** The action of the department or the officer was consistent with department policy, but the policy did not take into account the circumstances present in this instance.

Recommended Disciplinary Action:

**Written Reprimands:** Written reprimands are a permanent written documentation of disciplinary action that remain on file with the Public Integrity Unit and in the officer's personnel file.

**Suspension:** Recommended suspension time shall be calculated in hours, days, weeks or months.

Each day of suspension is the equivalent of a 10-hour workday, regardless of the officer's assignment.

A week's suspension is the equivalent of a 40-hour workweek, and a month's suspension is the equivalent to four 40-hour workweeks.

**Suspensions over 40 hours:** Service shall start within 60 calendar days of Urban County Council approval.

Once service is initiated, suspensions over 40 hours shall be served consecutively.

**Suspensions of 40 hours or less:** Service shall start within 30 calendar days of Urban County Council approval.

All hours of a suspension of 40 hours or less shall be served within the same calendar week.

**Note:** Exceptions to the suspension service start date requirements include those situations when officers are already on a leave status, including military leave or disability leave, or other extenuating circumstance where the officer is not available.

Working any scheduled assignment (for overtime or for straight time) is prohibited during any calendar week containing any suspension hours.

**Exception:** Court appearances (per current collective bargaining agreements).

Court absence forms are required for each business day of a suspension, regardless if it is a regular duty day or it is an RDO that is a business day. This form shall be submitted immediately upon scheduling the service of a suspension.

**V. DISCIPLINARY PROCEDURE**

**A. Recognition as a Function of Discipline**

1. Consistent with GO series 1993-10 Awards and Commendations, the Chief of Police may recognize employees with various honors and recognitions as outlined in the policy.

B. Counseling as a Function of Discipline

1. Counseling may be employed by itself or in conjunction with one or more of the other components of the disciplinary system. The following criteria for using counseling must be satisfied:

a. There must exist a reasonable belief that the officer has an existing problem or is experiencing difficulty understanding, adjusting to or internalizing matters which are:

1. Job Related (pertaining to assigned tasks)
2. Personnel Policies
3. Interpersonal (involving relationships with co-workers)
4. Personal (matters which are largely personal) but which are affecting the officer's work performance.

b. Evidence must be present indicating that the officer's problem is having a detrimental effect on their work performance.

c. There must be reason to believe that counseling may assist the officer in a supportive way or otherwise have a positive impact on the officer's work performance.

2. The following procedures are established for using counseling as a function of discipline.

a. Counseling may be initiated by any supervisor. In addition, the Disciplinary Review Board may recommend counseling.

b. Officers may be required to receive counseling facilitated by the police chaplain or outside counseling at the direction of the Chief of Police.

c. Counseling sessions that are done at the bureau level or lower shall be documented at that level. Counseling at the direction of the Disciplinary Review Board or the Chief of Police shall be documented in the officer's personnel file.

C. Training as a Function of Discipline

1. When an officer fails to demonstrate minimum levels of proficiency, the proper disciplinary procedure is to order the officer into a refresher or remedial training class. Training is a means of improving performance and should be used as a means of enhancing an officer's abilities and motivation.

2. Bureau Assistant Chiefs are permitted to use counseling and training- which are not

disciplinary- as a means to improve job performance.

#### D. Punitive Actions as a Function of Discipline

1. Punitive actions constitute a component of the department's disciplinary system. Punitive actions permitted include one or more of the following:

- a. Reprimand
- b. Demotion
- c. Suspension without Pay
- d. Dismissal
- e. Open Recommendation

2. Offenses and recommended punishments are specified in the operational rules.

3. The theory of progressive discipline is used by the department and officers should understand that a record of recent minor infractions may result in proceedings against the officer under Operational Rule 1.11 (Unsatisfactory Performance). This produces the potential for a severe penalty even though the recommendation may be mild for the individual violations. A similar circumstance exists in situations in which an officer's one act of misconduct may violate more than one rule. These multiple violations may result in an alteration of the recommendation. An incident may be so serious, however, as not to require progressive discipline.

4. When considering prior complaints or discipline for progressive discipline, the department, including the Disciplinary Review Board, shall only consider discipline or complaints that occur within the time limits identified by the current collective bargaining agreement for the affected officer unless; however, both parties agree in writing to extend the period beyond the contractual time limits.

#### E. Complaint Receiving and Processing

1. All complaints against the department or officers of the department shall be investigated. Complaints may be received from the public by any electronic format, by telephone, letter, in person, by referral, or anonymously. Inquiries from the public concerning department policy and practices may not in fact constitute a complaint. However, employees receiving such inquiries shall evaluate if the inquiry constitutes a question, open records request, or complaint against the department or department employees. Anonymous complaints will be given due consideration, and if corroborating evidence is obtained, the anonymous complaint will be investigated. In this instance the investigating officer will become the complainant, should circumstances require. Malicious and deliberate false accusations shall also be investigated to protect the integrity of the department and its employees. The extent

of the investigations of this nature may be limited to substantiating the falsity of the accusations.

2. Any employee of the department receiving a complaint of misconduct by a police officer may refer the individual to the Public Integrity Unit or to any administrative level of the officer's assigned bureau.

3. Complaints are classified as Formal or Informal, and are processed as follows.

#### F. Informal Complaints

1. Informal complaints received by bureau Assistant Chiefs or supervisors may be investigated and resolved at that level, providing that the complainant is satisfied with the actions taken. If the complainant is not satisfied, the complainant should be referred to the Public Integrity Unit. Action taken at the bureau level will be accurately documented via the currently approved informal complaint reporting method.

2. Informal complaints received by the Public Integrity Unit will be forwarded to, and investigated by, the bureau to which the officer is assigned. The Chief of Police will receive information on informal complaints received and investigated on an annual basis, or as requested.

3. The bureau investigating the allegation shall notify the complainant, by telephone or letter, verifying that the complaint was received for processing. This shall be noted on the currently approved informal complaint reporting method where designated.

4. The bureau investigating the allegation shall notify the complainant, by telephone or by letter, every thirty (30) days to advise them of the status of the investigation until resolved. Each notification shall be documented on the currently approved informal complaint reporting method.

5. Complainants shall be notified, by telephone or letter, by the investigating bureau of the results of the investigation upon its conclusion with contact documented on the currently approved informal complaint reporting method.

6. All informal complaints shall be forwarded to the Public Integrity Unit for entry into the Early Indication System (IAPro).

7. Informal complaints may be escalated to formal complaints should circumstances warrant. The bureau Assistant Chief, or designee, shall have the authority to determine if the informal complaint can be resolved with the recommendation received, or if circumstances warrant a different remediation or a formal complaint. In addition, escalation may also occur if the bureau level investigation finds sufficient evidence to substantiate a complaint independent of the original allegation, or if the person chooses to change their complaint to a formal process.

a. If an informal complaint is escalated to a formal complaint, the Public Integrity Unit will immediately assume investigative responsibility. The bureau that was initially investigating the allegation shall immediately transfer all investigative records via the currently approved procedures to the Public Integrity Unit.

G. Formal Complaint (Form #111) (Internal)

1. All Formal Complaints are initiated when a Form #111 is signed by the complainant.
2. Any employee having reason to file a formal complaint against an officer of the department shall report to the Public Integrity Unit to initiate the formal complaint process.
3. In the course of the day-to-day operations of the department supervisors, of necessity, must verify certain information regarding the action of officers under their supervision. Nothing within this policy shall be construed to prohibit the discharge of supervisory responsibility. In this particular circumstance, one of the following actions will result:
  - a. A supervisor may relieve from duty an officer under their supervision for a period of not more than one work day with pay on the grounds that the officer is unfit for duty. The supervisor will promptly notify their chain of command and forward notification to the Chief's Office, via the chain of command.
  - b. In the event the supervisor fails to obtain a satisfactory reply or action from the officer, or the officer refuses to reply to the inquiry, then the supervisor shall document all facts regarding the incident and forward this documentation via their chain of command to the bureau assistant chief for direction.

H. Formal Complaint (Form #111) (Member of the Public)

1. A member of the public may file a formal complaint against an officer in one of two ways:
  - a. The complainant goes to the Public Integrity Unit and completes Form #111, as prescribed by KRS 15.520.
  - b. The complainant goes to the LFUCG Council Clerk and files a written charge against the officer.
2. The Public Integrity Unit shall investigate all formal complaints.
3. The Public Integrity Unit shall provide the complainant with an appropriately redacted copy of the Form #111.
4. The Public Integrity Unit shall notify the complainant, in writing, every thirty (30) days to update them of the status of the investigation.

5. Complainants shall be notified by the Public Integrity Unit, in writing, of the results of the investigation upon its conclusion.

6. When a complainant declines to file a formal complaint against an officer covered by a current collective bargaining agreement, then the complaint shall be recorded as an informal complaint or information only report and be investigated at the bureau level. However, if independent information supports a formal complaint, then the formal complaint (Form #111) may be signed by a supervisor and the formal complaint will be investigated by the Public Integrity Unit.

#### I. Internal Inquiries

1. The performance of the department, and of individual officers, is subject to review at any time. This review may take the form of an internal inquiry.

2. The internal inquiry does not require the existence of a formal complaint.

3. Internal inquiries are not necessarily allegations of misconduct; they are a simple investigative reaction to information.

4. Officers who refuse to respond to these inquiries by citing the protections of KRS 15.520 (Police Officer's Bill of Rights) may be considered for further disciplinary action.

#### J. Officer Notification

1. Officers shall be notified of the formal complaint by the Public Integrity Unit as soon as practical, unless such notification would hinder the investigation.

2. The notification shall include an Officer's Rights Form and a copy of the signed Form #111.

#### K. Investigation Time Limits

##### 1. Formal Complaints

a. Formal complaints investigations shall be completed in sixty (60) days.

1. The sixty days time period shall begin with the date the Form #111 is signed by the complainant, and ends on the date the investigation is submitted by the Public Integrity Unit to the Chief of Police for review.

b. The Public Integrity Unit shall request, in writing, an extension from the Chief of Police when extenuating circumstances requires the PIU formal complaint investigation to exceed the sixty days limit.

##### 2. Informal Complaints

a. An informal investigation shall be promptly initiated by the appropriate bureau within 7 days of receipt.

b. The Public Integrity Unit will track the progress of and ensure the completion of informal investigations that originate in the Public Integrity Unit.

c. An informal investigation shall be completed within 30 days of receipt.

1. The investigating bureau shall request an extension from the Public Integrity Unit if the investigation is not completed within 30 days.

L. Chief's Discretionary Meeting

1. Per the terms of the current collective bargaining agreements, the Chief of Police has the sole discretion to meet with the officer at the conclusion of the Public Integrity Unit investigation, and prior to the Disciplinary Review Board review, to discuss the formal complaint.

M. Disciplinary Review Board

1. The Disciplinary Review Board may review formal complaints made against department officers.

2. All officers shall be required to appear before the board as directed.

3. The Disciplinary Review Board will hear/review all available evidence and make recommendations to the Chief of Police concerning disciplinary actions.

4. The officer will be advised of the board's recommendations at the conclusion of the hearing.

5. The Disciplinary Review Board shall consist of Assistant Chiefs and Commanders selected by the Chief of Police or designee.

a. The number of members assigned to the board will be based on the current collective bargaining agreement pertaining to the officer's disciplinary case being heard before the board.

6. If a current collective bargaining agreement applies to the officer being reviewed, the board will include a voting representative appointed by the president of the FOP, in accordance with the current collective bargaining agreement.

a. In the event a commander or assistant chief appears before the board, the voting representative appointed by the FOP president must be of equal rank to the commander's or assistant chief's permanent rank (e.g. a commander or assistant chief appearing before the board will have a permanent rank of lieutenant).

7. Officers covered by a collective bargaining agreement may bring a FOP lodge representative to the board hearing as support. The officer shall not consult nor communicate with the lodge representative during the Disciplinary Review Board.
8. Officers not covered by a current collective bargaining agreement will appear before a board comprised of assistant chiefs and commanders selected by the Chief of Police or designee.
9. A representative of the Public Integrity Unit and a representative of the Department of Law shall serve as liaisons to the board in a non-voting capacity.

N. Disciplinary Consultation

1. The Chief of Police shall meet with the accused officer to discuss the recommendation of the Disciplinary Review Board.
2. The Chief of Police may accept, reject, or alter the Disciplinary Review Board's recommendation.
3. During this meeting, the accused officer may accept or reject the disciplinary recommendation discussed with the Chief of Police.
  - a. If the accused officer accepts the disciplinary recommendation, the Office of the Chief forwards the agreed upon final recommendation, along with the entire investigative file, to the Commissioner of Public Safety for disposition consistent with the policies of the Urban County Government.
  - b. If the accused officer rejects the disciplinary recommendation, the Office of the Chief forwards its final recommendation, along with the entire investigative file, to the Department of Law for disposition consistent with the policies of the Urban County Government.

O. Agreement of Conformity with KRS 95.450 and Release

1. If the Chief of Police finds probable cause to believe the accused officer committed the violation alleged, the Chief of Police may offer the officer the opportunity to accept disciplinary action subject to the provisions of the agreement of conformity.
  - a. Recommendations made by the Chief of Police are not binding on the Urban County Council.
2. Any agreement of conformity accepted by the officer from the Chief is also subject to time limits and procedures outlined in the CBA.
3. Officers contemplating a waiver or insisting on a hearing should be aware that the department's recommendations are not binding on the Urban County Council.

P. Conclusion of Fact

1. The conclusion of the formal complaint disciplinary process is structured to provide information to all participants in the process. The Chief of Police will notify each participant, in writing, of the results.

- a. Proper Conduct
- b. Improper Conduct
- c. Insufficient Evidence
- d. Unfounded Complaint
- e. Policy Failure

## **VI. RIGHTS OF OFFICERS**

A. See Appendix A for KRS 95.450, KRS 95.460, and KRS 15.520.

## **VII. INVESTIGATIVE RECORDS OF DISCIPLINARY ACTIONS**

A. Pursuant to the Records Retention Schedule from the Kentucky Department for Libraries and Archives, the following schedule for purging documents applies:

### 1. Formal Complaints

- a. All records related to the investigation of a formal complaint shall be maintained by the Public Integrity Unit.
- b. These records are destroyed 5 years after termination of employment, pursuant to State Archives and Records Commission L4905 dated 04-14-2016.
- c. At the discretion of the Chief of Police, the Form #111 and investigative file will be retained in the Public Integrity Unit for a longer period of time.
- d. Audio recordings created during an investigation after transcription shall be maintained one year after file is closed. All interviews with officers under investigation who are covered by a current collective bargaining agreement shall be recorded. Procedures for obtaining copies of taped statements are described in the current collective bargaining agreement. The department may choose to record and/or transcribe statements given by the complainant, witnesses, or officer not under investigation.

### 2. Informal Complaints

- a. The currently approved format of informal complaints records and documents shall be retained by the Public Integrity Unit for a minimum of two years.
- b. Pursuant to L4906, records related to the investigation of an informal

complaint will be destroyed 2 years after the close of investigation.

c. At the discretion of the Chief of Police, the currently approved format of informal complaints records and documents will be retained in the Public Integrity Unit for a longer period of time.

## **VIII. CIVIL LITIGATION**

A. In order to have the benefit of any information or evidence discovered during civil litigation involving the conduct of an officer, but at the same time provide for flexibility to deal immediately with serious infractions by officers, the following procedure dealing with the impact of civil litigation upon disciplinary procedures is adopted as an extenuating circumstance.

B. If related civil litigation is filed against the government, the department, or an officer at any point during the disciplinary procedure involving the officer, the following shall apply:

1. If an informal or anonymous complaint only has been received, and there is not sufficient corroborating evidence to warrant filing a formal complaint, the investigation will be held in abeyance until the civil litigation, including appeals, if any, are finally concluded.
2. If a formal complaint has been filed and the allegations, if true, would not in the opinion of the Chief of Police warrant dismissal, the investigation will be held in abeyance until the civil litigation, including appeals, if any, are finally concluded.
3. If a formal complaint has been filed and the allegations, if true, would in the opinion of the Chief of Police warrant dismissal, the investigation will continue until completed pursuant to this policy.
4. Notwithstanding the foregoing, the department may, at any time, act to preserve any evidence which is in danger of being lost if there is a delay in the investigation.

## **IX. REQUIREMENTS FOR MEDICAL AND LAB TESTING, PHOTOS, FINANCIAL DISCLOSURE AND POLYGRAPH**

A. Officers covered by a current collective bargaining agreement shall undergo a polygraph in accordance with current collective bargaining agreements. Any information resulting from any of the above examinations will not be used in a criminal prosecution of the officer. Failure or refusal to obey an order to submit to any of the above will constitute insubordination.

B. An officer may be required to submit to a medical or laboratory examination, undergo a polygraph examination, or be photographed, at the department's expense, when such test or participation is necessary in an internal investigation which is specifically, directly, and narrowly related to the officer's performance of official duties or fitness for duty.

C. Financial disclosure statements will only be required when it is related to an official internal investigation and then only when it specifically, directly, and narrowly relates to the

official acts of the officer in the performance of their duties.

## **X. REQUIREMENTS RELATED TO THE PRISON RAPE ELIMINATION ACT (PREA)**

### **A. Preservation of ability to protect detainees from contact with abusers.<sup>1</sup>**

1. Neither the agency nor any other governmental entity responsible for collective bargaining on the agency's behalf shall enter into or renew any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with detainees pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted.<sup>2</sup>

2. Nothing in this standard shall restrict the entering into or renewal of agreements that govern:<sup>3</sup>

a. The conduct of the disciplinary process, as long as such agreements are not inconsistent with the provisions of PREA standards 115.172 and 115.176:<sup>4</sup>

1. 115.172 (Evidentiary standard for administrative investigations):

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated and<sup>5</sup>

2. 115.176 (Disciplinary sanctions for staff);

a. Staff shall be subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies.<sup>6</sup>

b. Termination shall be the presumptive disciplinary sanction for staff who have engaged in sexual abuse.<sup>7</sup>

c. Disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) shall be commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories.<sup>8</sup>

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<sup>1</sup> Prison Rape Elimination Act [PREA] 115.166, US Department of Justice, 28 C.F.R. Part 115. May 17, 2012. Page 19.

<sup>2</sup> Prison Rape Elimination Act [PREA] 115.166 (a). Page 19

<sup>3</sup> Prison Rape Elimination Act [PREA] 115.166 (b). Page 19

<sup>4</sup> Prison Rape Elimination Act [PREA] 115.166 (b. 1). Page 19

<sup>5</sup> Prison Rape Elimination Act [PREA] 115.172. Page 21

<sup>6</sup> Prison Rape Elimination Act [PREA] 115.176 (a). Page 21

<sup>7</sup> Prison Rape Elimination Act [PREA] 115.176 (b). Page 21

<sup>8</sup> Prison Rape Elimination Act [PREA] 115.176 (c). Page 21

d. All terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and to any relevant licensing bodies.<sup>9</sup>

or<sup>10</sup>

b. Whether a no-contact assignment that is imposed pending the outcome of an investigation shall be expunged from or retained in the staff member's personnel file following a determination that the allegation of sexual abuse is not substantiated.<sup>11</sup>

**Note: APPENDIX A begins on the next page.**

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<sup>9</sup> Prison Rape Elimination Act [PREA] 115.176 (d). Page 21

<sup>10</sup> Prison Rape Elimination Act [PREA] 115.166 (b. 1). Page 19

<sup>11</sup> Prison Rape Elimination Act [PREA] 115.166 (b. 2). Page 19.

## APPENDIX A

## KENTUCKY REVISED STATUTES

**KRS 95.450 Discipline of members of police and fire departments in urban-county governments and cities on DLG's registry of cities that belonged to the second and third classes on January 1, 2014.**

- (1) The provisions of this section shall only apply to members of police and fire department in urban-county governments and those cities that are included in the Department for Local Government registry created pursuant to subsection (9) of this section.
- (2) Except as provided in subsection (6) of this section no member of the police or fire department in cities listed on the registry pursuant to subsection (9) of this section or an urban-county government shall be reprimanded, dismissed, suspended or reduced in grade or pay for any reason except inefficiency, misconduct, insubordination, or violation of law or of the rules adopted by the legislative body, and only after charges are preferred and a hearing conducted as provided in this section.
- (3) Any person may prefer charges against a member of the police or fire department by filing them with the clerk of the legislative body who shall immediately communicate the same to the legislative body. The mayor shall, whenever probable cause appears, prefer charges against any member whom he believes guilty of conduct justifying his dismissal or punishment. The charges shall be written and shall set out clearly the charges made. The person preferring the charges may withdraw them at any time prior to the conclusion of the hearing. The charges may thereupon be dismissed.
- (4) Upon the hearing all charges shall be considered traversed and put in issue, and the trial shall be confined to matters related to the issues presented. Within three (3) days after the charges have been filed with the legislative body, that body shall proceed to hear the charges. At least two (2) days before the hearing the member accused shall be served with a copy of the charges and a statement of the day, place and hour at which the hearing of the charges will begin. The person accused may, in writing, waive the service of charges and demand trial within three (3) days after with charges are filed with the clerk.
- (5) The legislative body may summon and compel attendance of witnesses at hearings by subpoena issued by the clerk of that body and served upon the witnesses by an officer authorized to serve court subpoenas. If any witness fails to appear in response to a summons or refuses to testify concerning any matter on which he may lawfully be interrogated, any District Judge, on application of the commission, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the District Court. The member accused may have subpoenaed any witnesses he may desire, upon furnishing their names to the clerk. The action and decision of the body on the charges shall be reduced to writing and entered in a book kept for that purpose, and the written charges filed in the matter shall be attached to the book containing the decision.
- (6) When the appointing authority or the head of the department has probable cause to believe a member of the police or fire department has been guilty of conduct justifying dismissal or punishment, he or it may suspend the member from duty or from both pay and duty, pending trial, and the member shall not be placed on duty, or allowed pay, until the charges are heard. If the

member is suspended, there shall be no continuances granted without the consent of the member accused.

(7) The legislative body shall fix the punishment of a member of a police or fire department found guilty, by a reprimand, suspension for any length of time not to exceed six (6) months, by reducing the grade if the accused is an officer, or by combining any two (2) or more of those punishments, or by dismissal from the service.

(8) A member of a police or fire department found guilty pursuant to the provisions of this section shall have the right to appeal to the Circuit Court under KRS 95.460.

(9) On or before January 1, 2015, the Department for Local Government shall create a registry of cities that shall be required to comply with the provisions of this section. The Department for Local Government shall include each of those cities on the registry that were classified as cities of the second or third class as of January 1, 2014. The Department for Local Government shall make the information included on the registry available to the public by publishing it on its Web site.

**Effective:** January 1, 2015

#### **KRS 95.460 Appeals to Circuit Court and Court of Appeals.**

(1) Any member of the police or fire department found guilty by the legislative body of any charge, as provided by KRS 95.450, may appeal to the Circuit Court of the county in which the city or urban-county government is located, but the enforcement of the judgment of the body shall not be suspended pending appeal. The notice of the appeal shall be filed not later than thirty (30) days after the date the legislative body makes its determination on the charge.

(2) Upon request of the accused, the clerk of the legislative body shall file a certified copy of the charges and the judgment of that body in the Circuit Court. Upon the transcript being filed, the case shall be docketed in the Circuit Court and tried as an original action.

(3) If the clerk fails to certify the transcript to the Circuit Court within seven (7) days after the request is made, the party aggrieved may file an affidavit in the Circuit Court setting out as fully as possible the charges made, the time of the hearing, and the judgment of the legislative body, together with a statement that demand for transcript was made upon the clerk more than five (5) days before the filing of the affidavit. Upon the filing of the affidavit in the Circuit Court, the case shall be docketed, and the Circuit Court may compel the filing of the transcript by the clerk by entering the proper mandatory order, and by fine and imprisonment for contempt. The appeal shall have precedence over other business, and be determined speedily.

(4) An appeal will lie from the judgment of the Circuit Court to the Court of Appeals as in other cases.

**Effective:** January 1, 2015

**KRS 15.520 Complaints against police officers -- Manner of investigation and hearing -- Statutory provisions that do not apply. (Effective June 24, 2015)**

(1) As used in this section:

(a) “Citizen” means any individual who is not:

1. A member or supervisor within the law enforcement agency that employs an officer; or
2. An elected or appointed official within the unit of government under which the law enforcement agency that employs the officer is organized;

(b) “Complaint” means any statement by a citizen, whether written or verbal, that alleges any type of misconduct by an officer, including statements that are submitted or received anonymously;

(c) “Disciplinary action” means termination, demotion, a decrease in pay or grade, suspension without pay, and a written reprimand.

(d) “General employment policies” means the rules, regulations, policies, and procedures commonly applicable to the general workforce or civilian employees that are not unique to law enforcement activities or the exercise of peace officer authority, regardless of whether those rules, regulations, policies, and procedures exist or appear in a departmental manual or handbook that is solely applicable to a law enforcement department or agency within the unit of government employing the officer;

(e) “Interrogation” means a formal investigative interview and does not mean conversations or meetings of supervisory personnel and subordinate officers that are not intended to result in disciplinary action, such as conversations or meetings held for the purpose of providing corrective instruction counseling or coaching;

(f) “Law enforcement procedures” means only those policies, rules, and customs that:

1. Are specific to the conduct of officers in the exercise of law enforcement powers and functions, including, without limitation; use of force, conduct in the course of pursuits, conduct during stops or detention of citizens, conduct in the course of interacting with, assisting, or questioning of citizens, and investigative conduct;
2. Are carried out in the course of peace officer functions;
3. Are not general employment policies; and
4. May exist in either written form or in the form of unwritten standards, practices, or protocols generally accepted and applied in the law enforcement profession;

(g) “Misconduct” means any act or omission by an officer that violates criminal law, law enforcement procedures, or the general employment policies of the employing agency; and

(h) “Officer” means a person employed as a full-time peace by a unit of government that

receives funds under KRS 15.410 to 15.510 who has completed any officially established initial probationary period of employment lasting no longer than twelve (12) months not including, unless otherwise specified by the employing agency, any time the officer was employed and completing basic training required by KRS 15.404.

(2) In order to establish a minimum system of professional conduct for officers of local units of government of this Commonwealth, the following standards are stated as the intention of the General Assembly to deal fairly and set administrative due process rights in certain disciplinary matters concerning those officers of an employing unit of government that participates in the Kentucky Law Enforcement Foundation Program fund administered pursuant to KRS 15.430 and, at the same time, to provide a means for redress by the citizens of the Commonwealth for wrongs allegedly done to them by officers covered by this section.

(3) Any complaint taken from a citizen alleging misconduct on the part of any officer shall be taken as follows:

(a) If the complaint alleges criminal activity by an officer, the allegations may be investigated without a signed, sworn complaint of the citizen;

(b) If the complaint alleges any other type of violation not constituting criminal activity, including violations of law enforcement procedures or the general employment policies of the employing agency, an affidavit, signed and sworn to by the citizen, shall be obtained, except as provided by paragraph (c) of this subsection; or

(c) If a complaint is required to be obtained and the citizen, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the employing agency may investigate the allegations, but shall bring charges under subsection (6) of this section against the officer only if the employing agency can independently substantiate the allegations absent the sworn statement of the citizen.

(4) (a) When an officer is accused of an act or omission that would constitute a violation of law enforcement procedures by an individual within the law enforcement agency employing the officer, including supervisors and elected or appointed officials of the officer's employing agency, the employing agency shall conform the conduct of any investigation to the provisions of subsection (5) of this section, shall formally charge the officer in accordance with subsection (6) of this section, and shall conduct a hearing in accordance with subsection (7) of this section before any disciplinary action shall be taken against the officer.

(b) The provisions of this subsection shall not prevent the employing agency from suspending the officer, with or without pay, during an investigation and pending the final disposition of any formal charges, except that an officer suspended without pay shall be entitled to full back pay and benefits for the regular hours he or she would have worked if no formal charges are brought or the hearing authority finds the officer not guilty of the charges.

(c) An employing agency shall not be required to follow the provisions of this section in addressing conduct by the officer that would constitute a violation of the general employment policies of the employing agency.

- (5) (a) Any complaint filed by a citizen under subsection (3) of this section or any allegation of conduct that would constitute a violation of law enforcement procedures under subsection (4) of this section shall be investigated by the employing agency or another designated law enforcement agency in accordance with the provisions of this subsection if the employing agency determines that an investigation of the complaint or the alleged conduct is warranted.
- (b) No threats, promises, or coercions shall be used at any time against any officer while he or she is a suspect in a criminal case or has been accused of a violation of law enforcement procedures. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period shall not be deemed coercion. Prior to or within twenty-four (24) hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in writing of the reasons for the suspension.
- (c) Unless otherwise agreed to in writing by the officer, no police officer shall be subjected to interrogation for alleged conduct that violates law enforcement procedures, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The notice of interrogation shall include a statement regarding any reason for the interrogation and shall be served on the officer by certified mail, return receipt requested, or by personal delivery.
- (d) The interrogation shall be conducted while the officer is on duty. The officer may be required to submit a written report of the alleged incident if the request is made by the employing agency no later than the end of the subject officer's next tour of duty after the tour of duty during which the employing agency initially was made aware of the complaint.
- (e) If an officer is under arrest, or likely to be arrested, or a suspect in any criminal investigation, he or she shall be afforded the same constitutional due process rights that are accorded to any civilian, including, but not limited to, the right to remain silent and the right to counsel, and shall be notified of those rights before any questioning commences.
- (6) (a) If it is determined through investigation or other means that the facts alleged in a citizen complaint or in an accusation of a violation of law enforcement procedures warrant charging the officer, the charges shall be made in writing with sufficient specificity so as to fully inform the officer of the nature and circumstances of the alleged violation in order that he or she may be able to properly defend himself or herself.
- (b) The charge shall be signed by a representative of the employing agency, shall set out the disciplinary action recommended or imposed, and shall be served on the officer in writing by certified mail, return receipt requested, or by personal delivery.
- (c) When an officer has been charged with a violation of law enforcement procedures, no public statements shall be made concerning the alleged violation by any person or persons of the employing agency or the officer so charged, until final disposition of the charges.
- (d) No officer as a condition of continued employment by the employing agency shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature.

(7) Unless waived by the charged officer in writing, a hearing shall be conducted by the officer's appointing authority to determine whether there is substantial evidence to prove the charges and to determine what, if any, disciplinary action shall be taken if substantial evidence does exist. In conducting a hearing, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any officer charged, except as otherwise agreed to in writing by the officer and the employing agency:

- (a) The accused officer shall have been given at least twelve (12) days' written notice of any hearing. The notice of hearing shall be served on the officer by certified mail, return receipt requested, or by personal delivery.
- (b) Copies of any sworn statements or affidavits to be considered by the hearing authority and any exculpatory statements or affidavits shall be furnished to the officer no less than twelve (12) days prior to the time of any hearing;
- (c) At any hearing based upon the sworn complaint of a citizen, the citizen shall be notified to appear at the time and place of the hearing by certified mail, return receipt requested, or by personal delivery;
- (d) If the return receipt has been returned unsigned, or the individual does not appear, except due to circumstances beyond his or her control he or she cannot appear at the time and place of the hearing, any charge resulting from a complaint made by that citizen shall not be considered by the hearing authority and shall be dismissed with prejudice;
- (e) The accused officer shall have the right and opportunity to obtain and have counsel present, and to be represented by counsel;
- (f) The appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes shall subpoena and require the attendance of witnesses and the production by them of books, papers, records, and other documentary evidence at the request of the accused officer or the charging party. If any person fails or refuses to appear under the subpoena, or to testify, or to attend, or produce the books, papers, records, or other documentary evidence lawfully required, the appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes may report to the Circuit Court or any judge thereof the failure or refusal, and apply for a rule. The Circuit Court, or any judge thereof, may on the application compel obedience of the requirements of a subpoena issued from the court;
- (g) The accused officer shall be allowed to present witnesses and any documentary or other relevant evidence the officer wishes to provide to the hearing authority, and may cross-examine all witnesses called by the charging party;
- (h) If any officer who has been suspended with or without pay is not given a hearing as provided by this section within seventy-five (75) days of any charge being filed pursuant to this section, the charge shall be dismissed with prejudice and not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits;

- (i) Any officer who has been suspended without pay who is found not guilty of the charges by the hearing authority shall be reinstated with full back pay and benefits for the regular hours he or she would have worked;
  - (j) The failure to provide any of the rights or to follow the provisions of this section may be raised by the officer with the hearing authority. The hearing authority shall not exclude proffered evidence based on failure to follow the requirements of this section but shall consider whether, because of the failure, the proffered evidence lacks weight or credibility and whether the officer has been materially prejudiced; and
  - (k) To the extent the provisions of KRS 61.805 to 61.850 are applicable, the hearing authority may conduct the hearing required by this subsection in a closed session, unless the officer requests of the hearing authority in writing at least three (3) days prior to the hearing that the hearing be open to the public.
- (8) (a) Any officer who is found guilty by any hearing authority of any charge, may bring an action in the Circuit Court in the county in which the employing agency is located within thirty (30) days of the date written findings are issued to appeal the action of that hearing authority. The appeal shall be initiated by the filing of a complaint in the same manner as any civil action under the Rules of Civil Procedure and shall include a copy of the hearing authority's final order. The Circuit Court review of the case shall be based solely on the administrative record created before the hearing authority and any new evidence offered by the officer regarding alleged arbitrariness on the part of the hearing authority.
- (b) The judgment of the Circuit Court shall be subject to appeal to the Court of Appeals. The procedure as to the appeal to the Court of Appeals shall be the same as in any civil action.
- (9) The provisions of KRS 90.310 to 90.410, 95.450, and 95.765 shall not apply in any proposed disciplinary action arising from a citizen complaint made under subsection (3) of this section or arising from any allegation of conduct that would constitute a violation of law enforcement procedures under subsection (4) of this section. This section shall not be interpreted or construed to alter or impair any of the substantive rights provided to a city police officer under KRS 90.310 to 90.410, 95.450, and 95.765 for any proposed disciplinary action or other matters not arising under subsections (3) and (4) of this section, including proposed actions involving alleged violations of general employment policies. To the extent that the provisions of this section are inapplicable to any proposed disciplinary action against a city police officer, the provisions of KRS 90.310 to 90.410, 95.450, and 95.765 shall remain in full force and effect.
- (10) As the provisions of this section relate to a minimum system of professional conduct, nothing in this section shall be interpreted or construed to:
- (a) Limit or to in any way affect the rights previously afforded to officers of the Commonwealth by statute, collective bargaining or working agreement, or legally adopted ordinance;
  - (b) Preclude an employing agency from investigating and charging an officer both criminally and administratively;

(c) Prevent the suspension with or without pay or reassignment of an officer during an investigation and pending final disposition charges;

(d) Permit an employing agency to categorize and treat any complaint that originates from a citizen as an internal matter in order to avoid application of all of the provisions of this section to the final disposition of a citizen's complaint;

(e) Apply any disciplinary action required by this section to actions taken by an employing agency that is not related to misconduct by a law enforcement officer, such as personnel decisions made by the employing agency due to lack of resources or personnel decisions related to chief's management of a department; or

(f) Prevent an employing agency from electing to apply the provisions of this section, or parts thereof, in circumstances that would not be covered under this section.

(11) This section shall not apply to officers employed by a consolidated local government that receive funds under KRS 15.410 to 15.510, who shall instead be governed by the provisions of KRS 67C.326.

**Effective:** June 24, 2015

**Note: APPENDIX B begins on the next page.**

**APPENDIX B****OPERATIONAL RULES**

The Disciplinary Review Board and the Chief of Police are not bound by the recommended disciplinary action listed for each Operational Rule, and each recommendation shall be based on the facts before the board.

**1.01 Conformance to Laws**

Officers shall obey all laws of the United States, Commonwealth of Kentucky, and Lexington-Fayette Urban County Government.

1. A conviction in any court of a misdemeanor or violation may be cause for disciplinary action.

Recommended disciplinary action:

Class A misdemeanor: Open Recommendation

Class B misdemeanor: Open Recommendation

Violations: Open Recommendation

2. A conviction in any court of a felony may be cause for dismissal.

Recommended disciplinary action: 1st offense- Dismissal

**1.02 Misconduct**

Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Misconduct of an officer shall include that which tends to bring the department into disrepute or reflects discredit upon the officer as an employee of the department, or that which tends to impair the operation and efficiency of the department or officer.

Recommended disciplinary action: Open Recommendation

**1.03 Seeking or Accepting Gifts, Gratuities, Bribes or Rewards**

It is improper for officers to solicit any gift, or accept any gift from any person, business, or organization for the benefit of the officer or the department if that person, business, or organization seeks to influence action of an official nature or seeks to affect the performance or non-performance of an official duty; or has an interest which may be substantially affected directly or indirectly by the performance or non-performance of an official duty.

Recommended disciplinary action: 1st offense- Dismissal

Note: For the purpose of this rule, the word "gift" shall include money, tangible or intangible, personal property, loan, promise, service, or entertainment.

**1.04 Vice**

A. Gambling - Officers shall not promote gambling activity as defined in KRS 528.010 (1) or intentionally frequent premises where gambling activity is promoted except in the performance of their duty.

Recommended disciplinary action: 1st offense- Dismissal

B. Prostitution - Officers shall not facilitate or solicit prostitution.

Recommended disciplinary action: 1st offense- Dismissal

**1.05 Identification**

All officers are required to have their official credentials (badge and department issued photo identification [ID] card) readily available at all times while in Lexington-Fayette County or while on official police business outside of Lexington-Fayette County.

Exceptions to this requirement include circumstances when having credentials readily available is impractical (for example, while exercising), circumstances involving officer safety, or under circumstances that would jeopardize an investigation.

All officers shall verbally furnish their names (and employee number if requested) and display their badges to any member of the public who requests identification. If additional identification is requested, officers shall also present their department issued photo ID cards. The photo ID card shall be displayed for an appropriate length of time to allow the person to read the card and obtain the necessary information.

These requirements do not apply when it may compromise officer safety or jeopardize a police action, when an officer is working in an undercover capacity, or when withholding this information is authorized by proper authority.

Recommended disciplinary action:

1st offense- Reprimand

2nd offense- 1 day

3rd offense- 1 week

**1.06 Public Complaints**

Officers shall courteously and promptly accept or refer any complaint made by a member of the public against any officer or any department policy or procedure. Officers shall never, through threats or coercion, attempt to dissuade any person from lodging a complaint against any officer or any department policy or procedure.

Recommended disciplinary action:

1st offense- Reprimand

2nd offense- 3 days

3rd offense- 2 weeks

**1.07 Courtesy**

Officers shall be courteous. Officers shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion. In the performance of their duties, officers shall not use profane or insolent language or gestures, and shall not express any prejudice concerning race, color, religion, ethnicity, gender, sexual orientation, gender identity, disability, politics, national origin, or similar personal characteristics.

Recommended disciplinary action:

1st offense- Reprimand

2nd offense- 1 day

3rd offense- 3 days

**1.08 Reporting for Duty**

Officers shall report for duty by assignment or orders at the proper time and place, being both physically and mentally fit, and properly equipped and aware of the information required for the proper performance of their duties.

Recommended disciplinary action: 1st offense- Open Recommendation

**1.09 Dereliction of Duty**

Officers, while on duty, shall at all times remain alert and in a sufficient state of readiness to quickly respond to any situation requiring police action. Officers, while on duty, shall not sleep, conduct personal business, attend to personal pleasures, or engage in any other activities which would cause them to neglect or be inattentive to duty. Officers shall not leave their work assignments except when authorized by a supervisor. Officers shall also not be absent without leave.

Recommended disciplinary action:

1st offense- 1 week

2nd offense-1 month

3rd offense- Dismissal

**1.10 Telephone**

Officers shall have a telephone in their residences or maintain a personal cellular telephone.

Officers shall immediately report any changes of telephone numbers or addresses (i.e. mailing address and/or street address) to their supervisor and the department's Personnel Records Unit.

Recommended disciplinary action:

1st offense- Reprimand

2nd offense- 1 day

3rd offense- 3 days

### **1.11 Unsatisfactory Performance**

Officers shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Officers shall perform their duties in a manner which will tend to establish and maintain the highest standard of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by:

1. Repetitious or consistent lack of knowledge of the application of laws required to be enforced.
2. An inability to perform assigned tasks.
3. The failure to conform to work standards established for the officer's rank, grade, or position.

In addition to other indications of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of the rules, regulations, manuals, or directives.

Recommended disciplinary action: Open Recommendation

### **1.12 Use of Tobacco/Electronic Smoking Products**

Officers shall not smoke in any police vehicles. Smoking in LFUCG-owned vehicles is prohibited by RCO 14-98(4).

When in uniform, officers may smoke as long as:

1. They are not in formation.
2. They do not have to leave their assignment or post for the purpose of doing so.
3. They are not engaged in traffic direction or control.
4. They are not riding a motorcycle, Segway, bicycle, horse or other vehicles.
5. They are not talking to a member of the public in an official capacity.

6. They are not in public view.

Officers shall not use snuff or chew tobacco during assigned duty hours or while operating department owned vehicles or while wearing a Lexington Police Department uniform, regardless of duty status.

Recommended disciplinary action:

1st offense- Reprimand (after one previous offense)

2nd offense- 1 day

### **1.13 Operation of Vehicles**

Officers should operate official vehicles in a careful and prudent manner and shall obey all laws of the state and all departmental policies pertaining to such operation. Officers shall set a proper example for other persons by their operation of a vehicle. Loss or suspension of a driving license shall be immediately reported to the officer's supervisor. This information will also be promptly forwarded, via the chain of command, to the Chief's Office and the Public Integrity Unit.

Recommended disciplinary action: 1<sup>st</sup> offense- Open Recommendation

### **1.14 Use of Department Equipment**

Officers shall utilize department equipment only for its intended purpose in accordance with established department procedures and shall not intentionally abuse, damage, or lose through negligence department equipment.

Recommended disciplinary action:

1st offense- 3 weeks

2nd offense- 3 months

3rd offense- Dismissal

### **1.15 Dissemination of Information**

Officers shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended. Officers may remove or copy official records or reports from a police installation only in the performance of duty. Officers shall not divulge the identity of persons giving confidential information except as authorized by proper authority in the performance of police duties.

Recommended disciplinary action:

1st offense- 1 month

2nd offense- 6 months

3rd offense- Dismissal

**1.16 Intervention**

Officers shall not interfere with cases being handled by other officers of the department or by any other agency or person unless:

1. Ordered to interfere by a supervisor; or
2. The interfering officer believes beyond a reasonable doubt that a manifest injustice would result from inaction.

Recommended disciplinary action:

- 1st offense- 1 month
- 2nd offense- 6 months
- 3rd offense- Dismissal

**1.17 Processing Property**

Property or evidence which is discovered, gathered, or received in connection with department responsibilities will be processed in accordance with established department procedures. Officers shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property or evidence found in connection with an investigation or other police action, except in accordance with established department procedures.

Recommended disciplinary action: Open Recommendation

**1.18 Honesty**

Officers shall not willfully depart from the truth in giving testimony or reporting in connection with any official duties. Upon the order of a supervisor, officers shall truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the department which may be asked of them.

Recommended disciplinary action: Open Recommendation

**1.19 Department Reports**

Officers shall submit all necessary electronic case reports and other reports in accordance with established department procedures.

Recommended disciplinary action: Open Recommendation.

**1.20 Political Activity**

1. Officers may participate fully in public affairs to the extent that such endeavors do not impair the neutral and efficient performance of official police duties, or create real or apparent conflicts of interest, and do not conflict with local, state (KRS Chapter 95), or federal laws.
2. Officers are prohibited from using their official capacity to influence, interfere with, or affect the results of an election.

Recommended disciplinary action: 1st offense- Dismissal

### **1.21 Strike**

Officers shall not engage in any strike. "Strike" includes the concerted failure to report for duty, willful absence from one's position, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purposes of inducing, influencing or coercing a change in conditions, compensation, rights, privileges, or obligations of employment.

Recommended disciplinary action: Open Recommendation

### **1.22 Treatment of Persons in Custody**

Officers shall not mistreat persons who are in their custody. Officers shall handle such persons in accordance with law and established department procedures.

Recommended disciplinary action: Open Recommendation

### **1.23 Use of Force**

No officer shall use more force in any situation than is reasonably necessary under the circumstances. The use of physical force shall be restricted to that amount of force which is reasonable and necessary to effect a lawful arrest, overcome resistance, or in defense of self or others. Officers shall use force in accordance with law and established procedures.

Recommended disciplinary action: Open Recommendation

### **1.24 Use of Weapons**

Officers shall not use or handle weapons in a careless or imprudent manner. Officers shall use weapons in accordance with law and established department procedures.

Recommended disciplinary action: Open Recommendation

### **1.25 Use of Alcohol, Illegal Drugs and Legal Drugs – On Duty**

1. Officers shall not use intoxicants while on duty, except in the performance of officially assigned duties.
2. Officers shall not appear for duty, or be on duty while under the influence or impaired by alcohol, or illegal drugs. Standards for determination and levels of alcohol intoxication and/or

illegal drug use shall be based on the current LFUCG Alcohol and Drug Free Workplace Policy.

3. Officers who have knowledge or have been informed that the use of any legal drug may present a safety risk shall immediately report such drug use to their immediate supervisor.

4. All officers shall comply with current standards outlined within the Alcohol and Drug Free Workplace Policy. In addition, officers shall be subject to the penalties outlined within the policy.

### **1.26 Loitering in Bars - Off Duty in Uniform**

No officers shall loiter in any bar, lounge, saloon, or other establishment whose primary service is the serving or selling of alcoholic beverages, with or wearing the following items of the Lexington Police Department uniform: jacket, shirt, trousers/pants, headgear, gun belt, raincoat, exposed badge, exposed weapon, or any other articles which identifies the person as a Lexington Police Department officer.

Recommended disciplinary action:

1st offense- Reprimand

2nd offense- 1 week

3rd offense- 1 month

### **1.27 Use of Intoxicants - While Driving Department Vehicles**

Officers shall not drive any department vehicle if their blood alcohol level is at or above the BAC indicated by the current LFUCG Alcohol and Drug Free Workplace Policy. Penalties are classified according to the current standards for 'Under the Influence' and 'Impairment' contained within the policy.

### **1.28 Lawful Orders**

Officers will obey all lawful orders issued with proper authority. Officers who are given an otherwise proper order which is in conflict with a previous order, regulation, directive or manual, shall respectfully inform the supervisor issuing the order of the conflict. If the supervisor issuing the order does not alter or retract the conflicting order, the last order shall stand. Under these circumstances, the responsibility shall be upon the supervisor. Officers shall obey the conflicting order and shall not be held responsible for disobedience of the order previously issued. Officers shall not obey any order which they reasonably believe would require them to commit any illegal act. If in doubt as to the legality of the order, officers shall request the issuing officer to clarify the order or confer with higher authority.

Recommended disciplinary action: Open Recommendation

### **1.29 Public Appearance and Statements**

Officers shall not publicly criticize or ridicule the department, its policies, or other officers by speech, writing, or other expression where such speech, writing, or other expression is defamatory, obscene, unlawful, tends to undermine the effectiveness of the department, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falsity. Officers shall not address public gatherings, appear on radio or television, prepare any articles for publication, utilize electronic media, act as correspondents to a newspaper or a periodical, release or divulge investigative information, or any other matters of the department while holding themselves out as having an official capacity in such matters without official sanction or proper authority.

Recommended disciplinary action: Open Recommendation

### **1.30 Abuse of Position**

Use of Official Position or Identification

1. Officers shall not lend their identification card, badge, or uniform to another person who is not an officer of the Lexington Police Department, or permit them to be photographed or reproduced without the approval of the Chief of Police. Officers shall not lend their identification, badge, or uniform to any officer who is serving a suspension, relieved of duty, or are on light-duty status.

Recommended disciplinary action: Open Recommendation

2. Officers shall not permit or authorize the use of their official title which identifies them as officers in connection with testimonials or advertisements of any commodity or commercial enterprise, unless otherwise approved by the Chief of Police.

Recommended disciplinary action: Open Recommendation

3. Officers are prohibited from using their official position, official identification cards or badges for:

- a. Soliciting personal or financial gain.
- b. Avoiding consequences of illegal acts.

Recommended disciplinary action: Open Recommendation

### **1.31 Endorsements and Referrals**

Officers shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service (such as an attorney, ambulance service, towing service, alarm company, mortician, etc.). In the case of ambulance or towing service, when such service is necessary and the person needing the service is unable or unwilling to procure it or requests assistance, officers shall proceed in accordance with established department procedures.

Recommended disciplinary action:

1st offense- Reprimand

2nd offense- 3 days

3rd offense- 1 week

**1.32 Immediate Supervisor's Failure to Take Action**

Any supervisor shall be subject to disciplinary action if that supervisor fails to:

1. Properly supervise subordinates in compliance with all rules, regulations, directives, orders, or policies of the department, or
2. Initiate a department complaint when such action is appropriate and in accordance with rules, regulations, directives, orders, or policies of the department, or
3. Take other appropriate action authorized and in accordance with rules, regulations, directives, orders, or policies of the department.

Recommended disciplinary action: Open Recommendation

**1.33 Report of Arrest**

Any officer of the department who is arrested or is likely to be arrested shall immediately report this information to the Chief of Police, or to the highest ranking available officer.

Recommended disciplinary action:

1st offense- 3 weeks

2nd offense- Dismissal

**1.34 Cowardice**

Officers will carry out their duties with courage and determination, and will remain firm and steadfast in the face of opposition and resistance.

Recommended disciplinary action: Dismissal

**1.35 Violating Any Rules of the Department**

Recommended disciplinary action: Open Recommendation

**1.36 Insubordination**

Insubordination is deliberate malicious behavior and misconduct which reflects on the efficiency and effective performance of the job. It is the responsibility of all supervisors to take corrective action based on the rule, and the responsibility of supervisors to explain this rule to officers under their supervision. An officer is insubordinate when they fail to follow a lawful order given by a supervisor, or they use disrespectful or abusive language or actions

towards a supervisor.

**Definition of Insubordination:** Behavior which reflects an officer's refusal to be supervised, including but not limited to direct refusal to obey a supervisor's legitimate work-related order, or failure to follow directions and instructions which are normal operating procedures for the unit. This rule includes failure to follow new instructions which have been adequately explained.

Recommended disciplinary action: Open Recommendation

### **1.37 Audio and Video Recordings**

Officers shall not use any device capable of making a video and/or audio recording to record images or conversations of any department officer without the knowledge or permission of the department officer while they are on duty.

Appropriate use of a department-issued body-worn camera, in accordance with policy and training, is exempted.

Recommended disciplinary action: Open Recommendation

### **1.38 Required Reporting – Legal Orders**

Officers shall report to a supervisor when they are issued a legal order which may impair their ability to perform law enforcement duties. Legal orders include, but are not limited to, a domestic violence order, emergency protection order, no contact order, and criminal summons, regardless of location of the issuing jurisdiction.

Recommended disciplinary action: Open Recommendation

### **1.39 Required Reporting- Criminal Investigations or Criminal Charges**

As soon as an officer becomes aware that they are the subject of a criminal investigation in any jurisdiction, or when an officer has been charged with any criminal offense in any jurisdiction, they shall immediately report this information to their supervisor. This information will also be promptly forwarded, via the chain of command, to the Chief's Office and the Public Integrity Unit.

Recommended disciplinary action: Open Recommendation

### **1.40 At Fault Collisions**

Officers shall operate vehicles at all times in such a manner so as to not be at fault in a collision.

Recommended disciplinary action:

1<sup>st</sup> offense- Bureau supervisor issues a letter of counseling.

2<sup>nd</sup> offense- (second at fault collision within 12 months of the first at fault collision) - Bureau supervisor issues a letter of counseling and directs retraining and may include loss of take home vehicle. The Chief of Police or bureau Assistant Chief may determine the duration of take home vehicle loss, if any, based on several factors: injuries, amount of damage, environmental factors, and/or human factors.

3<sup>rd</sup> offense- (third at fault collision within 12 months of the first at fault collision) - Open Recommendation

#### **1.41 Interference with Written Communications**

Officers shall not request others to alter or withdraw reports, letters, requests, or other written communications without justification for doing so. Officers shall forward all confidential mail unopened. If accidentally opened, the officer doing so shall initial it before forwarding.

Recommended disciplinary action: Open Recommendation

#### **1.42 Display of Firearms**

Officers shall not draw or display their firearms in public except for official inspection or use. Exceptions can be approved by a supervisor as part of an exercise, demonstration, display, or similar circumstance.

Recommended disciplinary action: Open Recommendation

#### **1.43 Personal Correspondence**

Officers shall not use official department letterhead, envelopes or stationery for private correspondence.

Recommended disciplinary action: Open Recommendation

#### **1.44 Interference in Private Business**

Officers shall not use their official authority (e.g., uniformed presence, credentials, etc.) to unduly influence or interfere with private business decisions between themselves and the business.

Recommended disciplinary action: Open Recommendation

#### **1.45 Display of Material in Police Facilities**

Only authorized material will be posted within or upon department property. Officers shall not post any type of personal notice or any cartoons, drawings, papers, or other material that may be offensive or contain derogatory language. This includes any material that contains

sexual, ethnic, or racial slurs, or is demeaning to other protected class members (e.g., age, religion, disability, or sexual orientation). Any department supervisor shall remove any material they become aware of that violates this policy. Officers shall not deface, damage, destroy, or tamper with authorized posted material.

Recommended disciplinary action: Open Recommendation

#### **1.46 Business Cards**

All business cards used by department officers to represent themselves as members of the department shall be approved by the Chief of Police.

Recommended disciplinary action: Open Recommendation

#### **1.47 Use of Department Uniform, Badge, Logo, Patch, and Name**

All use of the department badge(s), uniform, emblems, and name shall be approved by the Chief of Police or designee. Officers shall not apply the badge, department created logos, patches, or name to non-uniform apparel, letters, flyers, billboards, novelties, and similar applications without approval from the Chief or designee. Officers shall not disseminate the department patch logo or badge artwork to persons outside the department without approval from the Chief or designee. Approval is not required for displaying the department's name and images during a police function.

Recommended disciplinary action: Open Recommendation

#### **1.48 Inappropriate Action**

Officers shall perform required police duties. Officers shall take appropriate action on the occasion of a crime, disorder, or other condition deserving police action.

Recommended disciplinary action: Open Recommendation

#### **1.49 Reimbursement for Driving Take Home Vehicles Out of County**

Officers who are authorized to drive their assigned take home vehicle to and from their primary residence in another county (within 35 miles of the Fayette County line) directly to and from Fayette County shall reimburse the LFUCG for each round trip. The reimbursement payment is due, or must be postmarked, by the end of the business day on the 10<sup>th</sup> of any month.

Failure to meet this obligation may result in the loss or suspension of take home privileges. Penalties will apply for late payment of fees. Should the monthly payment not be received by the Office of the Chief by the end of the business day on the 10<sup>th</sup> of any month (or postmarked), the following actions will occur (implemented on April 1, 2010):

Recommended disciplinary action:

1<sup>st</sup> offense- Written notification to the officer through the chain of command

2<sup>nd</sup> offense within a year- Suspension of take home privileges for 1 month

3<sup>rd</sup> offense within a year- Suspension of privileges for a minimum of 6 months;  
written request for reinstatement will then be considered