

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Sterling D. Brown,
Plaintiff,

v.

Civil Action No. 2:18-cv-922

City of Milwaukee, et al.
Defendants.

FINAL STATUS UPDATE AND STIPULATION FOR DISMISSAL

NOW COME THE PLAINTIFF, Sterling D. Brown, by his attorney, Mark L. Thomsen, GINGRAS, THOMSEN & WACHS, LLP and defendants, including the City of Milwaukee, by their attorneys, Deputy City Attorney Robin Pederson, and submit this final update pursuant to this Court's Order, dated October 12, 2021 (Dkt. 95) and stipulation for dismissal.

As previously reported, the City of Milwaukee approved and signed the settlement agreement. In accordance with the terms of the settlement agreement, the City of Milwaukee prepared and submitted revised Standard Operating Procedures (SOPs) to the Milwaukee Fire and Police Commission (FPC). On October 7, 2021, the FPC considered these negotiated SOPs, and adopted them:

- 001: Fair and Impartial Policing
- 082: Training and Career Development
- 085: Citizen Contacts, Field Interviews, Search and Seizure
- 220: Arrest Authority

- 450: Personnel Investigations
- 460: Use of Force
- 747: Body Worn Cameras

The final matter pending has been resolved, i.e. on November 18, 2021 the FPC adopted a Milwaukee Police Department Discipline Matrix.

Accordingly, IT IS HEREBY STIPULATED by and between the parties that the Court may dismiss the above-captioned matter, on its merits, with prejudice, without costs to any party, and without further notice to any party.

Dated: December 13, 2021

GINGRAS, THOMSEN & WACHS, LLP
Attorneys for Plaintiff

By: s/Mark L. Thomsen
Mark L. Thomsen, SBN: 01018839

P.O. ADDRESS:

219 N. Milwaukee St., Suite 520
Milwaukee, WI 53202
Telephone: (414) 935-5482
Facsimile: (414) 763-6413
Email: mthomsen@gtwlawyers.com

Dated: December 13, 2021

**CITY OF MILWAUKEE AND ALL OTHER
DEFENDANTS**
Attorneys for Defendant

s/Robin A. Pederson
Deputy City Attorney Robin A. Pederson
State Bar No.: 1045759

P.O. ADDRESS:

841 N Broadway # 716,
Milwaukee, WI 53202
Counsel for All Defendants
Telephone: (414) 286-2633
Facsimile: (414) 286-8550
Email: rpederson@milwaukee.gov



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

001 – FAIR AND IMPARTIAL POLICING

GENERAL ORDER: 2021-XX
ISSUED: August 4, 2021

EFFECTIVE: August 4, 2021

REVIEWED/APPROVED BY:
Inspector Nicole Waldner
DATE: May 26, 2021

ACTION: Amends General Order 2018-37 (December 21, 2018)

WILEAG STANDARD(S): 1.7.8

001.00 PURPOSE

The work of our police members has a substantial and positive effect on crime and helps us pursue our mission of creating neighborhoods capable of sustaining civic life. MPD recognizes that **unlawful violence and racism, especially if perpetrated by police officers, as well as** crime, disproportionately impact **neighborhoods communities of color**, and that police tactics can at times be perceived as frightening or alienating. **Consequently**, an unfortunate paradox exists: the vulnerable neighborhoods most in need of services **and assistance** are inhabited by residents who sometimes feel unfairly targeted by police. We must be aware that the way our authority is used is equally as important as the result of its use.

To that end, this policy is intended to **establish** this department's commitment to **combat racist and discriminatory practices and** to clarify the circumstances in which officers can consider race, color, ethnicity, national origin, economic status, sexual orientation, gender identity or expression, age, gender, religion, limited English proficiency, disability, and housing status when making law enforcement decisions, and to reinforce procedures that serve to ensure the public that we are providing service and enforcing laws in an equitable way.

001.05 POLICY (WILEAG 1.7.8)

Police members shall **be anti-racist and anti-discriminatory and shall** not rely to any degree on an individual's race, color, ethnicity, national origin, economic status, sexual orientation, gender identity or expression, age, gender, religion, limited English proficiency, disability, or housing status in carrying out law enforcement activities except when credible, locally relevant information links a person or people of specific characteristics/status, as listed above, to a specific unlawful incident, or to specific unlawful incidents, criminal patterns, or schemes. This restriction on the use of race/ethnicity does not apply to law enforcement activities solely designed to strengthen the department's relationship with a diverse community.
(WILEAG 1.7.8.2)

Note: Biased based profiling by our police members is prohibited and is defined as the following: Police-initiated action that relies to any degree upon common traits associated with belonging to a certain group; such as race, color, ethnicity, national origin, ancestry, age, gender, gender identity or expression, sexual orientation, religion, marital status, economic status, disability,

political affiliation, cultural group, limited English proficiency, disability, housing status or any other identifiable characteristics of an individual rather than the behavior of that individual, or credible information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

(WILEAG 1.7.8.1)

Police members may use common traits as listed above in selecting whom they stop, when a person matches the specific description of an individual who is suspected of engaging in criminal behavior based on credible evidence.

(WILEAG 1.7.8.2)

A handwritten signature in black ink, appearing to read 'J.B.N.' with a long horizontal stroke extending to the right.

JEFFREY B. NORMAN
ACTING CHIEF OF POLICE

JBN:mfk



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

082 – TRAINING AND CAREER DEVELOPMENT

GENERAL ORDER: 2021-XX
ISSUED: August 4, 2021

EFFECTIVE: August 4, 2021

REVIEWED/APPROVED BY:
Inspector Nicole Waldner
DATE: May 26, 2021

ACTION: Amends General Order 2018-26 (September 17, 2018)

WILEAG STANDARD(S): 12.1.3, 12.2.1, 12.2.2, 12.2.3, 12.2.5, 12.2.6, 12.2.8, 12.2.9, 13.2.3

082.00 PURPOSE

The purpose of this standard operating procedure is to establish guidelines for employee training and development under the direction of the training director at the Training Division, the Human Resources Division, and the Chief of Police. The Milwaukee Police Department (MPD) provides basic recruit training and continuing education that exceeds requirements established by the state of Wisconsin Law Enforcement Standards Board (LESB) and the Training and Standards Bureau. **In addition, the purpose of this standard operating procedure is to ensure that the members of the Milwaukee Police Department are verifiably competent with all department policies and with the principles of fair and impartial policing.** Members subordinate to the rank of inspector of police shall follow the directives of the training director in matters relating to law enforcement certification and recertification training, and other training that may arise relevant to members' positions or work assignments.

082.05 ANTI-RACIST and ANTI-DISCRIMINATORY POLICY TRAINING

The Milwaukee Police Department is committed to the implementation of anti-racist and anti-discriminatory policies throughout the department. To that end, every member of the MPD must annually complete at least four (4) hours of bias training, which includes training on anti-racist and anti-discriminatory policies. This training includes a special focus for supervisors on detecting and reporting improper conduct. To demonstrate subject-matter competency, all members must successfully complete a written examination, including as to their understanding of MPD's anti-racist and anti-discriminatory policies. Members who fail the examination must receive immediate remedial training until the member can demonstrate core competency. MPD members must pass this written examination annually.

082.10 CORRUPTION IN TRAINING PROHIBITED

Any MPD member performing any training of any other MPD member is prohibited from describing or counseling on how to avoid culpability for violating MPD policy or the law. Each MPD member carries an affirmative duty to report any such commentary. Any member's failure to report such commentary by any MPD member may result in formal discipline. Any MPD member who, while training any other MPD member, describes or counsels those other MPD members on how to lie or avoid culpability for violations of MPD policy or the law may be discharged.

082.15 DE-ESCALATION TRAINING

Every member of the MPD must annually complete at least four (4) hours of scenario-based training on lawful use-of-force options, focusing on skills and tactics that minimize the likelihood of using unlawful excessive force, including de-escalation tactics. Such tactics are actions and techniques used by law enforcement to slow down or stabilize a potentially unstable situation to allow for more time, options, and resources for resolution or prevention of an incident. Use of force is not a proper application of de-escalation tactics.

082.20 RECRUIT OFFICER BASIC TRAINING (WILEAG 12.2.3)

Sworn officers must satisfactorily complete the Wisconsin law enforcement basic training curriculum established by the LESB and the Training and Standards Bureau prior to assignment to any duties that require them to unilaterally exercise police authority, carry a department-issued firearm outside of training, and make arrests.

In addition, under this section officers must first pass a written examination covering fair and impartial policing, including core competency of MPD's SOP 001, anti-discriminatory policies, cultural competency, de-escalation and professional communication.

082.25 ANNUAL INSERVICE AND SPECIALIZED TRAINING (WILEAG 12.1.3, 12.2.5)

A. The training director at the Training Division shall ensure that an in-service curriculum is designed and implemented each fiscal year to satisfy state training standards and the needs of the department.

1. Pursuant to Wis. Stat. § 165.85(4)(a)(7), certified law enforcement officers in the state of Wisconsin are required to attend a minimum of 24 hours of recertification training each fiscal year (July 1 through June 30), including annual firearms certification and biennial LESB-required pursuit driving training.
 - a. The biennial LESB-required pursuit driving training shall be completed with a state certified department instructor.
 - b. Police members shall be required to complete their annual firearms certification with their department authorized and issued firearm. The annual firearms certification shall be completed with a state certified department firearms instructor.

Note: LESB rules state the annual firearms certification and biennial LESB-required pursuit driving training must be administered by a certified instructor approved by the officer's primary employer. If a department member goes to another agency or academy to meet recertification requirements without the approval of the training director at the Training Division or an executive level officer (rank of inspector of police or above), the department will notify the Training and Standards Bureau and the state will not accept the training.



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

450 – PERSONNEL INVESTIGATIONS

GENERAL ORDER: 2021-XX
ISSUED: August 4, 2021

EFFECTIVE: August 4, 2021

REVIEWED/APPROVED BY:

Inspector Nicole Waldner

DATE: May 26, 2021

ACTION: Amendment to General Order 2019-21 (June 21, 2019)

WILEAG STANDARD(S): 1.9.1, 1.9.2, 1.9.3, 1.9.4, 1.9.5, 1.9.6

450.00 PURPOSE

The purpose of this standard operating procedure is to communicate the proper procedures to follow regarding personnel investigations. It is important to note the differences between a personnel investigation, which is an administrative inquiry, and a criminal investigation.

450.05 DEFINITIONS

A. CITIZEN COMPLAINT

A citizen complaint is an allegation of a Code of Conduct violation, standard operating procedure, or criminal allegation committed by one or more department members. A citizen complaint can be made either orally or in writing, provided that the complainant is an adult, parent or legal guardian of a juvenile complainant, attorney representing an aggrieved party, or an interpreter representing a non-English speaking or hearing impaired complainant.

A citizen complaint shall be documented in writing on a *Citizen Complaint Report* (form PI-31) by either the complainant or supervisor receiving the complaint. Subsequent investigation shall be documented on the *Citizen Complaint Supervisor's Report* (form PI-32).

Note: A citizen for the purposes of this policy means any person other than a member of the police department including persons who are not a United States citizen.

B. INTERNALLY GENERATED COMPLAINT

An internally generated complaint is an allegation of a Code of Conduct or standard operating procedure violation committed by one or more department members. An internally generated complaint can be made by any department member. Internally generated complaints can be made either orally (to a supervisory member) or in writing, however, a complaint alleging misconduct on the part of a captain of police or higher rank shall be made in writing to the Chief of Police. An internally generated complaint may be initiated by a supervisory member based upon personal observation of misconduct or hearsay information that alleges misconduct.

An internally generated complaint shall be documented in writing on a *Department Memorandum* (form PM-9E). Subsequent investigation shall also be documented on a PM-9E.

solutions with the assistance of a trained, impartial third party, a mediator. The mediator does not make decisions for the parties or determine who is right or wrong. Mediation is not a court hearing or a counseling session. Neither lawyers nor witnesses are needed, although, lawyers may attend to advise their clients.

- B. Mediation sessions are informal, structured discussions to help clarify the issues and move towards agreement. Parties are given the opportunity to listen to each other and to speak without interruption. If an agreement is reached, it may be written down and signed by the parties. A signed agreement is not required to conclude mediation. Before participating in a mediation session, the parties should think about possible solutions to the problem.
- C. Once the citizen complaint is reviewed by the Internal Affairs Division a determination will be made if the complaint is eligible for mediation. Each complaint is evaluated on its own merits to determine eligibility, including its value as a public relations tool. Mediation may be an appropriate disposition for any minor complaint that might otherwise have been categorized as sustained, not sustained, exonerated, or unfounded had a complete investigation been conducted. If it is determined that mediation is a viable solution both the complainant and the employee(s) involved will be contacted to arrange a mediation date and time.
- D. Once the mediation is over, the case is closed and no further action or discipline will be taken regarding the complaint.

450.35 STIPULATION

For a non-criminal allegation(s) in which a preponderance of evidence exists, the Internal Affairs Division may allow a member to stipulate to the allegation(s) in lieu of a personnel investigation. In such cases the Internal Affairs Division will supply the member with a stipulation agreement on form PM-9E. The member can 1) choose whether to stipulate to the allegation(s), 2) stipulate to the allegation(s) and provide a written response, or 3) decline to stipulate to the allegation(s) and request a personnel investigation. Additional instructions will be included to assist the member in making a decision.

450.40 INVESTIGATION PROCEDURES (WILEAG 1.9.3, 1.9.4)

A. CITIZEN COMPLAINT CONTACT

1. Whenever a commanding officer assigns a personnel investigation to a subordinate supervisor and there is a named citizen complainant, the investigating supervisor shall contact that complainant within 3 days of receiving the investigation. The investigating supervisor shall provide the citizen complainant with his or her name and work location telephone number, and the supervisor shall document the date and time of this contact in his or her investigative summary report. The investigating supervisor shall also provide the complainant with periodic progress updates.
2. If the investigating supervisor is unable to contact the citizen complainant in the time allotted, he or she shall contact the Internal Affairs Division for further direction. In this circumstance, it may be necessary for the Internal Affairs Division

to send a letter to the complainant's last known address requesting that the complainant contact the investigating supervisor.

B. INITIATION REPORT

The supervisor assigned to conduct a personnel investigation shall complete an initiation report as soon after being assigned the investigation as possible. Based upon a thorough review of the investigative file, the initiation report shall contain the following three (3) sections:

1. "On (date/time), I (investigating supervisor) was instructed by (initiating authority) to initiate an investigation regarding an allegation of misconduct on the part of (identify member)."
2. The second section shall include a concise statement of the alleged misconduct.
3. The third section shall state the following:

"If sustained, this allegation of misconduct is a violation of [cite the specific Code of Conduct or standard operating procedure, including the specific section] which states in part: [record only that portion of the Code of Conduct or standard operating procedure found to be in violation]."

Note: The outcome of a completed personnel investigation may differ from the violation(s) identified in the initiation report. Such differences do not make the initiation report inaccurate; therefore, investigating supervisors shall not alter the content of an initiation report.

C. PRE-INTERVIEW PROCEDURES

Prior to conducting a PI-21 interview of an accused department member, the investigating supervisor shall comply with the following requirements:

1. Review the investigative file, including any documents or evidence provided by the complaint and the preliminary investigation, to include all body worn camera video and squad video of all members on scene.
2. Collect and review any documentation or evidence relating to the allegation(s) that was not provided by the preliminary investigation but, nonetheless, is needed in order to conduct the investigation.
3. Identify and interview any citizen witnesses to the alleged misconduct.
4. Identify and interview any department members that are witnesses to the alleged misconduct and who are not a target of the investigation. If in doubt as to whether a member should be interviewed pursuant to a PI-21, consult your commanding officer or the Internal Affairs Division.
5. Prepare for the PI-21 interview of the accused member(s) by formulating and

drafting questions to ask the accused member(s). The investigating supervisor shall ensure that he/she is adequately prepared to conduct the PI-21 interview in advance of actually conducting the interview.

6. Whenever scheduling conflicts occur between the investigating supervisor and an accused member, and in order to expedite the completion of the investigation, the investigating supervisor may with the approval of his/her commanding officer prepare interview questions in writing and delegate the interview to another supervisor. In this instance, the investigating supervisor shall be responsible for summarizing the interview in writing based upon a review of the audio recording.

D. INFORMING THE MEMBER PROCEDURES – (FORM PI-21)

If a department member is under investigation for an alleged violation of the Code of Conduct or standard operating procedure and is subject to an interview for any reason, which could lead to disciplinary action, demotion or discharge from the Milwaukee Police Department, such interview shall comply with the following requirements:

1. The supervisor assigned to conduct a personnel investigation shall, prior to obtaining any information from an accused member (the target of the investigation), inform the accused member in a timely manner that the matter is a personnel investigation, not a criminal investigation, or a claim/lawsuit investigation.
2. If there is any possibility that the matter being investigated could result in a criminal proceeding, the investigating supervisor shall advise the accused member that: "This is a personnel investigation. The answers you give and the fruits thereof, cannot be used against you in any criminal proceeding."
3. Prior to conducting an interview that requires an accused member to provide oral statements, the investigating supervisor shall complete the *Internal Investigation-Informing the Member Report* (form PI-21).

Note: A PI-21 shall be issued for each subsequent oral statement obtained from the same member.

4. The supervisor shall request that the department member sign the PI-21 report. If the member refuses to sign the PI-21, the supervisor shall place the word "refused" on the signature line.
5. The original PI-21 shall become a part of the investigative file. A copy shall be given to the department member.
6. The department member under investigation shall be informed of the nature of the investigation prior to any interview by including a brief synopsis of the allegation(s) on the PI-21. Enough information shall be included so that the member is able to prepare for the interview.
7. If proper investigation requires that the member provide information such as memorandum book entries or notes then the member shall be ordered to bring that

- information to the interview. This order shall be made in writing on the PI-21.
8. Prior to any interview, the investigating supervisor shall advise the member that: "The refusal to respond during this interview, or any response which is untruthful, can result in suspension or discharge from the Milwaukee Police Department."
 9. The investigating supervisor shall record on the PI-21 a date, time, and location that the oral interview will take place. Although not required, interviews should be scheduled at least seven (7) days after issuing the PI-21. The member may request an earlier interview provided that the member has an opportunity to obtain appropriate representation for the interview.
 10. Whenever a department member chooses to participate in an interview either without representation present or less than seven (7) days in advance of when the PI-21 was issued, the investigating supervisor and member shall verbally confirm such agreement at the start of the recorded interview.
 11. If, for whatever reason, a scheduled PI-21 interview has to be rescheduled to a different time or date, it is not necessary to re-issue a PI-21. The investigating supervisor shall note the revised schedule on the original PI-21 and place his/her initials next to the revision. Further, the rescheduled interview shall take place as soon as practicable, provided the accused member has a reasonable opportunity to obtain the presence of and/or to consult with a representative of his/her choice before and/or during the interview.
 12. PI-21 interviews shall be scheduled Monday through Friday [excluding holidays as defined by Wis. Stat. § 230.35(4)(a)] between the hours of 6:00 a.m. and 9:00 p.m. If an interview is not concluded by 9:00 p.m., the investigating supervisor shall use his/her discretion to continue the interview beyond 9:00 p.m.

Note: This provision does not apply to PI-21 interviews that are related to an incident involving death or great bodily harm or where the Chief of Police determines that exigent circumstances require an immediate interview.

E. CERTIFIED LABOR ORGANIZATIONS

The department will not prohibit employees, whether or not they are the target of an investigation, from discussing ongoing internal investigations with a representative of a certified labor organization, unless such limitation is warranted by actual and specific concerns about the effect such communication may have upon the integrity of the fact finding process of the investigation. The Chief of Police reserves the right to determine, subject to this section, when investigations shall not be discussed with representatives of certified labor unions.

F. PI-21 INTERVIEW PROCEDURES (OBTAINING ORAL STATEMENTS)

Unless otherwise directed by the commanding officer of the Internal Affairs Division, oral statements shall be obtained from department members who are subject to personnel

investigations.

The following procedures shall be followed when oral statements are obtained:

1. An accused department member may have a representative of his/her choice present during an interview.
2. Only a supervisor shall obtain oral statements. A second supervisor shall be present at all times during the interview, however only the interviewing supervisor shall speak during the recorded portion(s) of the interview.
3. While recording is in progress, any communication between the supervisors shall be made in writing. Likewise, any communication between the accused member and his/her representative shall be made in writing.
4. The supervisor obtaining an oral statement shall use a digital audio recorder provided by the department.
5. The supervisor obtaining an oral statement shall inform the accused member that the statement is being recorded and the digital audio recorder shall be in plain view.
6. Follow the outline of the *Guidelines for Oral Interviews* (form PI-54E), a copy of which shall be located in each interview room used to obtain personnel investigation oral statements.
7. Ensure that each question that is asked of an accused member is adequately answered. For example, a supervisor may ask a member a question, however the member's response may not actually provide the information sought by the question. It is incumbent upon the supervisor to repeat or, in the case of a misunderstanding of the original question, to rephrase until the question is adequately answered.

Note: A PI-21 interview relates to a personnel investigation dealing with alleged violation(s) of Code of Conduct or standard operating procedure. These matters are not of a criminal nature; therefore, investigating supervisors shall not advise members of their constitutional (Miranda) rights.

8. If, at any time, the MPD determines that a member lied or knowingly submitted false information during a PI-21 interview, that member may be discharged.

G. TRANSFER OF DIGITAL AUDIO FROM RECORDER TO COMPACT DISC

1. At the conclusion of a PI-21 interview, the interviewing supervisor and the accused member shall proceed to a computer equipped with a compact disc writer, at which time the supervisor shall transfer the audio content of the interview from the digital audio recorder to two (2) compact discs.
2. After the data transfer, the supervisor shall ensure that the audio content of the interview was successfully downloaded to each of the compact discs.

3. Prior to disconnecting the digital audio recorder from the computer and after ensuring the successful transfer of data, the supervisor shall delete the interview from the recorder.
4. The supervisor shall provide one (1) compact disc to the member.
5. The supervisor shall label the investigative file copy of the compact disc by using permanent marker to include the following information:
 - a. Internal Affairs Division file number;
 - b. Date/time of the interview;
 - c. Rank/title and name of the member interviewed;
 - d. Rank/title and name of the interviewing supervisor.
6. The investigative file copy of the interview shall be stored in a compact disc sleeve to prevent damage to the disc.

H. INVESTIGATOR'S SUMMARY REPORT

The investigating supervisor shall prepare a summary report on a PI-32 or a PM-9E, depending on whether the personnel investigation is based upon a citizen complaint or an internally generated complaint. Upon conclusion of the investigation, the investigating supervisor shall prepare a detailed summary of the investigation, which shall include the following sections:

1. The initiating section shall be formatted to state the following: "On (date), I (primary investigator) was instructed by (initiating authority) to investigate an allegation(s) of misconduct on the part of (department member) assigned to (current work location)."
2. The allegation section shall include a concise statement describing the allegation of misconduct, including the date, time and location of the offense.
3. The investigation section shall include a detailed, sequential/chronological narrative that summarizes the investigation. As part of an investigative summary, all information contained within this section must be supported by other documents/evidence within the investigative file. For example, if in the summary report, an investigator references a statement made by a witness when interviewed, then a detailed narrative of that interview should be contained within the investigative file under a separate report. Additionally, if an investigator makes reference to facts contained in a document (such as a PD-2, line-up, subpoena), then that document or a copy of that document should be included within the investigative file. Interviews obtained pursuant to a PI-21 do not need to be reduced to writing on a report other than the investigator's summary report since the audio recording serves as evidence of the information obtained from the interview.

Note: Avoid using such general terms as subdued, restrained, placed under control and refrain from expressing personal opinions.

I. COMMANDING OFFICER'S SUMMARY REPORT

Upon completion of a personnel investigation, commanding officers shall submit a summary report on a *Department Memorandum* (form PM-9E), regardless of whether the personnel investigation is based upon a citizen complaint or an internally generated complaint. The commanding officer's summary report shall, if applicable, cite Code of Conduct violations with a brief statement on how each Code of Conduct section was violated. Commanding officers shall state their conclusion(s) at the end of their summary with any one or combination of the following dispositions:

1. Sustained

There is sufficient evidence to prove either the allegation(s) made in the complaint, or the allegation(s) identified through subsequent investigation. If sustained, the Code of Conduct violation shall be cited. **Commanding officer's Summary Reports that sustain a complaint may be obtained through procedures established under Wisconsin Statutes related to public records.**

2. Not Sustained

There is insufficient evidence either to prove or disprove the allegation(s).

3. Exonerated

The incident as alleged occurred, however the department member's actions were lawful/proper.

4. Unfounded

The allegation(s) is false or not factual.

5. No Code of Conduct Violation

No Code of Conduct violation occurred.

6. Policy Review

A violation occurred and a review of the specific policy violated is required for the member.

7. Counseling

A violation occurred and a review of the specific Code of Conduct Core Value violation is required for the member.

8. Remedial Training

A violation occurred and re-training is required for the member.

9. Resolved at District / Bureau Level

The incident / complaint is resolved in lieu of a formal investigation.

10. File Information Only

No investigation is required or needed.

11. File Pending Additional Information

There is not enough information for the department to conduct an investigation and it is pended until additional information is obtained.

12. Mediation

The incident / complaint is resolved by all parties involved meeting for the purpose of conflict resolution.

13. Termination / Discharge / Resigned / Retired

Internal Affairs Division use only.

Note: A combination of dispositions may be used when multiple allegations exist within the same complaint.

450.45 CIVILIAN MEMBERS – RIGHT TO REPRESENTATION

Civilian members subject to a personnel investigation shall be afforded the right to representation in the same manner as police members pursuant to this standard operating procedure.

450.50 COMMANDING OFFICER RESPONSIBILITIES

- A. The commanding officer of a district or division receiving a personnel investigation shall review the reports to ensure that a complete and proper preliminary investigation was conducted and that all relevant reports, information, and evidence are contained within the investigative file.
- B. For internally generated complaints that come to the attention of a commanding officer, the commanding officer shall determine whether a formal personnel investigation is required and if so, shall contact the Internal Affairs Division and obtain a file number, if applicable.
- C. The commanding officer shall immediately forward all original documents and any evidence obtained directly to the Internal Affairs Division.

- D. Whenever the Internal Affairs Division assigns a personnel investigation to a work location, the commanding officer of that work location shall immediately assign a supervisor to conduct the investigation.
- E. Commanding officers shall maintain a log to track all pending personnel investigations assigned to their work location.
- F. Commanding officers shall submit a written summary for each completed personnel investigation as outlined in 450.40(I).
- G. Upon completion of the personnel investigation, commanding officers shall forward the entire investigative file to their respective assistant chief or designee.
 - 1. The *Personnel Investigation Checklist* (form PI-46) shall be utilized to document the assignment, completion, and review of personnel investigations, as well as a general checklist for items included in and created for the investigation. This checklist shall be included with the entire investigative file when the investigation is forwarded to the respective assistant chief, or designee, and Internal Affairs Division for review.
 - 2. Upon review of the file, the assistant chief or designee shall forward the file directly to the Internal Affairs Division.
 - 3. To ensure file completeness, all information required on the *Personnel Investigation Checklist* will be checked for inclusion and checked off for accountability.

450.55 INTERNAL AFFAIRS DIVISION RESPONSIBILITIES / AUTHORITY (WILEAG 1.9.1, 1.9.2, 1.9.3, 1.9.6)

- A. The commanding officer of the Internal Affairs Division shall make diligent inquiry into every complaint of misconduct on the part of a department member coming to his/her attention. **As part of such diligent inquiry, a specific finding must be made by the commanding officer of the Internal Affairs Division, as to whether any violations occurred under any policies or procedures governing use of force and SOP 001 Fair and Impartial Policing.**

The Open Records Division shall produce any related public records as required by and through procedures established under Wisconsin Statutes related to public records.

- B. Personnel assigned to the Internal Affairs Division (Internal Investigations Section, Special Investigations Section, and Civil Investigations Section) are the designees of the Chief of Police as it relates to their investigations. As such, while performing these duties, personnel so assigned shall exercise the authority of the Chief's office under the direction of the commanding officer of the Internal Affairs Division.
- C. Orders issued by supervisors assigned to the Internal Affairs Division (Internal Investigations Section or Special Investigations Section) pertaining to a personnel investigation shall be obeyed, regardless of the rank of the department member



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

460 – USE OF FORCE

GENERAL ORDER: 2021-XX
ISSUED: August 4, 2021

EFFECTIVE: August 4, 2021

REVIEWED/APPROVED BY:

Inspector Nicole Waldner

DATE: May 26, 2021

ACTION: Amends General Order 2020-23 (December 11, 2020)

WILEAG STANDARD(S): 5.1.1, 5.1.2, 5.1.3, 5.1.4, 5.2.1, 5.3.1, 5.3.2, 5.3.3

460.00 PURPOSE

The purpose of this procedure is to provide instructions for the proper use of force by police members, provide a fair and impartial review of use of force incidents, determine whether the actions of police members were justified, and to maintain public confidence in the Milwaukee Police Department.

460.05 POLICY

It is the policy of the Milwaukee Police Department that members hold the highest regard for the sanctity of human life, dignity, and liberty of all persons. It is the policy of the department to accomplish the department’s mission with the cooperation of the public and with minimal reliance upon the use of physical force **consistent with the MPD’s purpose of serving and protecting all people, including those suspected of crimes**. The Milwaukee Police Department is committed to resolving conflict through the use of professional communication skills, crisis intervention, and de-escalation tactics, when feasible. Members shall only use the force necessary to perform their duties and in accordance with department policy. **Unlawful or excessive force is expressly prohibited**.

460.10 DISTURBANCE RESOLUTION MODEL (WILEAG 5.1.2, 5.1.4)

It is the policy of the Milwaukee Police Department that all uses of force will comply with the state of Wisconsin Defense and Arrest Tactics (DAAT) Disturbance Resolution Model, Intervention Options, as outlined below:

A. APPROACH CONSIDERATIONS

Decision Making	Justification
	Desirability
Tactical Deployment	Control of distance
	Positioning (relative positioning / relative positioning with multiple subjects)
	Team Tactics
Tactical Evaluation	Threat Assessment Opportunities
	Officer/subject factors
	Special circumstances
	Level/stage/degree of stabilization:

- moving vehicle, or the vehicle itself, unless deadly physical force is being used against the police member or another person by means other than a moving vehicle. This is not intended to restrict an officer's right to discharge their firearm at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officer or others, and the moving vehicle poses an imminent and ongoing threat of substantial physical harm to the police member or another person from which there is no reasonable means to escape.
2. Police members shall not intentionally place themselves to either the front or the rear of a moving vehicle's path. If they find themselves in danger from a moving vehicle, they shall attempt to move out of the way.
 3. A police member shall not discharge a firearm from a moving vehicle unless deadly physical force is being used against the police member or another person by means other than a moving vehicle (e.g., fired upon), and the risks are outweighed by the need to use deadly force.
 4. Police members shall not reach into or place any part of their bodies inside a driver occupied vehicle during a traffic stop or field interview.

460.45 RENDERING FIRST AID FOLLOWING USE OF FORCE

- A. If a subject states he or she cannot breathe, states he or she is having chest pains, requests medical attention or if the officer observes the subject in medical distress when utilizing force, the officer shall immediately evaluate the situation and determine if an alternative restraint or technique can be safely and effectively utilized that will allow the person to breathe properly without compromising officer safety. The member shall then request medical aid as soon as reasonably possible.
- B. Once the person has been controlled and placed in restraints on the ground, the police member shall roll the person onto their side or into a sitting position as soon as possible. This procedure is performed to prevent injury to the person and to facilitate the member's monitoring of the person's physical condition.
- C. Following the use of lethal or less lethal weapons, or other applications of force, members shall render or request medical aid, if needed or if requested by anyone, as soon as reasonably possible. This may include detecting obvious change in condition or behavior, clearing chemical agents from the eyes, providing first aid, evaluation by emergency medical services or immediate aid by medical professionals. Members shall request medical aid if a person is exposed to Orthochlorobenzalmalononitrile (CS) or Oleoresin Capsicum (OC) as soon as reasonably possible.

460.50 USE OF FORCE REPORT (PF) (WILEAG 5.2.1, 5.3.1, 5.3.2)

A. PURPOSE

The *Use of Force Report* is designed to document those incidents involving the use of force by department members as described herein. The report shall be completed by a supervisory officer of a higher rank than the member that used force, except for supervisors assigned to the Internal Affairs Division who can investigate and complete a

Use of Force Report for any department member.

B. WHEN TO FILE REPORT

1. The *Use of Force Report* shall be completed by a supervisory officer when a department member:
 - a. Discharges a firearm except in a training situation or for lawful recreational purposes.
 - b. Points a firearm at a person.
 - c. Uses a baton to strike a subject or animal in the line of duty.
 - d. Discharges an irritant, chemical, or inflammatory agent.
 - e. Deploys an electronic control device to include contact stun and probe deployment.
 - f. Department canine bites a person.

Note: This section does not apply when a department canine bites a person during a training session. If the department canine bites a person during a training session, the bite shall be documented on a *Department Memorandum* (form PM-9E) and forwarded through the chain of command to the commanding officer of the Specialized Patrol Division.

- g. Forcible blood draws requiring use of force to obtain a sample where a subject claims injury or is injured as a result of police action.
- h. Uses bodily force that involves focused strikes, diffused strikes, or decentralizations to the ground.
- i. Uses any type of force in which a person is injured or claims injury, whether or not the injury is immediately visible.
(WILEAG 5.3.1.1, 5.3.1.2, 5.3.1.3, 5.3.1.4)
- j. **Draws or displays a firearm (including a shotgun or rifle) to effect an arrest or seizure of a person.**

Note: When in doubt as to whether a use of force incident should be documented on a *Use of Force Report*, notify your shift commander or immediate supervisor for guidance and direction.

2. The supervisor responsible for filing a *Use of Force Report* shall obtain a number in the AIM system prior to securing from duty on the date in which the incident occurred. The member(s) and subject(s) names, date, time and location of the incident shall also be entered on the same date the number was generated.

investigation, a claim, a notice of injury, or a summons and complaint is filed with the city of Milwaukee naming a member of the department, the member in question shall submit additional reports or provide statements when so directed by a supervisor.

F. INTERNAL AFFAIRS DIVISION RESPONSIBILITIES

1. The Internal Affairs Division shall be responsible for the retention of all *Use of Force Reports* via the AIM system.
2. The commanding officer of Internal Affairs Division shall provide the *Use of Force Report* to the Police Academy for training purposes.
3. Use of force data will be analyzed / audited on a regular basis by the Internal Affairs Division.

G. COMMANDING OFFICER'S REVIEW AND RECOMMENDATION

1. The member's commanding officer shall review the AIM system *Use of Force Report* and enter a recommendation under "Incident Tracking". When the commanding officer determines the use of force is in compliance, these reports shall be forwarded through "Incident Tracking" and general information "Status" directly to the appropriate supervisor of the Internal Affairs Division.
2. If the review finds the member's use of force was not in compliance, training is needed, or if there are serious injuries requiring admission to a hospital or if death occurs, the commanding officer shall enter a recommendation under "Incident Tracking". These reports shall be forwarded through "Incident Tracking" and general information "Status" directly to their respective bureau commander. Commanding officers may, at any other time they believe notification to their bureau commander is warranted, forward the *Use of Force Report* to their bureau commander.

460.55 USE OF FORCE COMMITTEE

- A. A Use of Force Committee shall conduct periodic comprehensive reviews of all use of force issues affecting the department.
- B. The Chief of Police shall appoint police members to the Use of Force Committee, who shall serve a one-year term, subject to extension at the discretion of the Chief of Police.
- C. The department's range master and a supervisor from Office of Management Analysis and Planning shall be standing members of the Use of Force Committee and shall not be subject to the aforementioned term limit.
- D. The Use of Force Committee shall meet **at least** quarterly, or as otherwise directed by the Chief of Police, and shall focus on, but not be limited to, the following:

1. Appropriateness of use of force by department members.
 2. Proper field supervision and supervisory review of use of force incidents.
 3. Application and effectiveness of department policies and procedures concerning the use of force, **including whether there has been a violation of SOP 001.05.**
 4. Proper use and effectiveness of equipment.
 5. Effectiveness of use of force training.
 6. Identification of training needs and opportunities for department members.
- E. The Use of Force Committee shall prepare a written report of the committee's finding and/or recommendations, and submit such report to the Chief of Police within ten (10) days of the completed quarterly or directed review. The Chief of Police, or designee, shall submit a copy of this report to the Fire and Police Commission executive director within twenty (20) days of the completed quarterly or directed review. **This report may be obtained through procedures established under Wisconsin Statutes related to public records.**
- F. The Chief of Police, or designee, shall send correspondence to the Fire and Police Commission executive director if the Use of Force Committee quarterly meeting was not held.
- G. Any recommendations or other matters for consideration by the Use of Force Committee shall be forwarded through the chain of command to the Office of the Chief.

460.60 FBI NATIONAL USE OF FORCE DATA COLLECTION

- A. The Federal Bureau of Investigation (FBI) collects national data for any incident where force is used by an officer that results in:
- The death of a person;
 - The serious bodily injury of a person; or
 - An officer discharges their firearm at or in the direction of a person.
- B. The commanding officer of the Internal Affairs Division shall ensure that any use of force that meets the criteria in subsection A is reported on a monthly basis via the *UFAD Form* in TraCS.



JEFFREY B. NORMAN
ACTING CHIEF OF POLICE



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

747 – BODY WORN CAMERAS (BWC)

GENERAL ORDER: 2021-XX
ISSUED: August 4, 2021

EFFECTIVE: August 4, 2021

REVIEWED/APPROVED BY:
Inspector Shunta Boston-Smith
DATE: May 26, 2021

ACTION: Amends General Order 2021-07 (April 2, 2021)

WILEAG STANDARD(S): 1.2.5, 6.3.6, 6.6.4, 10.2.1

747.00 PURPOSE

The purpose of this policy is to establish guidelines for the use, management, storage and retrieval of recordings from the department's body worn camera (BWC) system.

BWC's will be used to support the mission of the department and assist department members in the performance of their duties by providing an accurate and unbiased recording of interactions between police members and the public.

747.05 POLICY

This policy establishes standards and guidelines related to the capture and use of audio and video recordings produced by Taser Axon Flex body worn cameras.

This policy applies to all members assigned a BWC, and any members, investigative personnel, and support staff responsible for preparing cases for criminal prosecution and the release of public records. This policy does not apply to the use or management of the Axon Fleet in-car video system that is permanently mounted in police vehicles.

747.10 DEFINITIONS

A. AXON MOBILE SMARTPHONE APPLICATION

A smartphone application (app) that allows for a Bluetooth connection from the camera to a supported smartphone device. The app will allow a member to view live or recorded video stored on the camera. Video cannot be altered or modified, but members can tag the video in the field while the video is still stored on the camera. Tagging videos in the field will eliminate the need to tag videos after uploading at the work location.

B. 30 SECOND PRE-EVENT BUFFERING

The Axon Flex BWC is continuously recording video in 30 second looped increments. This is sometimes known as a pre-event 30 second buffer and works similar to the Axon Fleet in car video buffer. Audio is not recorded until the member begins a recording. Once the member begins to record, the previous 30 seconds of video is included in the evidentiary recording.

B. TRAINING

Members will receive prescribed training prior to being assigned a BWC. Any training provided will be commensurate with the level of participation in the BWC program (e.g., camera wearer, detective, administrator, etc.)

C. CARE AND EQUIPMENT

1. The only BWC authorized by the Milwaukee Police Department is the department-issued Taser Axon Flex BWC. Personal video recording devices are prohibited.
2. All BWC's and related equipment will be issued to individual members by the BWC program administrator or his/her designee.
3. A record of inventory will be maintained by the BWC program administrator.
4. Only members that have received the prescribed training will be assigned or permitted to wear a BWC.
5. Members assigned a BWC are responsible for the proper care of the equipment.
6. Any BWC that is lost or stolen will be reported as required by SOP 340.75.

D. REPAIR / REPLACEMENT

1. Replacement video cords will be available in the lieutenant's office of each deploying work location.
2. When a BWC is in need of repair or replacement due to damage (other than for a video cord), the member assigned the camera must notify a supervisor. The member shall detail the circumstances leading to the damage in an official police incident report if the damage occurred during an incident. If the damage did not occur during a reportable incident, the member shall detail the circumstances in a *Department Memorandum* (form PM-9E).
3. BWC replacement parts and/or systems are available by contacting the Field Technology Unit or the BWC program administrator. The proper documentation, outlined above, must have been filed with a copy made available for review by the Field Technology Unit or the BWC program administrator before replacement parts or systems will be issued.

747.25 OPERATIONAL GUIDELINES (WILEAG 1.2.5, 6.3.6, 6.6.4, 10.2.1)

A. PRE-SHIFT INSPECTION

Prior to each shift, members assigned a BWC will ensure the unit is adequately charged. Further, members will inspect their charging and camera cables as well as the camera to ensure there is no visible damage and the device is in good working order. Any visible damage or concerns about the functionality of the equipment will be

brought to the attention of the member's immediate supervisor as soon as it is practical to do so. The member and supervisor shall make every effort to procure a replacement BWC and/or equipment as soon as practicable.

B. WORKING REPLACEMENT SHIFTS

Members assigned a camera and working a uniformed patrol replacement at a work location other than where normally assigned will utilize a spare BWC kept at the work location where the replacement is being worked.

1. Before using the spare camera, a supervisor with Evidence.com access will need to assign the camera to the member.
2. If a supervisor is not immediately available, the member can use the camera, but should locate a supervisor with Evidence.com access before the end of their shift so the camera can be properly assigned.
3. If a spare BWC is not available, the shift commander will be notified.

C. AUDIO / VIDEO RECORDING

1. Wearing Position of the BWC

The camera mounted on a pair of glasses or on the head with the low rider head mount is the preferred mounting location. The adjustable collar mount, the vest mount, brim of a department issued ball cap, or motorcycle helmet are secondary mounting options for the member. The camera should generally be worn on or near the member's head and worn on the member's strong side.

2. Use of and Recording with the BWC

- a. A member assigned a BWC must wear it at all times when on duty and performing or likely to perform enforcement duties, including traffic stops, field interviews, no-action encounters, frisks, or searches.
- b. In car video and body cameras are each considered a tool in the performance of law enforcement duties. When a member is assigned a BWC and operating a vehicle equipped with in-car video, both the in-car video body microphone and the BWC will be worn.
- c. Members with a BWC who arrive on a scene or engage in investigative or enforcement contacts shall activate their BWC for recordable events including, but not limited to:
 1. Vehicle stops
 2. Impaired driver investigations
 3. Field interviews and pedestrian stops
 4. Transporting citizens or prisoners
 5. Searches of persons or property

6. Dispatched calls for service
7. Crime scenes
8. Crash scenes (may be turned off if member is waiting on a tow truck and no additional enforcement activity is likely)
9. Advising a subject of Miranda warnings (in the field or without MediaSolv)
10. Suspect/witness statements and interviews
11. Vehicle and foot pursuits
12. Emergency response to critical incidents

If multiple members are on scene with a BWC, all members with a BWC will record.

Note: The department recognizes that officer safety is paramount. In urgent or rapidly developing circumstances, members shall activate their BWC for a recordable event as soon as it is safe and practical to do so.

- d. Members assigned a BWC and with a prisoner in an MPD booking room will record until either the booker releases the member or the prisoner is put into a cell.
- e. Recording at the Criminal Justice Facility (CJF) will cease upon entry to the facility unless approved by CJF staff.
- f. Once a BWC is recording, members must continue to record until either the completion of the event or until they leave the scene and their involvement in the event ceases.
- g. While not required by policy or state law, members assigned a BWC may inform other parties that they are being recorded. This has proven to be influential in garnering cooperation of subjects and has been shown to reduce incidents of use of force.
- h. A BWC is not specifically designed to log evidence or to be used for any situation where fine detail and resolution is necessary. Members should use their assigned BWC to record crime scenes prior to the arrival of crime scene technicians or forensic investigators, especially if the scene may change or be compromised.
- i. For efficiency, members assigned a BWC can view and tag captured video via the Axon mobile smartphone app or by using Sync prior to uploading to Evidence.com.
- j. The failure of a member to activate a BWC as required by SOP 747, or the tampering with BWC footage, is a factor in assessing member credibility in any investigation into the conduct of the member. This section does not apply if the BWC was not activated due to a malfunction of the BWC, and the MPD member was not aware of the malfunction, or if exigent/emergency circumstances prevented activation.