

Nevada Department of Corrections
Office of the Inspector General
Preliminary Inquiry and
Administrative Investigations Guide
SECTION I: INTRODUCTION

Nevada Department of Corrections has a vital and ongoing responsibility to serve the citizens of the State of Nevada through the effective, efficient, ethical, moral and lawful conduct of its employees. It is essential that public confidence in the Department's ability to investigate and properly adjudicate complaints against its members be maintained. Anyone who expresses dissatisfaction with the conduct of a Department employee is entitled to prompt acknowledgement of his or her complaint. State laws, NRS 289.057 and NRS 284.387, authorize the Department to investigate complaints of misconduct. These sections read in part:

NRS 289.057 Investigation of allegation of misconduct; suspension without pay; review of file by peace officer in certain circumstances; law enforcement agency prohibited from keeping or making record of investigation or punitive action in certain circumstances.

1. An investigation of a peace officer may be conducted in response to a complaint or allegation that the peace officer has engaged in activities which could result in punitive action.

NRS 284.387 "Internal administrative investigations leading to certain disciplinary action: Right of employee to written notice..."

Furthermore, State law, NRS 289.055, requires the Department to have a procedure in place to investigate complaints.

NRS 289.055 Establishment and availability of written procedures for investigating complaints and allegations of misconduct. Each agency in this State that employs peace officers shall:

1. Establish written procedures for investigating any complaint or allegation of misconduct made or filed against a peace officer employed by the agency; and
2. Make copies of the written procedures established pursuant to subsection 1 available to the public.

This guide in conjunction with relevant Administrative Regulations and Operating Procedures is intended to fulfill the requirements of the law.

To that end, it is the policy of this Department to accept for review and possible assignment all complaints against its employees as prescribed by Administrative Regulation 339. The rights of the employee as well as the complainant must be preserved, and any investigation or hearing, arising from a complaint must be conducted in an open and fair manner with truth as the objective. Each accused employee is entitled to consistent, accurate and prompt disposition of complaint.

The Department will conduct thorough and impartial preliminary inquiry, administrative and when necessary, criminal investigations into all allegations of employee misconduct as prescribed by *Administrative Regulation 339*. All inquiries and investigations will seek to determine the pertinent facts, circumstances, and information regarding the complaint to be used by the Inspector General, Adjudicator or Prosecutor to determine a finding concerning the alleged misconduct.

The decision to initiate a preliminary inquiry and/or investigation, following the receipt of a completed Nevada Department of Corrections' Standardized Complaint Form (NDOC-1064), an

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incident entry in the Nevada Offender Tracking Information System (NOTIS), any Prison Rape Elimination Act (PREA) anonymous, third party, staff or other report, or any other type of verbal or written report of misconduct, resides with the IG or designee, (IG). All preliminary inquiries and/or investigations will be conducted by investigators from the IG office, (IG) and/or by Division Heads/Wardens or their designees having jurisdiction or responsibility over the matter or the employee being investigated. Any preliminary inquiry and/or investigation request deemed to have a conflict of interest involving the IG, Division Heads/Wardens or their designees will be reviewed by the IG for assignment to another investigative body. Investigative responsibility is determined and assigned by the IG or Director for the Department.

Any NOTIS Incident Report (IR), Inmate Grievance, staff or inmate or third party reporting mechanism, DOC 1064 or other reporting means that does not have articulable and supporting verification of the alleged misconduct by a staff member will be reviewed and given to an independent staff member, such as an institutional supervisory staff member, a Division Head or an IG Investigator in order to conduct a Preliminary Inquiry.

The purpose of a Preliminary Inquiry is to determine whether, in the opinion of the investigator, that there is information, documentation, or other type of evidence to support that the allegation of misconduct reasonably could have happened.

Results of a preliminary inquiry will be documented in an 028 entered into the NOTIS entry to include the conclusion reached by the assigned investigator. The results of the preliminary inquiry could lead to an official IA/IN investigation, which is a separate and distinct process. Final decision of any subsequent formal action as a result of the preliminary inquiry rests with the Inspector General and the Director as the Appointing Authority over investigations.

Investigative information developed concerning allegations of employee misconduct will be presented in a comprehensive "Report of Personnel Complaint Investigation". Completed reports will be forwarded to the responsible Division Head, Deputy Director or Director Designee who is responsible to adjudicate the complaint. The responsible adjudicator will review the report for the purposes of determining appropriate findings concerning each and every allegation in the complaint. Following that review, and when necessary, the Division Head will make a recommendation to the Department's Human Resources Administrator concerning any subsequent corrective or disciplinary action warranted by the case findings. Final authority regarding corrective or disciplinary action rests with the Director or his/her designee. All completed investigation case files will be forwarded to the IG for review and storage. All investigation case files and their contents are confidential by law and subject to dissemination *by IG or Director Authorization Only, and only on a need and right to know.*

Duty to Report Misconduct

The standard of conduct for employees of the Nevada Department of Corrections is outlined in Administrative Regulation 339, Employee Code of Ethics and Conduct, Corrective or Disciplinary Action, and Prohibitions and Penalties. The regulation states in part:

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- *Employees shall uphold the tenets of the United States Constitution, its amendments, the Nevada Constitution, Federal and State laws, rules and regulations, and policies of the Department.*
- *Employees shall report without reservation any corrupt or unethical behavior which could affect either inmates, employees, or the integrity of the Department of Corrections.*

Upholding the public trust takes courage and integrity. As prescribed by Administrative Regulations 421, 332, and 339, any Nevada Department of Corrections employee who becomes aware of any alleged act of misconduct by another Department employee is required to immediately report the information to his or her supervisor or to the IG in a manner timely to the risk posed by the issue, or the need for a timely response. Complaints should be submitted using either the Nevada Department of Corrections' Standardized Complaint Form (NDOC-1064) or via an incident entry in the NOTIS computer reporting system pursuant to Administrative Regulation 121.

- In conjunction with any PREA, 115.61 standard, "The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency..."
- The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators; and

CONFIDENTIALITY

All information obtained during both a preliminary inquiry and any subsequent formal investigation, if applicable, is confidential. All Department representatives tasked with a preliminary inquiry or taking, investigating and/or adjudicating complaint allegations, shall hold the matter confidential. Employees' who are assigned the above tasks have a legal and ethical obligation to maintain the confidentiality of the investigation. State law protects employees' personnel records and personal information. Investigators shall only discuss aspects of investigations with those who have a **right and need to know**. Without strict confidentiality, investigations can be compromised and evidence destroyed.

According to PREA standard 115.61(b) "Apart from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions."

SECTION II: THE PRELIMINARY INQUIRY

All Department Administrators, Supervisors and investigators are held to specific and certain actions during all types of investigations that could lead to punitive action against an employee. Approaching an accused staff member during an informal inquiry and asking investigative questions, could have potential adverse action during the formal investigative and/or administrative process. Caution should be used with any accused or suspected employee. However, all staff continues to have the responsibility and duty to report according to AR 332 and 421, and in conjunction with the operational needs and duties, supervisory staff still have the duty to obtain reports from staff in support of the operational needs of the Department. This does not, however, preclude any staff member from their obligation of mandatory reporting to their supervisor subsequent any unusual incident.

- PREA related incidents, allegations and/or reports, the person taking or receiving the initial response should not approach any accused or suspect staff member or inmate.

Maintaining Objectivity

Objectivity demands that persons assigned to a Preliminary Inquiry (PI) or an official IA/IN such as investigators keep an open mind at all times. The most outlandish allegations could be true and seemingly credible charges could be completely false. The investigator's role is to gather the facts. At conclusion of the PI, the assigned NDOC staff member will form a conclusion based upon whether or not there is some supporting information to refute or corroborate that the allegations could have occurred. Under a formal IA however, the responsibility for drawing conclusions falls to the finder of fact, the Warden or Division Head and/or Director, who review the final investigation and administers appropriate corrective action or discipline.

Identify the Parties Involved

Prior to referring an IR to the Inspector General's Office for review for PI and/or an IA/IN, identifying complainants, witnesses, and involved employees when possible is the first step to an entry in NOTIS. When a PI is being conducted, whether the number involved is one or twenty-one, the preliminary investigator (the person taking the complaint), must obtain each person's:

- Name
- Address
- Telephone (home, pager, work)
- Identifying numbers e.g., NDOC, NDL, NVID, SSN
- Best time for re-interview

Complainants – Most often, the complainant(s) will come forward. They may or may not, be able to identify the involved employees. The complainant may or may not, know of witnesses.

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Witnesses – The preliminary investigator should identify witnesses early. Seek them out; find out what they have to offer. This will save another investigator from retracing the trail. What witnesses saw or heard and their proximity to the incident are important. Establishing a witness' credibility and relationship to the complainant and the accused employee is another aspect to cover.

NOTE

According to an Amendment to NRS 289.060, all witnesses to a matter who are Peace Officers and the accused is a Peace Officer, the witness Peace Officers will be identified, notified they are a witness and must be interviewed. This is mandatory during the formal investigation process. However for the informal preliminary inquiry process, all witnesses to a matter should be identified and at a minimum submit a written report.

Participant employee — Participant employees are potential accused employees or witnesses. Unlike complainants, the investigator may have to find them. One way to identify them is through other complainants and witnesses. Identification may be by name or description. Daily work and time sheets, logs, activity and incident reports are just a few of the typical documents available to connect involved employees to the related incidents.

TIP

Gathering these documents contemporaneous to the initial complaint will save time down the line for whoever is assigned the formal investigation

TIP

It is important to address the reasons for any delay in reporting the complaint. The reasons should be noted in the investigation.

The staff member assigned to conduct the PI, should do so in a time frame no longer than 30 calendar days from the date the PI was received from the IG's office. The PI conclusion as to whether or not there is some supportive information, evidence, or documentation will be documented within an 028 within the NOTIS IR that is assigned for PI.

The staff member assigned to the PI should review the NOTIS report and all reports submitted in conjunction with the report. Any NOTIS IR generated in conjunction with an inmate Grievance shall also include a copy of the inmate's grievance, since that is the document that outlines the allegation of misconduct. Identify what the allegation is and begin to support or refute through information, evidence, or documentation through the independent review of staff logs, gatehouse logs, NOTIS IRs and/or disciplinary reports and general discussion.

The PI may also involve interviews of staff, whether non-Peace Officer or Peace Officer. The rules of the Peace Officer Bill of Rights, under NRS 289 may apply. In order to make a determination about whether the POBR would apply, contact the IG's office.

The conclusion of the PI occurs, once there is some supportive information, documentation or evidence to refute or corroborate that the allegation of misconduct did or did not occur. The staff member assigned to the PI provides a conclusion of the PI to his or her Division Head, Warden or in the case of an IG Investigator being assigned to the PI, the IG Supervisory

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Investigator. Once the conclusion report is approved by a Division Head or Warden, the NOTIS IGIDR (Incident Reporting Document) and 028 conclusion report will be returned to the IG's office, again the due date for PI reports will be 30 calendar days from the date assigned the PI.

The IG supervisor will review the PI Conclusion report and notify the IG with the recommendation to:

- Refer the IR for official assignment as an IA, IN or both and close the IR as processed and accepted status or;
- Close the IR as processed with a not accepted status, with a notation in the IG referral record that the matter could not be supported or refuted and is closed inactive until such time as additional information is received.

The IG will review the PI conclusion report and generate the written notification to the Director as Appointing Authority that an allegation(s) of misconduct has been received and will be official assigned for investigation. The written notification to the Director will include the following information, in compliance with NRS 284.287;

- The name of the accused staff member;
- All allegations that the staff member may face; and
- That within 30 days from the date the Director signs the notification, the named staff member will receive a written notice of allegation(s) or the matter was or will be closed for any further action related to the allegation(s) named.

Once the official notification of allegations against a staff member is signed by the Director, the IG will notify the IG Supervisory Investigator to assign the official IA, IN or both. The notification signed by the Director will become an official record of the IA investigative case file. The IG's office is responsible for tracking the 30 day time frame for the notification to the accused staff member.

If the IA is assigned to a Division Head or a Warden, the IG's office will provide notification to the assigned Division Head or Warden when approximately 15 days has lapsed since the assignment. An IA assigned to an investigation in the IG's office, will also receive a notification when approximately 15 days has lapsed since the official assignment.

Within the first 30 days of the official IA/IN investigation, the assigned investigator (including the subordinate supervisory staff member of a division or the institution or facility) should begin to engage in investigative activity. Refer to Section III, The formal Investigation..

SECTION III: THE FORMAL INVESTIGATION

The IG will assign the formal investigation to an appropriate investigator. The investigator may be an individual assigned to the IG or may be the appropriate Division Head or Warden. The formal investigation consists of the steps taken by the investigator to assemble the case file, investigate the complaint and prepare the final investigative report. This person may or may not be the supervisor who initially took the complaint from the complainant. This section outlines the steps for assembling the case file and for conducting the formal investigation.

Assembling the Case File

Following review of all reports contained within NOTIS that have been referred for investigation, reports sent to or received by the IG via any reporting means, including third party, telephonic and/or e mail, and determination of acceptance for investigation, a decision of the investigative type will occur and the IG designee will assemble the formal case file folder and/or documents for each new case. The IG designee may be Administrative supportive staff or the investigative staff themselves. The case file folder will contain the completed Complaint form or NOTIS entry, the assigned case number and sequence number, copies of any recordings and available attachments gathered in support of the investigation. The folder will also contain blank Chronological Record forms and all necessary notification and admonishment documents. Deleted sentence about delivery of the case file to the investigator.

(Note: In cases where the assigned investigator is a supervisor at an institution/facility, the Division Head shall ensure that a duplicate working file containing the above described items is prepared and provided to the assigned investigator. The assigned investigator will use the working file and the formal file will be retained at the IG.)

Investigators are responsible to ensure that they have all relevant materials necessary to conduct a thorough investigation. Investigators should locate and assemble any documents related to the matter. This is a list of some documentation the investigator might obtain early in the investigation.

- Copy of the complaint report/allegations
- Crime, arrest, or other miscellaneous records bearing on the allegations
- Diagrams/photographs of the scene, if applicable
- Witness list, including telephone numbers, addresses, and available dates
- Chronological record
- Medical treatment records
- Photographs of injuries and injured areas, visible or not
- Documents that establish contact between the accused staff member and the complainant
- Any applicable logs, shift reports, grievance, and/or documentation of accused or complainant activity; and

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- Review and make available prior complaints and reports of sexual abuse involving the suspected perpetrator.

Review the Complaint and Related Reports

Begin by reviewing the complaint and any related material within the case file with a check against NOTIS and any other supportive data base or place of records such as Human Resources. As mentioned in the previous section, the investigator must maintain objectivity when reading the file. Some of the things to look for are:

- Due dates, including any possible statute limitations and the new limit based upon changes to NRS 284 made during the 76th Legislative session.
- Discrepancies contained in documents or statements attached to the complaint
- Witness, Complainant, and Accused Staff identity and availability (days off, vacation, retirement, release date, etc.)
- Potential documentary evidence that must be gathered.
- Any potential criminal action and its impact on the investigative approach.
- Any scientific evidence analysis (blood, fingerprints, ballistics).

Set Due Dates

The Administrative investigative and discipline process is complicated and lengthy. In managing the investigative assignment, the investigator must set personal due dates as the investigation phase is just one aspect of the process. Once the investigation is completed, it is adjudicated by the appropriate Division Head, reviewed at different levels for consistency and fairness and acted upon. The IG sets a target a specific number of days to receive, review, finalize and forward cases to the concerned Division Head. With the new limitation in mind of the staff member having in hand the pending discipline action within 90 days of the date the accused was notified of the interrogation/interview, investigative due dates will be set at 30 days from the accused staff member being served the notice of interrogation/interview to ensure adequate time for review and any necessary follow up or corrections. Following submission and approval of the investigative report, the report is submitted to the concerned Division Head for Adjudication. The investigation phase is considered complete when the concerned Division head makes a finding concerning the allegations. Investigators must have an understanding of the process and schedule the investigation accordingly. If after beginning, the investigator determines that additional time is needed to complete the formal investigation, a request is made to the IG, through the investigator's chain of command, for an extension. Given adequate justification, an extension will be granted and the investigator will be notified in writing of the new due date.

Once an accused staff member is notified of the interview/interrogation and the 90 day "clock" has begun, each subsequent failure to attain the completion date, has an impact on the totality of the 90 days. Any subsequent request for additional time, after the 90 days from the date the accused staff member was notified about the interrogation/interview,

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must be sought with guidance from the IG's Office, keeping in mind the totality of the required 90 day process for all steps between service and notice of discipline.

The assigned investigator has an obligation to meet due dates and to keep his or her supervisor and respective Division Head apprised of the investigation's status and progress.

The assigned investigator must verify that all appropriate steps have been taken during the preliminary investigation. If any steps have been overlooked, the investigator must address them. Some common considerations are:

- Administering appropriate sobriety tests where legally appropriate
- Preserving physical evidence
- Making appropriate notifications and admonishments
- Interviewing transient witnesses who might be difficult to locate later
- Paraphrase the complainant's statement, if necessary. If that's already been done, listen to the recording anyway. The investigator can learn many things from the tape.

Determine Witness and Employee Availability

Make a list of all the persons identified for interview. This will assist in planning interviews and developing investigative strategies more effectively. Remember, it is now mandatory that all Peace Officers who are identified or reported as witnesses must be notified they are a witness, with a reasonable time frame to obtain representation if they wish then interviewed. The employee witness and accused staff members' information can usually be obtained from the Department's NSIC management system, institutional or division supervisor, and or Personnel. The list should include the following:

- Name and address
- Institution housed at
- Days off
- Shift assignment (start and end times)
- Vacation periods
- Day and night telephone numbers

Interview the Supervisor Who Took the Original Complaint

Investigators should not overlook the need to interview the initial reporter or who took the complainant's original statement. This person is a potential source for insight and information that is not present in tape recordings or paraphrased interviews. Use this interview to verify the date of occurrence and the date of reporting the incident. An explanation for any delays should be noted in the Chronological Record and the investigator's notes section of the investigation report.

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Ask for additional notes, documents, photographs, etc., that were not included with the original complaint submission. Investigations can be adversely affected when at subsequent hearings, the initial person who took the complaint testifies to the existence of rough notes and the investigator is unable to produce them. Such a situation gives the defense the opportunity to argue that these notes contained exculpatory information that is being withheld.

Plan Investigative Strategy

Developing a strategy for investigations will save valuable time in the long run. Narrow the scope of the investigation and focus on the best way to proceed. Consider consulting with experts, if necessary, especially for matters involving technology, fiscal and personnel related practices, rules and or regulations. Understand though, investigations can take many turns; planning is a continuous process. Here are some questions to ask:

- What special considerations am I facing in this investigation?
- What are the liability issues?

Review available sources of information relative to the allegation at hand about the accused staff member, including any concerns previously about behavior, review sources of information about the complainant, could the allegation have happened based upon shift assignment versus facts of the allegation; and review any other potential pertinent information to be developed pertaining to complainant, witnesses and accused.

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SECTION IV: PREPARING FOR INTERVIEWS

Background preparation and planning is an essential element to conducting thorough interviews. Being familiar with background information provides an edge during interviews. One caution about this step: *Investigators **MUST NOT** allow the formation of preconceived notions concerning persons or events that might compromise objectivity.*

Researching Background

Frequently, interview subjects reveal critical information in unexpected or off-hand comments. A well-prepared investigator will be able to recognize the significance of such comments and capitalize on them. Privacy rights of all persons are important. Background research should only be conducted in areas and on persons that are germane and relevant to the investigation. Background research may be relevant concerning complainants, witnesses and/or accused persons. Some sources of information are listed below in no particular order:

- Crime and arrest reports
- Intelligence files
- DMV records
- Past or pending grievances or kite complaints
- Family background and associations
- Education
- Employment and promotion history
- Attendance/leave records
- Performance evaluations and work performance standards
- Training records
- Prior allegations of sexual abuse/assault or sexual harassment

Many of these sources are confidential and require a “need to know, right to know” authority, and in some circumstances may require the permission of the individual under consideration. The amount and nature of research conducted on any particular subject will depend on relevance and the nature and scope of the investigation. For information that is confidential and not readily available, the investigator must consult with the IG.

Scheduling Interviews

Generally, all interviews should be scheduled in advance and conducted in person. As a general rule, all accused employees should be interviewed in person and digitally recorded. Frequently, key witness staff members prepare written statements concerning an event. While useful in providing insight, written statements should not be substituted for in-person interviews and never in the case of an accused staff member, unless that staff member is no longer employed by the Department and that person fails to cooperate with the investigation. However, occasionally an in-person interview of a witness is not practical. Non-employee subjects who refuse in-person interviews or whose location makes an in-person interview impractical may be

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interviewed by telephone. As with in-person interviews, telephonic interviews will be digitally recorded. Pursuant to State law, the subject *must be* advised of telephonic tape recording in advance. Consult a supervisor or the IG if circumstances indicate the need to conduct an unannounced interview. Occasionally, the nature of an investigation may require one.

Department Employees

Peace Officer - NRS 289.060 establishes certain rights/requirements concerning the interrogation of an individual with peace officer status, whether a witness or as an accused. (Note changes due to legislative amendments will be annotated in red for quick review and compliance). Those are as follows:

NRS 289.060 Notification and requirements for interview, interrogation or hearing relating to investigation; prohibition against use of certain statements or answers in subsequent criminal proceedings.

1. Except as otherwise provided in this subsection, a law enforcement agency shall, not later than 48 hours before any interrogation or hearing is held relating to an investigation conducted pursuant to NRS 289.057, provide a written notice to the peace officer who is the subject of the investigation. If the law enforcement agency believes that any other peace officer has any knowledge of any fact relating to the complaint or allegation against the peace officer who is the subject of the investigation, the law enforcement agency shall provide a written notice to the peace officer advising the peace officer that he or she must appear and be interviewed as a witness in connection with the investigation. Any peace officer who serves as a witness during an interview must be allowed a reasonable opportunity to arrange for the presence and assistance of a representative authorized by NRS 289.080. Any peace officer specified in this subsection may waive the notice required pursuant to this section.

2. The notice provided to the peace officer who is the subject of the investigation must include:

(a) A description of the nature of the investigation;

(b) A summary of alleged misconduct of the peace officer;

(c) The date, time and place of the interrogation or hearing;

(d) The name and rank of the officer in charge of the investigation and the officers who will conduct any interrogation or hearing;

(e) The name of any other person who will be present at any interrogation or hearing; and

(f) A statement setting forth the provisions of subsection 1 of NRS 289.080.

3. The law enforcement agency shall:

(a) Interview or interrogate the peace officer during the peace officer's regular working hours, if reasonably practicable, or revise the peace officer's work schedule to allow any time that is required for the interview or interrogation to be deemed a part of the peace officer's regular working hours. Any such time must be calculated based on the peace officer's regular wages for his or her regularly scheduled working hours. If the peace officer is not interviewed or interrogated during his or her regular working hours or if his or her work schedule is not revised pursuant to this paragraph and the law enforcement agency notifies the peace officer to appear at a time when he or she is off duty, the peace officer must be compensated for appearing at the interview or interrogation based on the wages and any other benefits the peace officer is entitled to receive for appearing at the time set forth in the notice.

(b) Immediately before any interrogation or hearing begins, inform the peace officer who is the subject of the investigation orally on the record that:

(1) The peace officer is required to provide a statement and answer questions related to the peace officer's alleged misconduct; and

(2) If the peace officer fails to provide such a statement or to answer any such questions, the agency may charge the peace officer with insubordination.

(c) Limit the scope of the questions during the interrogation or hearing to the alleged misconduct of the peace officer who is the subject of the investigation. If any evidence is discovered during the course of an investigation or hearing which establishes or may establish any other possible misconduct engaged in by the peace officer, the law enforcement agency shall notify the peace officer of that fact and shall not conduct any further interrogation of the peace officer concerning the possible misconduct until a subsequent notice of that evidence and possible misconduct is provided to the peace officer pursuant to this chapter.

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(d) Allow the peace officer who is the subject of the investigation or who is a witness in the investigation to explain an answer or refute a negative implication which results from questioning during an interview, interrogation or hearing.

4. If a peace officer provides a statement or answers a question relating to the alleged misconduct of a peace officer who is the subject of an investigation pursuant to NRS 289.057 after the peace officer is informed that failing to provide the statement or answer may result in punitive action against him or her, the statement or answer must not be used against the peace officer who provided the statement or answer in any subsequent criminal proceeding.

(Added to NRS by 1983, 2097; A 1993, 2379; 2005, 622; 2011, 1750)

NRS 289.080 Right to presence and assistance of representatives at interview, interrogation or hearing relating to investigation; confidential information; disclosure; record of interview, interrogation or hearing; right of subject of investigation to review and copy investigation file upon appeal.

1. Except as otherwise provided in subsection 4, a peace officer who is the subject of an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during any phase of an interrogation or hearing relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer.

2. Except as otherwise provided in subsection 4, a peace officer who is a witness in an investigation conducted pursuant to NRS 289.057 may upon request have two representatives of the peace officer's choosing present with the peace officer during an interview relating to the investigation, including, without limitation, a lawyer, a representative of a labor union or another peace officer. The presence of the second representative must not create an undue delay in either the scheduling or conducting of the interview.

3. A representative of a peace officer must assist the peace officer during the interview, interrogation or hearing. The law enforcement agency conducting the interview, interrogation or hearing shall allow a representative of the peace officer to explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace officer but may require such explanation to be provided after the agency has concluded its initial questioning of the peace officer.

4. A representative must not otherwise be connected to, or the subject of, the same investigation.

5. Any information that a representative obtains from the peace officer who is a witness concerning the investigation is confidential and must not be disclosed.

6. Any information that a representative obtains from the peace officer who is the subject of the investigation is confidential and must not be disclosed except upon the:

- (a) Request of the peace officer; or
- (b) Lawful order of a court of competent jurisdiction.

↪ A law enforcement agency shall not take punitive action against a representative for the representative's failure or refusal to disclose such information.

7. The peace officer, any representative of the peace officer or the law enforcement agency may make a stenographic, digital or magnetic record of the interview, interrogation or hearing. If the agency records the proceedings, the agency shall at the peace officer's request and expense provide a copy of the:

- (a) Stenographic transcript of the proceedings; or
- (b) Recording on the digital or magnetic tape.

8. After the conclusion of the investigation, the peace officer who was the subject of the investigation or any representative of the peace officer may, if the peace officer appeals a recommendation to impose punitive action, review and copy the entire file concerning the internal investigation, including, without limitation, any recordings, notes, transcripts of interviews and documents contained in the file.

(Added to NRS by 1983, 2098; A 1991, 647; 1993, 2380; 2005, 623; 2011, 1752)

(Note: The provisions of NRS 289.060, 289.070 and 289.080 do not apply to any investigation which concerns alleged criminal activities [NRS 289.090] and when the investigation is purely criminal in nature. Other Constitutional protections would apply.)

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Non-Peace Officer – Additionally, pursuant to NRS 284.387 any employee (non-peace officer as well) who is the subject of an internal administrative investigation that could lead to disciplinary action against him or her is also afforded certain rights:

NRS 284.387 Internal administrative investigations leading to certain disciplinary action: Right of employee to written notice of allegations before questioning and to representation; deadline for and notification to employee of completion; extensions.

1. An employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee pursuant to NRS 284.385 must be:
 - a. Provided notice in writing of the allegations against the employee before the employee is questioned regarding the allegations; and
 - b. Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations. The employee must be given not less than 2 business days to obtain such representation, unless the employee waives the employee's right to be represented.
2. An internal administrative investigation that could lead to disciplinary action against an employee pursuant to NRS 284.385 and any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1. If the appointing authority cannot complete the investigation and make a determination within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1, the appointing authority may request an extension of not more than 60 days from the Administrator upon showing good cause for the delay. No further extension may be granted unless approved by the Governor.
(Added to NRS by 2003, 2003; A 2011, 1496)

As enumerated above, the provisions of 284.387 apply to all state employees. Additionally, certain case law, including *NLRB v. Weingarten, Inc.* and *Epilepsy Foundation of Northeast Ohio v. NLRB*, extend limited but similar representation protections to employees. Accordingly, when it becomes necessary to conduct employee misconduct investigations, apply the applicable notification and representation guidelines to the employees, as determined by whether or not the employee is a Peace Officer. Any time an employee who is the subject of an administrative investigation is to be questioned concerning activities that may result in corrective/punitive action, appropriately notice the employee and allow the employee to have appropriate representative(s) or attorney(s) present if the employee so desires and as established by either NRS 284 or NRS 289. If an employee requests to have a representative(s) present for an interview, allow the mandated amount of time to obtain such representation. Each case has variables that must be considered. NRS 289.060 identifies "no later than 48 hours before any interrogation or hearing" and 284.387 identifies "not less than two business days" as sufficient time to obtain a representative. Reasonable flexibility is recommended. Generally, three business days is sufficient time to find a suitable representative. More or less time might be appropriate depending on circumstances. In most cases, interviews can be scheduled without problem and to all parties' convenience. Individuals claiming they cannot find a representative should not stymie investigations or cause unnecessary delay in investigations. Once the prescribed time for obtaining a representative has passed, the interrogation/interview may be conducted.

(Notes: On September 9, 2003 the Attorney General issued Opinion No. 2003-03 concerning the language in NRS 284.387. Part of that opinion reads as follows, "*Section 4's limitation on the questioning by an agency of an employee suspected of misconduct*")

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is that the employee must be given at least two business days notice to obtain representation. Based on the limited and clear language of section 4, once the two business days notice has elapsed, the agency may then schedule the questioning of the employee at any time, subject to the relevant payment due the employee for callback or overtime pay, if the questioning is not conducted during the employee's regularly scheduled work time.".)

Remember, if a representative is present during an interview, he or she must not be connected to, nor the subject of, the same investigation. If the Department tape or digitally records the interview of an accused staff member, a copy will be provided to the employee upon request at the employee's expense.

As outlined in NRS 289.080(3) and (4), a representative must not be connected to or the subject of the same investigation and any information that a representative obtains from the accused peace officer concerning the investigation is confidential and **MUST** not be disclosed except upon certain circumstances. Any information that a representative obtains from a peace officer who is a witness must not be disclosed at all.

It is preferred that interviews of Department employees be scheduled for the employee's regular working hours or at least during their normal waking hours when the interview is conducted off duty. Occasionally, the seriousness of the investigation may result in off-hours interview. When interviews of employees occur during non-working hours, the employee shall be compensated pursuant to Department compensation guidelines. The time an employee spends in travel status and in the interview, should be documented in investigative notes.

Non-Employees

Witnesses – Interviews of witnesses or complainants who are not Department employees should be scheduled at the subject's convenience while avoiding unnecessary delay to the investigation. If a subject is difficult to locate or schedule, consult with a supervisor or the IG. Letters may be sent to the subject, and Chronological Record entries should be made to memorialize good-faith efforts to interview the person.

Length of Interviews – Interviews will vary in length depending on the gravity and complexity of the investigation. Schedule enough time to conduct a thorough interview without being rushed. Lengthy interviews may be continued on another day; however, end the interview by stating on the tape that the subsequent meeting will be a continuation of the same interview and not a re-interview to avoid any misunderstanding. Keep in mind the objectives and a sense of fairness.

Location of Interviews – The location of interviews can be critical. Employees should be interviewed at Department facilities. Consult a supervisor or the IG if the employee insists on an interview at a location other than a Department facility. Non-Department subjects, witnesses and complainants should be encouraged to come to Department facilities for interviews to ensure control over the interview. Conducting an interview at a private residence might leave

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the investigator vulnerable to the subject dictating certain conditions, such as insisting that a spouse observe an interview against the investigator's wishes. This could taint the spouse's statement if he or she should need to be interviewed later.

Once an interview date is confirmed, reserve an interview room if an investigator office is not available. Don't assume one will be available. Use a location that is quiet, private and has necessities like tables, chairs, electrical outlets, etc.

Tape or Digitally Recording Interviews

All interviews of Department staff members, witness and/or accused will be digitally recorded in their entirety. Before actually conducting an interview, review the following guidelines. The Department's practice is to not surreptitiously record administrative interviews.

Off-tape discussion – Off-tape discussion should be avoided as much as possible. Interview subjects often speak frankly during pauses in questioning, revealing information the investigator might not otherwise have obtained. At the announcement of a break, it is not unusual for subjects to relax and make significant comments or admissions.

Witnesses (not employees) – When a witness or complainant who is not a department employee objects to a recorded interview, attempt to explain the rationale for recording. Usually, a polite explanation will gain the cooperation of most subjects. However, if the subject still refuses to be recorded, document the refusal and continue with the interview.

SECTION V: CONDUCTING INTERVIEWS

With the background and preparation done, the next step in an investigation is conducting the interviews. The investigator is fact gatherer, not the fact finder. The investigator must be willing to accept the varying versions of events that subjects give. This does not mean the investigator can't confront persons with discrepancies between statements or evidence.

Investigators are encouraged not to use offensive language. Additionally, investigators will not use threats of punitive action, except when an employee refuses to answer questions. Further, no promise of reward may be made as an inducement to answer questions.

Primary Investigator

The primary investigator plans the case strategy and leads the interviews. Customarily, the primary investigator has the following responsibilities during the interview:

- Sets the questioning strategy prior to the interview
- Leads and controls the interview
- Asks the bulk of the questions
- Takes notes
- Operates the tape recorder

Secondary Investigator (If applicable)

The secondary investigator assists and supports the primary investigator. Customarily, the secondary investigator has the following responsibilities during the interview:

- Takes thorough notes
- Forms additional questions while listening to the interview
- Identifies other subject areas to probe
- Follow up with questions after the primary investigator is finished

Observers

As a general rule, no more than two investigators should interview or interrogate an employee at one time. Observers, such as a trainee, the investigator's supervisor or a representative of the Attorney General's Office may observe the interview or interrogation. However, the observer should not participate by asking questions. On occasion, it is permissible to exchange roles, for example after a break. The identity and role of any observer should be noted on the recording and to the subject being interviewed. All persons who will be present during an interview must be included in the interview notice.

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(Note: The Deputy Director having jurisdiction and the IG shall be notified in advance when Wardens or Division Heads are to be interviewed. Generally, an investigator from the IG will participate, especially if the subject of the interview is the accused.)

Representation

Department Employees - Besides the primary and secondary investigators, the occasional observer and the interview subject, most interviews could have at least one more person present, the subject's representative. Peace Officers who are either a witness or accused have a statutory right to at least one representative, but no more than two. The investigator must understand the representative's role in the process. If a representative is present during the interview, he or she must not be connected to, or the subject of, the same investigation. Representatives are not relegated to the role of passive observers and are permitted to speak during interviews at appropriate and designated times. However, representatives cannot answer questions for employees.

Non Peace Officer have a statutory right to at least one representative, but no more than two. The representation for non Peace Officer staff member(s) can be a lawyer or other person of their choosing.

Never tell an employee that he or she doesn't need a representative. When an employee has no representative present at the interview have the employee acknowledge on tape that he or she has chosen not to have a representative present. This will forestall a future accusation that you denied the employee the right to a representative.

Non-Department Subjects – Non-Department subjects, witnesses or complainants, should generally be interviewed in private. The investigator has the discretion to allow third party observers. However, the presence of friends or family can complicate the interview or skew its objectivity. Other times, attorneys representing complainants or non-employee witnesses may be present.

Preparing Questions

Preparing questions in advance of the interview is one approach to conducting the investigation. Consult with peers, supervisors and experts for proper questions that will address the concerns of the specific investigation. A list of general guidelines will help form questions:

- Arrange questions in chronological order
- Specific questions should address each specific allegation
- Type the list of questions and leave room for notes
- Highlight key questions
- Give the interview partner a copy of the question list in advance. (Do not give the list to interview subject.)
- Check off questions only after receiving a **satisfactory** answer

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- Review the list before conducting the interview

Remember **do not** rely solely on prepared questions. Listen carefully to responses and be prepared to follow up answers with appropriate questions that were not prepared or anticipated.

Strategies for Questions

The following guidelines will help the investigator conduct a smooth, professional interview:

- The primary investigator asks the bulk of the prepared questions
- The secondary investigator takes copious notes, writing any additional questions
- Subjects should be asked direct, specific questions to address each allegation
- Ask for specific admissions or denials from accused employees for each allegation, e.g., “Did you strike inmate Jones on the head with the bottle?”
- Ask each witness who denied seeing or hearing the allegation, “If Masterson had hit Jones on the head with the bottle, were you in a position to see it happen? Would you have seen or heard it?”

Beginning the Interview

Precede interviews by completing a LEAD-IN sheet for each person being interviewed, if possible. The lead-in is a scripted guide for identifying each person present at the interview as well as other information which will be needed when writing the statement summaries. After filling out the lead-in sheet, begin the interview on tape by reading the lead-in aloud. Using the lead-in sheet will also ensure that the investigator provides the requisite information to accused employees; names of interrogators, identity of others present, nature of the investigation and required admonishments.

(Note: Remember that NRS 289.060 requires that:

(b) Immediately before the interrogation or hearing begins, inform the peace officer orally on the record that:

- (1) He is required to provide a statement and answer questions related to his alleged misconduct; and
- (2) If he fails to provide such a statement or to answer any such questions, the agency may charge him with insubordination.

This is accomplished by reading the prepared Administrative Admonition onto the tape.

After reading the lead-in, give a brief explanation about the purpose of the interview. The investigator is **NOT** obliged to reveal any information that would jeopardize the investigation. However, accused employees are entitled to know the “nature of the investigation.” Allow the subject to tell what happened in his or her own words, without interruption.

Be prepared to review documents or physical evidence with the subject. If a diagram of the incident location was prepared, use only a generic, sanitized version and have the subject fill in relevant information as the subject recalls it. This practice will keep one witness’ recollection

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from molding to other witnesses' statements. Later, the investigator can create a comprehensive or summary diagram, if needed.

Ask each subject to show his or her location on the diagram in relation to the incident and the other parties' locations, if applicable. If not applicable, ask for specific information from the subject about their location. Then ask the subject if he or she was in a position to see or hear the act in question. Each allegation and all relevant issues should be addressed with each witness.

Typical questions might be:

- Did it (specific allegation) happen?
- Did you do it? Did you see who did it?
- Who was present when it happened?
- Were you in a position to see or hear it if it did happen?
- Do you think the other witnesses were in a position to see or hear it?
- Could the act have occurred without your knowledge? (Explain)

It is important to establish the relationship between all parties present and involved at the incident.

SECTION VI: INTERVIEWING COMPLAINANTS AND WITNESSES

This section discusses points specific to interviews of complainants and witnesses, whether Department employees or not. In this discussion, the terms complainant and witness are used interchangeably.

Interview Goals

Interviews of complainants have five important goals:

- Identify all allegations of misconduct against Department employees
- Determine if any allegations of misconduct are against any non-Department employee
- Ensure that every allegation is addressed in the interview
- Resolve discrepancies between the complainant's initial complaint statement and any subsequent statements
- Identify all involved employees and additional witnesses

The complainant must directly address each and every allegation of misconduct. The investigator's basic questions will follow the Who, What, When, Where, Why and How format plus additional probing questions that will be determined by the nature of the investigation.

IMPORTANT - An investigation will not be considered complete unless the complainant and the accused employee address each allegation.

It is not uncommon for a complainant's recollection to change from the initial time of the incident to the time of the interview. The investigator should not necessarily conclude the complainant is lying when this happens. Memory lapses or unconscious suppression, individual perspectives, elapsed time, conferring with others, etc., all contribute to the ability to recall events. Regardless of the cause, it's important to clarify and resolve any discrepancies between the complainant's various statements.

At the conclusion of the interview, remember to specifically verify the complainant has no more allegations or complaints. Don't ask leading questions to solicit more allegations. Some proper questions are:

Do you have any additional complaints, concerns or information to bring to our attention before we conclude the interview or is there anything you can tell us that will aid us in this investigation or that you think we should know?

If the complainant is a Department employee, Peace Officer or otherwise, the Admonition of Confidentiality must be read, reviewed and signed. A copy should be afforded to the complainant should they wish one.

Writing the Statement

Investigators are required to write a paraphrased summary of each interview. Writing the summaries is both a tedious and challenging task to do well. Unlike verbatim transcriptions, paraphrased summaries have the potential for bias, whether intentional or not.

The best time to summarize statements is immediately after the interview. At the conclusion of the interviews, time and circumstances permitting, the investigator should summarize the subject's statement in writing. The biggest challenge will be writing an objective, accurate account of the subject's statements. The statements should be free of the investigator's opinion or biases. Similarly, the investigator must be cognizant to avoid the omission of information.

Recants

When a complainant recants the allegation(s), the investigator shall document the recantation in the subject statement and proceed with the completion of the entire investigation. It is the investigator's responsibility to ensure the recantation is consistent with established facts. If the recantation conflicts with established facts, the investigator shall question the complainant in-depth and ensure the complainant is not being unduly influenced by other factors, such as fear of reprisal or intimidation. If it is determined that intimidation is a factor, the investigator shall immediately take appropriate action to stop the intimidation, investigate the additional allegation and consult with the IG.

SECTION VII: EMPLOYEE INTERVIEWS

Special considerations for conducting employee interviews require a separate discussion from non-employee interviews in the previous section. The primary differences lie in protections afforded to peace officers under NRS Chapter 289, as well as, other protections afforded to all employees under NRS 284, labor codes and other laws. The better the investigator knows and understands these various provisions, the better prepared they will be to conduct an employee interview and deal with the variety of situations that arise. The same standards apply to all employees when it becomes necessary to conduct investigations regarding allegations of employee misconduct. Consequently, all complaint investigations against employees will be handled in the same manner, regardless of having or not having peace officer authority. Only the applicable rights under the specific provisions for each NRS 289 and NRS 284 will be applied to the person being interviewed and/or interrogated.

Employee Witnesses

All Department employees not accused of misconduct, are obligated to answer questions in Department criminal and administrative investigations. Indeed, the investigator, as the representative for the Director, can compel reluctant employee witnesses to answer questions or face disciplinary sanctions. All employees are provided the following protections:

- Reasonable hours for interview
- Compensation for interviews conducted outside regular work hours
- Notification with a reasonable allotment of time for obtaining a representative should he/she choose

Neither civilian nor sworn *witnesses* have a right to know the nature of the investigation. The investigator may use discretion to reveal those parts of the investigation believed the witness must know in order to answer the questions. However, should the investigation or questions turn toward the witness as an accused, this employee has a right to know the nature of the investigation. (*See NRS 289.060*).

When asking employees to recall incidents, dates, times, etc., it is appropriate to provide them with appropriate relevant reports, just prior to convening or during the interview. Allowing the employee to be reacquainted with reports that the employee wrote personally will help the interview proceed in a more orderly fashion. If such disclosure could hamper the investigation, consider explaining to the employee the need for confidentiality. ***The investigator is not obligated to provide employees with a personal copy of any document to keep.***

Accused Employees

The most challenging interview during any investigation is the interview of the accused employee. The investigator must clearly understand the bounds of authority as well as the protections retained by every employee.

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Nature of the Investigation – Accused employees, unlike employee witnesses, have a right to know the nature of the investigation at the time of the interview. For example, in a complaint involving discourtesy, the investigator would meet the requirement by saying, while on tape and prior to asking any questions:

I am conducting an investigation regarding discourtesy alleged against you by John Smith. According to Smith, it occurred during training you and he attended on April 7, 2002, at the POST Academy in Carson City.

The lead-in form provides a check box to remind the investigator to include an explanation of the nature of the investigation.

Compelled Statements – Department employees are protected like any other person by rights that are guaranteed under the state and federal constitutions. This includes the protection against self-incrimination. Nonetheless, employees can be compelled to answer questions for administrative purposes only. If for example, an employee being investigated for misconduct that potentially includes elements of criminal activity declines to waive his or her rights as prescribed by Miranda, the criminal investigator must handle that investigation from that point without an interview of the suspect employee.

The investigator handling the Administrative Investigation will address separately, affording all the rights the employee is entitled to and when appropriate, read to the employee the Administrative Admonition form. When this is done, the compelled statement under the threat of insubordination or another disciplinary action constitutes a statement made under duress, which cannot be used against the employee in a criminal proceeding. The statement can however, be used in the development of administrative findings by the Adjudicator of the matter at hand.

Controlling Difficult Interviews

The vast majority of interviews will proceed smoothly with all parties (employee, representative, etc.) understanding the process and the need for the interview. If and/or when the investigator is faced with a confrontational or belligerent employee and/or representative, the following suggestions may prepare the investigator to better handle the situation:

- When the employee and/or representative tries to use the interview as a forum for making demands or legal challenges to the investigation, respond by saying, “Thank you. Your objection has been noted on the tape, now let’s continue with the interview”
- Don’t debate the relative merits of the objections some objections may be addressed with simple explanations
- If objections continue, repeat that the objection will be noted and direct the employee to answer the questions
- When the representative answers questions for the employee, remind the employee and the representative that the employee must answer the question. Representatives may not

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be conduits for employee's answers. If it sounded as if the employee was leaning toward a different answer prior to the representative's prompting, record/document the prompted response, but note the prompting in the statement summary

- An explanation to employees who are refusing to answer questions might be as follows: "The question I am posing is proper and relevant to the investigation. You are obligated to answer and failing to do so could result in an additional charge of insubordination. You, the employee, will have to face the consequences, not your representative"
- When these suggestions fail, order the employee to answer the question
- When the representative persists with obstructive behavior after being cautioned, begin dealing directly with the employee exclusively
- If the representative gives the employee improper advice (e.g. "You don't have to answer that question."), the investigator may tell the employee that the advice is improper
- Employees have a right to request breaks during the interview. As the facilitator of the interview, the investigator gets to call the breaks, with consideration to the employee's needs. If an employee asks for a break after a question is asked, the investigator may direct the employee to answer the question before breaking the interview. **The need for a break should not be used as a ploy to confer on every question outside the investigator's presence.**

Note: NRS 289.080 does specify the following

3. A representative of a peace officer must assist the peace officer during the interview, interrogation or hearing. The law enforcement agency conducting the interview, interrogation or hearing shall allow a representative of the peace officer to explain an answer provided by the peace officer or refute a negative implication which results from questioning of the peace officer **but may require such explanation to be provided after the agency has concluded its initial questioning of the peace officer.**

Knowledge, confidence, experience and professionalism will help overcome difficult situations. **It is important to note that the majority of representatives understand their roles and conduct themselves in a professional and cooperative manner. In many cases, their presence facilitates the interview.**

Employees Reversing Statements

Accused employees will sometimes return from an interview break or a day following an interview and want to change all or part of a statement, perhaps making a complete reversal of the previous statement. When an employee wants to change a statement after it has been made, include the original and the new version in the statement summary. With both statements, the finder of fact (employee's Division Head) will be better able to evaluate the truth of the matter. Consider the following examples of how to deal with a changed statement:

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Concluding Employee Interviews

Once the questioning has concluded, read each allegation that pertains to the employee being interviewed and ask the employee if he or she admits or denies the allegation. This practice will ensure that the investigator addresses every allegation and will help clarify any ambiguities present in the employee's statement.

Ask for Questions – All employee interviews should conclude with the investigator extending the opportunity for input from the participants:

- Ask the representative, "Do you have any questions?"
- Ask the employee, "Do you have any other information to tell us that is pertinent to this investigation or do you have any questions?"

Give Confidentiality Order – While the interview is still being recorded, order the employee not to discuss the investigation with anyone other than his or her representative, attorney, or the investigators assigned to the case. Remind the employee that violating this order could result in a charge of insubordination. Have the employee sign a confidentiality statement.

TIP

Also admonish the employee representative and the employee not to provide dubs of their interview tape recording to anyone else other than an attorney representing the accused in the investigation or in the subsequent disciplinary action.

Storage of Audio Recordings – Recordings of interviews from all investigations shall be secured and returned with the Investigative case file at the conclusion of the investigation for storage in the IG pursuant to office procedure. It is the responsibility of each investigator and Division Head to ensure that each tape is properly secured.

SECTION VIII: WRITING THE REPORT

The facts of an investigation are communicated through a written report. The final report is the culmination of the investigation. A poorly investigated complaint cannot be rehabilitated by a well-written report. Similarly, a poorly written report could invalidate the best investigation. Therefore, both investigative skill and writing ability are equally important. This section will outline complaint investigation report formats and give tips on writing style.

STANDARD “REPORT OF PERSONNEL COMPLAINT INVESTIGATION”

All Class 3, 4, and 5 complaint investigations will be reported in the Standard “Report of Personnel Complaint Investigation” format. Class 1 and 2 complaint investigations will be reported in the Standard “Report of Personnel Complaint Investigation” format, except in those instances when a Short Form Report is appropriate. As in all matters, this is a guideline and referenced there is always an exception to every rule, but any exception should be reviewed with the IG or his or her designee.

SHORT FORM “REPORT OF PERSONNEL COMPLAINT INVESTIGATION”

Selected Class 1 and 2 complaint investigations may be documented in the short form “Report of Personnel Complaint Investigation” format. Examples where the short form format would be appropriate for use include incidents where there are minimal issues in dispute or where the issue is performance based with few witnesses and there is an admission by the accused. The Short Form Report is used to document and adjudicate complaint investigations that involve no significant liability issues. The assigned investigator/supervisor should conduct an investigation, as appropriate, to ensure there is no other misconduct.

SUBSTANDARD PERFORMANCE

Division Heads should ensure that non-misconduct performance related issues are resolved without conducting lengthy investigations and in a manner consistent with prescribed personnel guidelines.

STANDARD REPORT FORMATTING

Complaint investigations are reported in a standard Memo format using Times New Roman 12 pt font.

DATE: July 1, 2002

TO: Warden, Northern Nevada Correctional Center

FROM: Paul Armstrong, Investigator, NNCC
Raymond Jones, Investigator, NNCC

SUBJECT: REPORT OF PERSONNEL COMPLAINT INVESTIGATION
IA-2002-XXXX-XX

COMPLAINT

*(Note that the **Complaint Section** provides the reader with three preliminary points:*

- *Source of the complaint*
- *Names, identifying numbers, information and assignments of the accused employee*
- *Nature of the allegations reported.*

Inmate Complaint alleging **UNBECOMING CONDUCT** and **UNAUTHORIZED USE OF FORCE** against Correctional Officer John Smith.

(Note that the type of complaint in this section should be pulled from the Major headings of the AR 339 Prohibitions and Penalties.)

ACCUSED STAFF

Last Name, First Name, Involved Institution

SAMPLE REPORT FORMAT FACE SHEET HEADING

The report begins by providing the reader with general information about the complaint and leads into more specific information from the varying perspectives. The example above tells the reader that the complaint is an officer against whom an inmate alleged one or more acts of UNBECOMING CONDUCT and one or more acts of UNAUTHORIZED USE OF FORCE.

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SOURCE - *The source of the complaint refers to who alleged the misconduct, Department, Inmate, Public. If the complaint is a mixture of allegations by a member of the public, an inmate, and by the Department, classifying it as a public complaint takes precedence. If the complaint involves allegations by an inmate and the Department, it would be classified as an inmate complaint.*

ACCUSED EMPLOYEES - *Each employee against whom allegations were alleged in the same incident should have separate investigative files, each with a distinct sequential number after the IA number.*

NATURE OF MISCONDUCT - *The nature of the misconduct alleged against the employee should be included in the paragraph. Case assignment sheets will include allegations identified by the IG listed in numerical order. If you identify additional allegations, they should be drawn from Administrative Regulation 339 (CODE OF ETHICS; EMPLOYEE CONDUCT; PROHIBITIONS AND PENALTIES) and added in numerical sequence. Contact the IG if you have questions concerning a particular allegation.*

Signature Block – The report’s signature block is to be placed at the bottom left side of the face sheet. It should allow for the signatures of each investigator and the approving supervisor.

_____ Paul Armstrong, Sergeant
_____ Raymond Jones, Sergeant
APPROVED: _____ John P. Simpson, Lieutenant NNCC

SAMPLE SIGNATURE BLOCK

Headers - Subsequent pages should have a header (disabled on the first page) that includes the page number. If you place this as a Header by means of the personal computer, you will save yourself the frustration of retyping page headings after you enter additional information.

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SAMPLE HEADER FORMAT

Margins - One inch all around for all pages.

Report Narrative Sections

Complaint investigation reports are divided into six distinct sections separated by the following headings:

- **SUMMARY**
- **WITNESS LIST**
- **INVESTIGATION**
- **INVESTIGATOR'S NOTES**
- **ADDENDA**

Each section is discussed below.

Summary Section: Beginning on a new page immediately after the COMPLAINT section. The **SUMMARY** section should provide the reader with an overview of the complaint, beginning with a short chronological introduction that leads the reader to the first and subsequent allegations. In many instances a copy of the NOTIS entry can be inserted here with additional details if needed.

It is important to identify the perspective from which the summary is written. Generally, the preferred perspective uses facts not in dispute, which are supported by references to documents or other facts included in the Addenda. Occasionally, a summary cannot be written from a neutral perspective. The solution is to choose a perspective and clearly identify it for the reader.

SUMMARY

According to Complainant Inmate Brown, on June 11, 2002, at approximately 5:00 PM, he was standing outside the culinary with Inmate Johnson, when Correctional Officer Bright approached and called him a "bitch".

ALLEGATION 1

Inmate Brown alleged that on June 11, 2002, at approximately 5:00 PM, Correctional Officer Bright engaged in UNBECOMING CONDUCT when Bright called Brown a "bitch."

(Note that only the primary heading from the Prohibitions and Penalties list is used.)

All allegations are specifically stated for the first and only time in the **SUMMARY** section. For future reference in the report, each allegation is numbered following a chronological sequence. Do not change the allegation numbers once the numbers are established.

Allegations that occur at the same place and time may be stacked together and addressed concurrently in subsequent interviews. This sample entry would follow immediately from the

previous allegation. When allegations are made regarding additional misconduct that occurred at a different date or place, take the reader to the next occurrence by means of a short transitional narrative.

Sample Summary section with transition to subsequent allegation

Approximately two hours later, Inmate Brown was in his cell lying on his bed when he received a note from an unknown Correctional Officer. Brown read the note and discovered that it contained the message, "Keep your mouth shut or you'll be sorry."

ALLEGATION 2

Complainant Inmate Brown alleged that on June 11, 2002 at approximately 7:00 PM, an unknown Correctional Officer engaged in UNBECOMING CONDUCT when the officer sent a note that stated, "Keep your mouth shut or you'll be sorry."

Notice in the examples above how the transition takes the reader to later in the evening in the complainant's cell and lists the allegation.

Referencing information - It is necessary here to pause and mention the four options for referencing information:

INDENTED NOTES – Indented notes clarify information or provide the reader with information regarding some fact immediately preceding the indented note itself. Use indented notes when it is important for the information to be directly connected to the source, for example, when an allegation is added to the investigation. Indented notes begin one tab space to the right from the current margin. Indented notes are acceptable in both the SUMMARY and INVESTIGATION sections.

Sample Indented note

ALLEGATION 2

Complainant Inmate Brown alleged that on June 11, 2002 at approximately 7:00 PM, an unknown Correctional Officer engaged in UNBECOMING CONDUCT when the officer sent a note that stated, "Keep your mouth shut or you'll be sorry."

(Note: This allegation was not alleged during the initial interview. It was added during a subsequent interview on June 13, 2002.)

INVESTIGATOR'S NOTES – Investigator's Notes are used to provide the reader with

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pertinent information related to information contained in the SUMMARY or INVESTIGATION sections. Investigator's Notes and Footnotes serve the same purpose and have equal weight in significance. You have the discretion to decide whether to use an Investigator's Note or a footnote.

TIP

The Footnote may be preferable over the Investigator's Note unless the information in the note is lengthy or un-referenced in the body of the report.

A reference in a statement to a doctor's opinion of a complainant's injury might appear as follows:

Investigator's Note reference

The complainant stated that the tenderness to his left rib cage, his sore thumb and the abrasion on his forehead were all caused by blows from CO Smith's fist.
(Investigator's Note 1)

Investigator's Notes are numbered sequentially through the entire report. If a supplemental report becomes necessary after the first investigation is completed, the numbering will pick up from the last Investigator's Note number in the first report. The numbering of footnotes and Investigator's Notes are separate and unrelated. The content and uses for Investigator's Notes and footnotes will be discussed in the INVESTIGATOR'S NOTES section.

FOOTNOTES – Footnotes are a shorter, simpler, and a preferred alternative to Investigator's Notes. By taking advantage of the word processor's capabilities, the writer will find footnotes easier to use and the report easier to edit. Footnotes are easier for the reader, too. Use footnotes for the same purposes as Investigator's Notes, keeping in mind the length of the notes. Footnotes that carry across several pages are impractical and instead should be referenced as Investigator's Notes.

Sample of footnote's use

The complainant stated that CO Smith grabbed him from behind and placed a chokehold around his neck. ¹

¹ Officer Smith - 5'5", 150 lbs Complainant – 6'5", 220 lbs

ADDENDA REFERENCES – Addenda references are used any time the writer wants to alert the reader to a supporting document related to the investigation. Addenda may be referenced in the SUMMARY and INVESTIGATION sections as well as in footnotes and Investigator's Notes. The format for Addenda references is similar to that of Investigator's Notes.

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Here are references to an Incident Report, a Use of Force Report, and a Medical Report:

Addenda references

CO Smith stated that the inmate fight started at 7:00 AM.
 (Addendum 1)

The inmate received a 3-second blast of OC spray and was subsequently examined by medical personnel.
 (Addenda 2-3)

-
- (Addendum 4, p.205) *If an addenda item already has a page number such as, a court transcript, you may refer to the page number of the transcript.*

Interviewed Person List Section: Beginning on a new page immediately after the SUMMARY section. The list includes every person who was interviewed for the complaint and every investigator who took part in the interview or collected evidence. Employee representatives and interview observers need not be listed.

FORMAT – The Interviewed Person List is used primarily by officials who are responsible for representing the Department at hearings associated with the complaint and its investigation and subsequent adjudication of findings. The names should appear in alphabetical order by last name. Dates and times of interviews, tape numbers, if applicable and the page on which the subject’s interview begins are listed for each person, except investigators.

<u>Non-Employees</u>	<u>Employees</u>	<u>Inmates</u>
Last name, First name	Last name, First name	Last Name, First Name
Address	Rank/Title	NDOC #
City, State, Zip Code	Identification Number	Assigned Institution
Day Phone	Assignment	
SSN or NDL		

Interviewed List should have the following appearance:

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Interviewed LIST

Name	Date	Time	Tape-Side	Page
Adams, John E. Sergeant	6/15/02	1330	12378-A	23

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NNCC				
Cartwright, Maxwell G. 123 Elm Street Carson City, NV 89711 (775) 123-8907	6/15/02	1440	23456-A	10
Armstrong, Paul Intake Supervisor Employee No. XXXX NNCC	Investigator			

TIP

The easiest way to create a Witness List is by using the Table command of the computer. You will need four columns and as many rows + 1 for the number of persons to enter. The extra row is for the labels at the top. Make the first row a HEADER in your table and it will repeat on subsequent pages.

Investigation Section: Beginning on a new page immediately after the INTERVIEWED LIST section. The **INVESTIGATION** section consists of the summaries of interviews of all the persons involved in the complaint, as well as the investigator’s investigative insights contained in footnotes and Investigator’s Notes. The **INVESTIGATION** section is the core of the report.

ORDER OF INTERVIEWS - The investigation and report should begin with the complainant’s interview and end with the interview of the accused. Thus, the report will flow from the complainant’s perspective to the accused. The investigator has the discretion for the order of interviews that fall between the complainant and the accused. Generally, use the witnesses’ point of view as a gauge. If one witness’ statement is more closely related to the complainant, then place that interview nearer the complainant’s than the accused. When a witness tends to support one allegation but refutes another, use discretion and place the interview in a position that best fits the flow of the investigation.

INTERVIEW FORMAT – Each interview should begin on its own page and consist of three parts: **Heading, Lead In,** and **Statement.**

The **HEADING** is placed at the top of the page and contains the personal information of the subject. The content is slightly different depending on whether the subject is an employee, inmate, or non-employee.

Employee interview heading

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INVESTIGATION
(1st page of investigation section only)

**Smith, John E., Correctional Officer, Employee No. XXX, Northern Nevada
Correctional Center,**

Non-employee interview heading

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Page 8

Jones, Paul, 123 South Elm Street, Carson City, NV. 89711, (775) 222-3333

Inmate interview heading

IA-2002-XXXX-XX
Page 8

Smith, Mike #XXXXX, Inmate, High Desert State Prison

The **LEAD IN** begins each interview. It should include the following information:

- Subject's name
- Date/time of interview
- Location of interview
- Investigator's name (ID Number and assignment if mentioned for the first time)
- Employee representative's name, if any
- Any other observers present
- Tape number and side or digitally
- Administrative (and Criminal if appropriate) admonishments.

If the subject was interviewed more than one time, begin a second lead-in in a new paragraph with the information specific to the re-interview. The multiple lead-ins will serve to tell the reader that the subject was interviewed more than once. When it is important for the reader to know what was said in the first interview versus the second, make the distinction in the text. When such a distinction is not important for the reader to know, you will not need to articulate the distinctions. Place an addenda reference at the end of each lead-in paragraph to reference the signed Employee Advisement form, if one was signed and is to be included with the report as addendum.

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NOTE: *DO NOT* include the admonition information if the employee was not read the admonition or given an admonition order to answer.

Sample Lead In with Admonition

Today's date is June 25, 2002, and it's approximately 0730 hours. This is Criminal Investigator Jane Doe and I am present at High Desert State Prison, Warden's Conference room to conduct an in person digitally recorded Interrogation/Interview with Senior Correctional Officer John Smith. Representing Officer Smith today is Henry Redgrave of the Employee's Association. This is being recorded on A02-34 and you are both aware it is being recorded correct? Officer Smith you were provided with a Notice of Interrogation/Interview for an Administrative Investigation on June 17, 2013. That notice afforded you at least 48 hours to obtain an employee representative is that correct. The Admonition of Rights was read and signed by Officer Smith, with acknowledgement on the record from Officer Smith that he is aware he must provide a statement and answer questions related to the misconduct allegation(s) and that if he fails to provide such a statement or to answer any such questions, he may be charged with Insubordination. The Admonition of Confidentiality was read onto the record and signed by Officer Smith.

Officer Smith, how long have you been with the Department? Where are you currently assigned and what is your duty station, shift assignment and work schedule. In the performance of your assigned duties, have you read Administrative Regulations and operational procedures.

STATEMENTS are paraphrased summaries of the subject's recorded statement. Write the statements in the 3rd person (he, she, it, they), past tense. Use quotes sparingly and only to directly quote a specific phrase that has particular significance to the investigation. Writing an accurate, objective narrative that captures the essence of the subject's statement is the biggest challenge in writing the investigation. The process begins with a well conducted interview.

(If needed, subsequent reviewers/adjudicators should listen to the tape recording for precise content, including nuances.)

Organizing information is vital to a well written interview. Allegation headings are used to divide a statement summary into parts that are relevant to individual allegations. Each statement part is simply numbered according to the numbers previously assigned to each allegation in the SUMMARY section (e.g., ALLEGATION 1, ALLEGATION 2, etc.). Include **ALL** parts of a statement relevant to a particular allegation under the specific numbered allegation heading. The reviewer/adjudicator should not have to depend on any other information from another part of the statement in order to evaluate a particular allegation. When information from a statement is pertinent to another allegation(s) separated by time or location, you will have to repeat the relevant information.

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Page 5

Bright, Alan C., Correctional Officer, Employee No. XXX, Northern Nevada Correctional Center,

On June 17th, 2002, Senior Correctional Officer Alan Bright was provided with a Notice of Interrogation/Interview Administrative Investigation by Criminal Investigator Jane Doe. Officer Bright requested his right to 48 hours of notice and the right to have an employee representative present. Officer Bright listed "TBD" as his employee representative.

(Addendum 1) The interview was conducted on June 25th, 2002 at 0730 hours at Northern Nevada Correctional Center, Operations. Officer Bright was represented by Henry Redgrave of the Employee's Association. The interview was digitally recorded using A02-34 with Officer Bright and his representative's knowledge and consent. Admonition of Rights and Admonition of Confidentiality were both read and signed by Officer Bright.

(Addendum 1) Admonition of Confidentiality was read and signed by the employee's representative, Henry Redgrave. (Addendum 1)

Prior to the start of the interview, Investigator Doe read to the peace officer NRS 289.060 subsection 3 part B numbers 1 and 2.

Bright stated that on June 11, 2002, he was assigned to the Tag Plant with Officer Hanna. They were assigned general security duties. They remained together during the entire shift.

ALLEGATION 1

Bright refreshed his recollection by reviewing his informational report. Bright said Officer Hanna was with him during the shift and was present throughout. They were never in the vicinity of inmate Brown's housing unit or cell. The nearest approach to Inmate Brown's housing unit is approximately 500 yards north of the Tag Plant.

Bright denied that he called Brown a "bitch" or that he made any derogatory remark to him. Bright stated that he has not even seen Inmate Brown since his return from vacation on June 9, 2002.

ALLEGATION 2

Officer Bright stated that he has not been in or around Inmate Brown's housing unit since he returned to work on June 9, 2002. Additionally, he indicated that he has not sent any correspondence using interdepartmental mail other than his time sheets.

Bright denied sending any messages to Inmate Brown. Further, he denied having any knowledge of Brown receiving any type of note.

SUBJECT HAS NO CONNECTION TO ALLEGATION – Include all allegation headings in every interview statement. When a subject has no connection to a particular allegation, explain briefly that the subject was not present or had no pertinent information.

ADDITIONAL INFORMATION – Create a heading called **ADDITIONAL** at the end of statements to summarize important information relevant to the investigation but not directly related to the allegations. For example, a witness’s statement about a pattern of sleeplessness, depression or gambling in the year leading up to a theft allegation.

DENIALS and RECANTATIONS – Include any denials or recantations under each applicable allegation heading. When a complainant recants, be sure to include the reason.

Investigator’s Notes Section: Beginning on a new page immediately after the last statement in the investigation. This is the page on which the reader will find the information referenced in the SUMMARY or INVESTIGATION sections as an Investigator’s Note.

TIP

The source for many investigator notes and footnotes will come from the Chronological Record, if the Investigator has done a thorough job of log documentation.

Format – The Investigator’s Notes page should have the following appearance:

INVESTIGATOR’S NOTES
(This heading on 1st page only)

1. Franklin and Sterling were assigned to NNCC Tower 2 at the time of this incident. Franklin was subsequently transferred to the Tag Plant and Sterling to Classification.
2. Burns identified Franklin from the Photo Display Folder as the officer who unnecessarily pointed a gun at Inmate Jones. Burns identified Sterling from a Photo Display Folder as Franklin’s partner. (Addenda 8-9)

Sample Investigator’s Notes page

USES FOR NOTES – Below is a list of uses for footnotes or Investigator’s Notes. Remember, footnotes are preferred, but when the note is lengthy or un-referenced, it is better suited as an Investigator’s Note. Place un-referenced Investigator’s Notes at the end of the Investigator’s Notes page.

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- Explain discrepancies or changes in allegations appearing on the original Standardized Complaint form and the completed investigation
- Clarify ambiguous or conflicting statements made by subjects
- Location and description of evidence seized and or stored
- The status of any criminal case
- How the incident was resolved that day (e.g., placed on administrative leave, reassigned, etc.)
- In Use of Force or aggravated cases, the height and weight of accused and complainant
- Why any witnesses or complainants were not interviewed
- Observations of injuries or lack of injuries by the investigator. Include the date and time the injuries were observed and the amount of elapsed time between the incident creating the injury and the time observed
- Any reenactments performed
- Additional searches for evidence, witnesses, etc
- Sobriety and other test results
- Investigating Officer's observations (lighting, conditions, etc)
- Relevant information if it appears that staff actions or failures to act contributed to the PREA allegation of abuse
- Reason for delay in investigation
- Explanation of missing addenda items pertinent to the investigation
- Gang information of witnesses or complainant, if relevant
- Criminal history record information of witnesses or complainant, if relevant
- Foundation for photographs: dates, times, location, photographer and a label of what is being depicted. For example, "Complainants right inner thigh." The investigator should not interpret the photographs; leave that to the adjudicator
- Foundation for medical treatment: date, time, treating physician, diagnosis (if any), prognosis (if any), expert opinion (if any)
- How and when Department employees were identified (e.g., by photo display folder, description or their own statements)
- A description of any physical evidence
- The reasoning behind any credibility assessments
- Forwarding of the case to the IG for review and/or presentation to the Attorney General's office.

Addenda Section: Beginning on a new page immediately after the last entry in the INVESTIGATOR LIST. The ADDENDA lists all documents referenced in the report. Addenda items should be numbered ***AND listed in the order they are referenced in the report.*** Include only the documents that are referenced as part of your Addenda. Other documents not referenced, such as signed statements or computer printouts, should be retained in the Investigative Case File. Keep the list of Addenda items simple but descriptive. You will

assemble the Addenda in the same order as it is referenced and listed. An Addenda list should have the following appearance:

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ADDENDA
1. Correctional Officer Alan Bright's Notice of Interrogation/Interview Administrative Investigation, Admonition of Confidentiality and Admonition of Rights forms (3 pages)
2. Daily Shift Activity Report (DSAR), Bright and Hanna, June 11,2002 (2 pages)
2. Complaint Advisory Form, Brown (1 page)
3. Photographs of Northeast Corner of Yard 3 from Tower 2 (5 pages)

Sample Addenda list

The pages of the Addenda list are the last pages of the report.

ASSEMBLING ADDENDA – All referenced Addenda items should be assembled and numbered in order of reference in the report. Mark each page of an Addenda item in its lower **right** corner with ADDENDUM sequence #. When the item is multi-paged, also sequence each page. From the example above, it would read in the lower right corner ADDENDUM 1 Page 1 of 2, ADDENDUM 1 Page 2 of 2. Do not try to number Addenda too soon because it will change often.

TIP

Place a copy of the final, assembled addenda in the Investigative Case File, in the event the original addendum becomes misplaced.

ALLEGATION LIST – Since the allegations are listed only once in the SUMMARY section of the report, it is helpful to future readers/adjudicators to have a list of the allegations for reference while reading the report. Creating the list is a simple process of copying and pasting the allegations from the SUMMARY section onto a new document. Again, the Allegation List is NOT a page of the report, merely a helpful tool for later readers. ***Allegation lists should be placed with the original investigation report for use by the adjudicator.***

Allegations List

Revised June 2017

<i>For Adjudicator's Use Only</i>
IA-XXXXX
ALLEGATION 1
Inmate Brown alleged that on June 11, 2002, at approximately 5:00 PM, Correctional Officer Bright engaged in UNBECOMING CONDUCT when Bright called Brown a "bitch."
ALLEGATION 2
Complainant Inmate Brown alleged that on June 11, 2002 at approximately 7:00 PM, an unknown Correctional Officer engaged in UNBECOMING

SHORT FORM REPORT FORMATTING

Short Form Reports are reported in a standard Memo format using Times New Roman 12 pt font. The face sheet is identical to the Standard Report Format.

DATE: July 1, 2002

TO: Warden, Northern Nevada Correctional Center

FROM: Paul Armstrong, Investigator, NNCC
Raymond Jones, Investigator, NNCC

SUBJECT: REPORT OF PERSONNEL COMPLAINT INVESTIGATION
IA-01-XXX

COMPLAINT

*(Note that the **Complaint Section** provides the reader with three preliminary points:*

- *Source of the complaint*
- *Names, identifying numbers, information and assignments of each accused employee*
- *Nature of the allegations reported.*

*For an investigation with two accused employees, the **Complaint Section** might appear as follows:)*

Inmate Complaint alleging UNBECOMING CONDUCT against Correctional Officer John Smith, Employee No. XXXX, Northern Nevada Correctional Center.

Department complaint alleging NEGLECT OF DUTY against Correctional Sergeant Bob Jones, Employee No. XXXX, Northern Nevada Correctional Center.

(Note that the primary and sub heading from the Prohibitions and Penalties list are used.)

ACCUSED STAFF

Last Name, First Name, Involved Institution

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Signature Block – The report’s signature block is to be placed at the bottom left side of the face sheet. It should allow for the signatures of each investigator and the approving supervisor.

Paul Armstrong, Sergeant

Raymond Jones, Sergeant

APPROVED:

John P. Simpson, Lieutenant
NNCC

The Short Form Report is used to document and adjudicate complaint investigations that involve no significant liability issues. The assigned investigator/supervisor should conduct an investigation, as appropriate, to ensure there is no other misconduct. The Short Form headings are as follows:

- Summary (Brief summary of incident or issue)
- Allegation(s)
- Appropriate investigator notes
- Addenda
- Classification
- Rationale
- Corrective/Disciplinary Recommendation
- Deputy Director Concurrence
- Employee Notification

SUMMARY

On February 11, 2003, Inmate Smith alleged in grievance # XXXXXX that Officer Jones called him a punk.

ALLEGATION 1

Inmate Smith alleged that on February 11, 2003, Officer Jones engaged in UNBECOMING CONDUCT when Jones called him a punk.

CLASSIFICATION: SUSTAINED

AR 339.05 Subsection 18 Unbecoming Conduct C. Unprofessional remark to an inmate. CLASS 1

RATIONALE: Jones admitted the allegation. The conduct alleged in the sustained allegation constitutes a Class 1 offense in the Class of Offense Guidelines. The Chart of Corrective/Disciplinary Guidelines recommends a sanction in the range of Verbal Counseling to Written Reprimand for a first time offense. This is the first sustained allegation of misconduct against Officer Jones. Jones is an experienced officer who should understand the importance of professional demeanor. In this instance it is clear that inmate Smith became unruly and obnoxious and C/O Jones became frustrated and spoke inappropriately. Jones reacted poorly due to a momentary lapse in judgment in a stressful situation. In keeping with the philosophy of progressive discipline, a sanction at the low end of the scale is appropriate.

CORRECTIVE/DISCIPLINARY RECOMMENDATION: Verbal Counseling.

DEPUTY DIRECTOR CONCURRENCE:

On March 30, 2003, Warden Doe discussed the Corrective/Disciplinary recommendation with the Department Deputy Director who concurred with the recommendation.

EMPLOYEE NOTIFICATION:

On April 2, 2003, Warden Doe met with C/O Jones and notified him concerning the outcome of the investigation and the recommended Corrective/Disciplinary action. Jones was provided a copy of the "Result of Adjudication Report".

SECTION IX: SPECIAL CONSIDERATIONS

The following section is offered to the investigator to provide additional information and insight into items that have been previously discussed. Also, it is provided to reiterate some of the more important aspects of conducting investigations and to provide investigators with relevant information concerning unique or uncommon investigations that might be encountered. Pursuant to Administrative Regulation 340, all complaints regarding allegations of employee misconduct are sent to the IG for review, category classification, assignment to the appropriate investigative body, and tracking. Complaints assigned to a Division Head are the responsibility of the Division Head for the completion of the formal investigation. All complaints must be investigated and documented. All reports are forwarded to the IG for review and storage.

It is acknowledged that some of the following information may not always be relevant, it is provided as information and to augment an investigator's awareness and knowledge of proper investigative techniques.

Confidentiality

All information obtained during any investigation and all documentation concerning the investigation is confidential. Any Department employee or representative who is tasked with taking, investigating and adjudicating complaint allegations, shall hold the matter confidential. Discussion and/or release of any information shall be restricted to individuals with **A NEED TO KNOW AND A RIGHT TO KNOW**. Investigators should seek direction from supervisors before releasing any information.

Assigned investigators should direct and admonish all employee-involved parties, to refrain from discussing complaint allegations with any non-authorized person or entity. All non-employee involved parties will be requested and advised to refrain from discussing matters with non-authorized parties.

The Investigative Case file and all of its attachments are *not* public records and will not be reproduced for the public record. Access to the file is limited to the case investigator and his or her supervisor, designated Department officials, the IG or designee, concerned Deputy Directors, the Director, and when applicable representatives of the state's Attorney General's office. The subject of the investigation and his or her representative may review and/or copy the file according to requirements found in NRS 289.

NRS 289.040 Law enforcement agency prohibited from placing unfavorable comment or document in administrative file of peace officer; exception; right to respond; provision of copy of comment or document; right to review administrative file under certain circumstances.

5. Upon request, a peace officer may review any administrative file of that peace officer maintained by the law enforcement agency that does not relate to a current investigation.

The Investigative Case file and all of its attachments are the property of the IG. That file *may not* be reproduced or copied without the express written consent of the IG. The material must not be left unattended and when not in use, must be retained in a secure manner. Authorized

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individuals who review or take possession of the file are required to sign before taking custody of it.

Any evidence obtained solely as a result of the personnel investigation is confidential and shall **NOT** be disclosed to members of the outside agency conducting a criminal investigation or any other unauthorized persons.

The Need for Documentation

It is important to the employee and the Department to maintain a file and document complaints even following disposition. Complaints that were investigated and resolved but not documented have resulted in additional and redundant investigation simply because documentation was not prepared. The public and employees have a right to feel secure that complaint allegations are handled appropriately within the Department. Public and employee trust and confidence in the Department diminish when records don't exist and the process lacks standardization. Standardizing the process ensures all complaints are handled equitably and fairly. Employees should be informed that investigative findings and reports are confidential.

According to PREA standard 115.71, all PREA administrative and criminal investigations shall include a written report and the Department shall retain all written reports relative to PREA allegations of sexual abuse/assault and sexual harassment for as long as the alleged abuser is incarcerated or employed by the agency plus five (5) years. In accordance with this requirement, all PREA investigations, both criminal and administrative will include PREA on the investigative file folder to ensure compliance with retention.

Parallel Administrative and Criminal Investigations

Garity and Miranda Rights

When it becomes necessary to conduct both an administrative investigation and a criminal investigation regarding a complaint, the IG will most often handle the both the Administrative and criminal investigation. Within the IG office, separate and independent investigative persons will be assigned. Each will develop and maintain separate Investigative Case files; whereby, privileged information gathered in the administrative investigation will not, under any circumstances, be shared with the individual(s) assigned the investigation of the criminal matter. If a criminal investigation is on going, all criminal reports will be gathered and added to the administrative investigation. Absolutely none of the administrative file will be copied or shared for the criminal investigative report. Any questions concerning this issue will be forwarded to the Attorney General's Office.

Self Incrimination

In conducting a criminal investigation, it is the Department's practice to provide a Miranda admonishment to all individuals suspected of criminal activity and to specifically identify the accused/suspected staff member that the interview being conducted is in regards to a criminal investigation.

Revised June 2017

False and Misleading Statements - Untruthfulness or an intentional lack of candor.

- A false statement is any manner of communication including but not limited to oral, written and electronic made by a Department employee:
 - When the employee knew or evidence demonstrates the employee should have known the statement was false at the time it was made; or
 - The employee fails to correct any statement upon learning the statement is false.

- A misleading statement is any manner of communication including but not limited to oral, written and electronic made by a Department employee:
 - When the employee knew or evidence demonstrates employee should have known the statement was inaccurate,
 - Intentionally provides information in an inaccurate context.
 - Intentionally provides information designed to misdirect or lead others astray.
 - Intentionally withholds information that is known or reasonably believed to be relevant.
 - Intentionally fails to provide a complete and accurate account of matters that are known by the employee.

Exculpatory Information

Information that tends to prove the innocence of an accused is called *exculpatory* information. Information that tends to prove the accused guilty is called *inculpatory* information. Investigators are obligated to disclose all relevant information developed during any investigation, whether it tends to prove or disprove the employee's involvement. Indeed, relevant information which neither suggests guilt or innocence should also be included. Consider the following:

An examination for latent prints failed to identify the accused employee.

In this example, the investigator should indicate on the Chronological Record that the latent print examination was conducted with an explanation of the results. Similarly, the information should be noted as an Investigator's Note in the investigation.

While the absence of latent prints neither proves nor disproves that the employee handled the object, it is nonetheless proper that the analysis and its results were included in the investigation. From the defense's perspective, the results of the analysis may corroborate a defense theory. The omission of the analysis from the investigation could be used to show a willful attempt by the investigator to conceal exculpatory information. Such omissions appear biased and can cast a shadow of doubt on an otherwise proper investigation, calling into question its overall objectivity and thoroughness.

Legal Advice

Often, the investigator will be asked to provide legal advice and recommendations as to what an employee should do regarding representation, etc. It is the Department's position that investigators refrain from providing legal advice to anyone. Investigators are required to advise each employee being investigated of their right to representation. However, investigators must refrain from directing an employee to any specific representative. They may direct such inquiries to the Department's Personnel Office who has available information pertaining to organized labor organizations that may be available to assist employees.

Privileged Communications

Are best described as being communications (spoken or unspoken) that are between an employee and his or her representative/attorney. These communications are privileged, in that the investigator does not have a right to know any of the specifics regarding the communications. Similarly, communications between an investigator and his or her counsel are privileged.

Polygraph Examinations

NRS 289.070 Use of polygraphic examination in investigation.

1. During an investigation conducted pursuant to NRS 289.057, the peace officer against whom the allegation is made may, but is not required to, submit to a polygraphic examination concerning such activities.
2. A person who makes an allegation against a peace officer pursuant to NRS 289.057 may not be required to submit to a polygraphic examination as a condition to the investigation of his allegation, but may request or agree to be given a polygraphic examination. If such a person requests or agrees to be given a polygraphic examination, such an examination must be given.
3. If a polygraphic examination is given to a peace officer pursuant to this section, a sound or video recording must be made of the polygraphic examination, the preliminary interview and the postexamination interview. Before the opinion of the polygraphic examiner regarding the peace officer's veracity may be considered in a disciplinary action, all records, documents and recordings resulting from the polygraphic examination must be made available for review by one or more polygraphic examiners licensed or qualified to be licensed in this State who are acceptable to the law enforcement agency and to the officer. If the opinion of a reviewing polygraphic examiner does not agree with the initial polygraphic examiner's opinion, the peace officer must be allowed to be reexamined by a polygraphic examiner of his choice who is licensed or qualified to be licensed in this State.
4. The opinion of a polygraphic examiner regarding the peace officer's veracity may not be considered in a disciplinary action unless the polygraphic examination was conducted in a manner which complies with the provisions of chapter 648 of NRS. In any event, the law enforcement agency shall not use a polygraphic examiner's opinion regarding the veracity of the peace officer as the sole basis for disciplinary action against the peace officer.

The use of polygraph examinations is greatly limited due to legislation, case law and inadmissibility in court and/or administrative hearings. However, a complainant's polygraph examination may be used at a hearing as long as the complainant agrees.

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A peace officer against whom an allegation of misconduct is made *may*, but is not required to, submit to a polygraph examination concerning such activities. A person who makes an allegation against a peace officer *may not be required* to submit to a polygraph examination as a condition to the investigation of the allegation, but *may request or agree* to be given a polygraph examination. If such a person requests or agrees to be given a polygraph examination, such an examination *must* be given. If a polygraph examination is given to a peace officer, a sound or video recording of the preliminary interview, the polygraph examination, and the post examination interview must be made. A polygraph examiner's opinion as to the veracity of the accused peace officer shall not be used as the sole basis for disciplinary action. (See NRS 289.070)

(Note: NRS 289.070 contains limitations concerning the polygraph. Before the opinion of the polygraph examiner regarding the officer's veracity may be considered in a disciplinary action, all records, documents, and recordings resulting from the polygraph examination must be made available for review by one or more polygraph examiners licensed or qualified to be licensed in this state who are acceptable to the law enforcement agency and the officer. If the opinion of a reviewing polygraph examiner does not agree with the initial polygraph examiner's opinion, the officer must be allowed to be reexamined by a polygraph examiner of his choice who is licensed or qualified to be licensed in this state. The opinion of a polygraph examiner regarding the officer's veracity may not be considered in a disciplinary action unless the polygraph examination was conducted in a manner which complies with the provisions of NRS 648.)

When a subject's credibility is highly suspect, the polygraph examination can be useful as an investigative tool. Often, subjects may admit untruthfulness during the examination or after the examination when confronted with results. When appropriate, arrange for polygraph examinations in compliance with NRS 289.070 and document in chronological log.

If, during the polygraph examination or subsequent re-interview, the subject recants or contradicts any previous statement or admits to lying, the polygraph examination may be referenced in the investigation. The reference should begin like this:

Complainant Jones was re-interviewed after voluntarily submitting to a polygraph examination. Jones recanted his statement and admitted to giving false information about Officer Marbury's discourteous remark ...

Probationary Employees

Probationary employees constitute a special class in regards to the administration of discipline. Because of this, it is important to determine and note in the Investigative Case file, an employee's status. This will assist the Division Head in reviewing and adjudicating the matter. Include the employee's probationary start and end date in the Investigator's Note section.

Employees Arrested or Suspected of Criminal Acts

When an employee is detained or arrested and without option, transported to a local jail, police or medical facility for outstanding warrants or any offense committed, Investigators assigned to the IG may be tasked to respond to the outside agency for the purpose of conducting a preliminary investigation but at a minimum and when available, collect the arresting initiation report

- Advise the concerned member of the outside agency that your investigation is for internal, administrative purposes only
- Complete the Department's Standardized Complaint form or NOTIS entry if one was not completed at the time the Department became aware of the incident.

SECTION X: FORMING ALLEGATIONS

The following guidelines may be used to assist complaint investigators in the formation of proper allegations. Properly formed allegations help to focus the investigation. The wording of allegations also plays a role in the Department's ability to definitively resolve misconduct. Allegations should be formulated using specific Class of Offense Guideline primary misconduct headings and secondary specific descriptor language. Consider the following:

An inmate told the complaint investigator that on June 1, 2003, officer Smith called him a "jerk".

Referencing the Class of Offense Guideline, this alleged activity is found under the specific primary heading of "Unbecoming Conduct" and the adjudicator and if applicable Attorney General's Office would review all secondary specific descriptors for application to the adjudication for the specific class of violation. Using that information and inserting the specifics of this allegation, a properly formatted allegation in this instance would be, at the time of adjudication:

ALLEGATION 1

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNBECOMING CONDUCT when Smith called Doe a jerk.

When the inmate's complaint involves more than a single act such as the following::

An inmate told the complaint investigator that on June 1, 2003, officer Smith called him a "jerk", as the officer grabbed him by the hair, threw him to the ground, and kicked him for no reason.

Sample complaint

If the complainant's statement were formed into a single allegation, it would present a problem for the Investigator and later, the Adjudicator (employee's Division Head), as well as the Deputy Attorney General representing the Department at any subsequent administrative hearing. Should some acts be found to be true but any single act (name calling, grabbing by the hair, throwing to the ground, kicking) within the allegation be proved false, it becomes problematic to sustain the allegation as a whole. To avoid this problem, each act of misconduct should be addressed separately at the initial phase by the investigator with the actual secondary headings applied by the adjudicator or the Attorney General's Office during their review. However, the complainant's statement above would thus be written into four separate allegations:

ALLEGATION 1.

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNBECOMING CONDUCT when Smith called Doe a jerk.

ALLEGATION 2.

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNAUTHORIZED USE OF FORCE when Smith unnecessarily grabbed Doe by the hair.

ALLEGATION 3.

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNAUTHORIZED USE OF FORCE when Smith unnecessarily threw Doe to the ground.

ALLEGATION 4.

Inmate Doe alleged that on June 1, 2003 Officer Smith engaged in UNAUTHORIZED USE OF FORCE when Smith unnecessarily kicked Doe's right thigh.

Sample allegations

Similarly, if two employees are accused of the same acts of misconduct in the same incident, the IG's office will initiate a single investigation IA separated by sequential investigative files for each involved employee. Investigators from the IG are available for advice and assistance in structuring allegations. The telephone number is (775) 887-3247.

The following are provided to assist in the formation of allegations of misconduct. This is not intended to be all-inclusive, but rather to provide examples of categories of potential misconduct. Keep allegations simple, specific, and precise.

Allegation Examples

— All allegations begin with one of the following formats:

- Complainant *(last name)* alleged that on *(date)*, *(employee's name)*.....
- The Department alleges that on *(date)*, *(employee's name)*
- Inmate (last name #) alleged that on *(date)*, *(employee's name)*.....

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The next part of the allegation would read

- Engaged in

At this point and for investigative use only, use the primary heading from the AR 339 Class of Offense Guideline that most accurately reflects the alleged misconduct.

Finally, you would write

- When he or she....

And end the allegation with the specific alleged activity.