

NASHVILLE COMMUNITY
REVIEW BOARD



Final Report

**Policy Advisory Report:
Metro Nashville Police
Department Zero-Tolerance
Sexual Misconduct Policy**

Approved on
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MNPD Zero-Tolerance Sexual Misconduct Policy Proposal

Final Draft

Contents

Introduction	4
Complaints Received by the Community Review Board.....	5
Alleged Sexual Misconduct by an MNPD Officer	5
MNPD Sexual Misconduct Investigatory Process.....	6
Defining Police Sexual Misconduct	7
Police Sexual Harassment in the Workplace.....	8
Non-Reporting Police Sexual Misconduct.....	9
Non-Reporting by Civilian Victims	9
Non-Reporting by Law enforcement Officers.....	9
The Need for Sexual Misconduct-Specific Policy	10
Policy:.....	12
Purpose	12
Definitions.....	12
Sexual Misconduct	12
Legal Standing	12
Federal Laws	12
Tennessee Laws:	13
Victim Rights	13
Prohibitions.....	14
Early warning signs.....	15
Prevention.....	16
Mandatory Reporting.....	16
Confidentiality	16
Employee Responsibilities	16
Supervisory & Command Staff Responsibilities.....	17
After Receiving a Report	18
Procedures for Investigating Sexual Misconduct Internally	18
MNPD Responsibility.....	19
Concurrent Administrative and Criminal Investigations.....	19
Alternate Options to Report Sexual Misconduct.....	20

Retaliation..... 20

Training 21

Recruitment 22

 Applicant Screening 22

Auditing..... 22

 Post Incident 22

 Integrity Audit 22

Collaboration with External Organizations 23

Future Research 24

External Resources..... 25

Appendix A..... 26

 Acronyms 26

Appendix B 27

 Tennessee Criminal Sexual Codes..... 27

Appendix C 31

 Police Sexual Misconduct Complaint Process Flowchart..... 31

 Figure 1 32

 Figure 2 33

 Figure 3 34

References: 35

Introduction

On August 10, 2020, Nashville Mayor John Cooper publicly called for an investigation into an alarming amount of sexual misconduct allegations brought against Metro Nashville Police Department (MNPD)^{42, a}. The list of complaints, issued by Silent No Longer TN (SNLT) on behalf of 19 women, detail allegations of sexual harassment, sexual assault, and gender disparity perpetrated by various members of the police department⁶¹. The ensuing investigations by Nashville's District Attorney's Office and Metro Human Resources prompted Mayor Cooper to include in the 2020 Policing Policy Commission Report⁵² more than 10 "action items" for MNPD to complete to achieve "a workplace where sexual harassment and assault is not tolerated."⁴⁶ Importantly, the Commission provided a completion deadline of 6-18 months for each action item in the November 2020 report¹⁶.

Almost 4 years after Chief John Drake publicly expressed a commitment to achieving the Commissions goals, MNPD has yet to "adopt a 'zero-tolerance' policy around sexual assault and sexual harassment". In lieu of adopting a specific policy for addressing sexual misconduct, Chief Drake stated in MNPD's 12-18 Month Action Item Report¹⁷ that MNPD employees were shown a video in October 2020 of the Chief stating that "harassment and discrimination would not be tolerated and when reported would be investigated thoroughly". Additionally, MNPD has implemented a dedicated phone line that is available 24 hours a day, seven days a week, for the purpose of reporting misconduct.

While the steps MNPD have taken are in the right direction, they do not meet the full complexity of the issue. For instance, "police sexual misconduct" pertains to a variety of behaviors, ranging from workplace sexual harassment to any sexual contact with civilians while under color of law, regardless of consent⁷⁵. Thus, police sexual misconduct is an issue too complex for a phone-line or video announcement alone to solve. It is a pervasive issue that must be addressed through dedicated, explicit, zero-tolerance policy.

The Nashville community has continually pushed for MNPD to further address the issue of police sexual misconduct. On November 21, 2022, the Nashville Community Oversight Board invited Greta McClain, director of SNLT, to speak at the monthly board meeting. At the meeting, Director McClain described being in communication with over 70 current and former MNPD employees who described incidents of sexual harassment, sexual assault, gender discrimination, racial discrimination, and retaliation. She then called on the NCOB, Mayor Cooper, and members of Metro Council to institutionalize policies to protect MNPD employees from becoming victims of further misconduct. Specifically, she sought MNPD policies that:

- Create a Zero Tolerance policy around sexual assault and sexual harassment.
- Handle harassment or hostile workplace complaints and expeditiously communicate their resolution to the parties.
- Consult with the Sexual Assault Center, the YWCA, and other related community organizations to conduct a blind review of complaints and policy.
- Adopt the International Association of Chiefs of Police's (IACP) and the Department of Justice's (DOJ) recommendations for how to conduct sexual assault/harassment complaints within MNPD.
- Create a blind review team consisting of an MNPD OPA supervisor, Metro HR supervisor, sexual assault advocate, and a DV advocate to conduct a random review of completed and in-process investigations at least once per calendar year.

^a See Appendix A for a list of acronyms.

- Create an investigative board staffed with an OPA investigator, senior sexual assault detective or supervisor, CRB compliance monitor, and Assistant DA or DA investigator to investigate officer-involved sexual violence, DV, or retaliation.
- Have specific policies on mandatory reporting, retaliation, and screening.

In addition to the many cases brought forward by SNLT, allegations of sexual misconduct by MNPD employees have continued to emerge. In 2023, a former female MNPD officer was awarded \$300,000 in compensatory damages in a harassment lawsuit against MNPD⁵³. Documents from the lawsuit indicate a pattern of MNPD supervisors not addressing harassment and misconduct when reported. Further, details of the case illustrate that when she brought these issues to light within MNPD, she was met with severe retaliation, ranging from continual assignment to details with the alleged perpetrator to threats of criminal charges. Though this lawsuit ruled in the victim's favor, her experiences sadly exemplify why many female police officers choose not to report their experiences of police sexual misconduct⁵⁹. This harsh reality demonstrates a need for MNPD policy reform that goes beyond providing phone lines for reporting misconduct. Explicit, comprehensive policies are required to combat a workplace culture that is tolerant of police sexual misconduct. Without such policies, it stands to reason that MNPD officers who are victims of misconduct will remain unlikely to report.

Unfortunately, the 2023 lawsuit was not the last incident of sexual misconduct by MNPD officers to be publicized. In May of 2024 an MNPD officer was fired for appearing in an OnlyFans promotional video in which he parodied a mock 'sexual shakedown'^{28,76}; a type of police sexual misconduct wherein an officer uses color of law authority to coerce sexual contact in exchange for the officer not ticketing or arresting an individual during a traffic stop. In addition to the simulated misconduct, the officer featured in the promotional stunt wore his MNPD uniform and badge and used his MNPD vehicle for the video²⁸. Although the swift dismissal of the officer is commendable, the officer's behavior in this case portrays MNPD officers as having both a culture of apathy towards- and ineffective training on- police sexual misconduct. Without a comprehensive zero tolerance sexual misconduct policy within police departments, that culture cannot and will not change.

Finally, in May of 2024, the CRB, OPA, and the Mayor's Office received a whistleblower complaint filed by a former lieutenant in MNPD's OPA⁴. He alleged that by design "[t]he department has failed to implement an actual zero tolerance policy on sexual harassment and discrimination; fails to properly communicate with or help employees affected by such conduct; and does not ensure violators cannot commit inappropriate conduct." The complaint details specific allegations against MNPD officers, where certain high-ranking officers were found to be engaging in practices of repeated sexual misconduct and gender discrimination yet received little disciplinary action. Often such officers were allowed to retain their positions and continue committing acts of misconduct. The complaints from this insider demonstrate that- in addition to the inadequacy of MNPD's extant policies- the culture and practices of MNPD are not representative of a workplace that has a "zero-tolerance" policy towards police sexual misconduct.

Complaints Received by the Community Review Board

Alleged Sexual Misconduct by an MNPD Officer

The Nashville Community Review Board (CRB) has also received a number of complaints regarding police sexual misconduct within MNPD. In December of 2022, CRB received an anonymous complaint from a social worker who claims to work with the unhoused community in Nashville. The complaint describes an "ongoing sexual relationship" between an unhoused young woman and an MNPD officer who was assigned to do homeless outreach. The complainant shares that over a period of 2-3 months the young woman would confide in them, sometimes sharing images of the two together and stating that they would "hook up" in his MNPD vehicle. The young woman also shared that the MNPD officer

would buy her meals and give her rides while on duty. While the young woman apparently believes the relationship to be consensual, the social worker states that they felt “disturbed” and obligated to file the complaint given the “high potential for abuse” and the clear power imbalance between the two individuals. As described in the following sections of this report, acts of police sexual misconduct often involve both abuse of power and authority under color of law and manipulation of vulnerable populations.

When notified of this complaint by the CRB, the director of the Office of Professional Accountability^b (OPA) stated that she would initiate an investigation of the case herself. Unfortunately, the unhoused woman was unwilling to provide the name of the MNPD officer or report his actions for “fear of losing her love”, limiting the information provided in the complaint. Indeed, OPA shared in August of 2023 that they had not been able to identify the victim or evidence of any wrongdoing against the officer involved, and therefore had decided to close the investigation^c.

While OPA was unable to take the investigation into this complaint further, this case provides an example the nuances of police sexual misconduct and color-of-law authority. While the unhoused young woman and the MNPD officer are both ostensibly consenting adults, the officer’s position in law enforcement calls into question whether the young woman feels coerced into providing consent. For instance, if the unhoused woman is forced to decide between rejecting the officer and being arrested, she may feel like she has no choice but to consent. Further, federal law prohibits consent as a defense to sexual misconduct under the color of the law^d, and most existent police sexual misconduct policies prohibit engaging in sexual acts with vulnerable populations while acting under the color of the law. Law enforcement officers are tasked with protecting members of the community they serve, and holding officers to this charge is paramount to both the effectiveness and reputation of any police department.

MNPD Sexual Misconduct Investigatory Process

The CRB has also been notified of multiple cases of MNPD failing to conduct investigations into cases of sexual assault or sexual battery on behalf of civilian victims. In April of 2021, the COB (now the CRB) received a complaint from a member of the community who found a young black woman, who claimed she had been sexually assaulted, lying in the street^e. The community member assisted the victim in calling the police and directing them to the scene. However, when the MNPD officers arrived, the community member stated that the officers did not interact with the victim appropriately, did not take her case seriously, and did not appear to believe the victim had been sexually assaulted. Although the CRB determined that the policy violation allegations were not sustained, this case exemplifies a trend of complaints brought to the CRB expressing disappointment in MNPD’s standards for handling sexual misconduct cases. In July of 2024 alone, the CRB received three separate complaints about MNPD failing to adequately handle civilians’ sexual assault investigations^f.

However, police sexual misconduct is not a problem unique to Nashville. Police departments across Tennessee have a publicized history of police sexual misconduct^{23,51,63} and failing to appropriately handle sexual assault cases on behalf of civilians^{18,47}. On a national scale, Maher found that more than 35% of all officers engaged in some form of sexual misconduct³⁷. Additionally, a study by the associated press found that roughly 1,000 officers lost their badges due to sexual misconduct violations in a six-year period⁶⁰. Furthermore, a database compiled by *The Buffalo News* reported that a law enforcement official was caught in a case of sexual abuse or misconduct at least every five days over the course of

^b Now former director at the time of the final draft of this report

^c Email correspondence with OPA

^d See legal standing policy section

^e COB CC2021-016

^f CRB CC2024-028; CRB CC2024-062; CRB CL2024-501; The details of these cases cannot be currently documented in this report, as all three of these cases are still open with the CRB and one of them is an ongoing criminal case. However, in two of these cases OPA has sustained the allegations against the officers for failing to adequately conduct the sexual misconduct investigations.

2005-2015⁵. Thus, adoption of the sexual misconduct policies recommended in this report would make MNPD a trailblazer for police departments across Tennessee and would help raise the professional standards of police departments across the country.

Defining Police Sexual Misconduct

The phrase “Police Sexual Misconduct” can be used to describe a variety of behaviors, from workplace sexual harassment to sexual contact with civilians while under color of law. For the purposes of this report, the End Violence Against Women International’s (EVAWI) definition of police sexual misconduct is useful:

“Law enforcement sexual misconduct is generally defined as including sexual harassment, sexual assault, sexual battery, and any inappropriate or unwanted sexual behavior committed against a member of the community or fellow employee by agency personnel... [and] includes any sexual act committed by agency personnel while on duty, or while acting under the color of the law, or any sexual act committed while off-duty but involving agency or government equipment, or within agency/government property or vehicles, involving the use of a service weapon, or information obtained through law enforcement activity or databases, or secured through threat of taking or denying official action.. [and it] also includes behavior that takes advantage of a law enforcement position to misuse authority and power to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue by another person.”⁷⁵

This definition encompasses both police sexual violence and sexual harassment of peer officers in the workplace and highlights the key elements of the issue that are unique to police sexual misconduct^{32,37}. For instance, a major theme of police sexual misconduct in general is misuse of power and authority. Police officers are charged with enforcing laws, providing service, and maintaining order in a just manner³⁹. As a result of this authority and trust placed in LEOs to exercise their duties appropriately, police routinely work alone and without direct supervision, and they regularly interact with vulnerable citizens. Many of these encounters with civilians occur during late night hours, and in situations that are isolated from public scrutiny. While these circumstances are justified and are necessary for officers to perform their duties, they also provide easy opportunities for the perpetration of sexual misconduct.

Evidence from a study by Stinson, Taylor, and Liederbach designed to understand the contexts in which police sexual violence occurs, found that officers who are sexual predators do indeed take advantage of the opportunities provided through situational contexts, most often those they encounter through their traffic enforcement authority or the enforcement of laws designed to control the sex worker industry, or situations in which they encounter minors who are vulnerable and easy to sexually manipulate⁶⁵.

Importantly, such instances cannot be written off as isolated encounters between consenting participants that involved females who were attracted to the uniform and the badge^{32,38,50}. Historically, this stereotype has provided agencies with plausible deniability, given the private nature of the encounters³³ and predators’ preferences for victims who are especially easy for officers to discredit (e.g. minors, intoxicated individuals, sex workers, minority members, etc.)^{64,76}. This neglect by agencies to investigate instances of police sexual violence allows predators to further endanger citizens. Several research studies demonstrate that this issue is not primarily driven by a majority of officers who deviate once, but rather by a pervasive minority of predator officers who exploit a system that enables them to repeatedly harm community members^{54,64,66}.

The stories of officers Anthony Arevalos of the San Diego Police Department and Daniel Holtzclaw of Oklahoma City Police Department demonstrate how vulnerable citizens pay the price when police agencies fail to adequately deal with officers who engage in PSV^{10,19}. Both officers victimized more than a dozen citizens, many of whom were targeted because they knew other law enforcement officers would not believe their stories. They were also not silent about their crimes amongst other officers and were allowed to stay on the force until criminal charges were brought against them from an outside agency⁶⁶. There are also stories of high-ranking officers who are known to have committed acts of sexual misconduct against civilians yet still rose through the ranks, such as Chief David Brame of the Tacoma Police Department (TPD)^{56,57}. Despite allegedly sexually assaulting a community member at gunpoint, TPD internal affairs did not sustain the allegations against him, allowing him to stay on the force and become captain 13 years later. During this time, he was also domestically abusing his wife. While she repeatedly notified other high-ranking members of the TPD and members of the city government of the abuse she was suffering, no action was taken until Brame fatally shot his wife and himself in front of their two children.

A large-scale study of PSV cases by Rabe-Hemp & Braithwaite further emphasizes the risks associated with hiring or maintaining officers with previous allegations of PSV⁵⁴. Of the 106 cases of PSM observed, 41.5% of cases involved a repeat offender officer. Further, problem-prone officers accounted for 72% of all victimizations. Cases of recidivist PSV were 11.7 times more likely to result in a lawsuit compared to non-recidivist cases of PSV. Thus, departments that fail to investigate or choose to hire on officers with prior allegations of police sexual misconduct place themselves at a high risk of being found liable in civil suits. In fact, in just over the course of 5 years, police misconduct from the Chicago Police Department (CPD) cost taxpayers over \$164.3 million⁸. Further, out of the 200 officers named in the cases, 57 were named in three or more cases, emphasizing the liability of repeat offenders within police departments.

While PSM is a prevalent issue nation-wide, the goal of this report is not to assert that most police officers are bad actors who engage in predatory sexual behaviors. Rather, the aim of this report is to highlight the responsibility of police agencies to prevent the police officers who are sexual predators from sexually degrading, humiliating, violating, damaging, threatening, and/or assaulting citizens they are otherwise sworn to protect and serve.

Police Sexual Harassment in the Workplace

The other category of offenses included in EVAWI's definition of PSM is sexual harassment of police officers by their coworkers. Workplace sexual harassment is a pervasive issue in the US^{40,70}, and has been shown to have long-term negative consequences on careers⁴³. However, there is a substantial body of evidence that sexual harassment is particularly endemic in the law enforcement profession. A study of police chiefs' views on sexual harassment in policing found that many "implied that the culture creates an atmosphere where officers feel free to engage in sexual misconduct with little fear of being reported"³⁸. Additionally, a survey of 2,867 male and female police officers observed that 71% of female and 41% of male police officers experienced workplace sexual harassment⁶⁹. While it is important to note that sexual harassment is not exclusive to female police officers, the disproportion between rates of sexual harassment across genders is glaring^{2,26,44}; numerous studies detail the ubiquity of sexual harassment and gender-based discrimination female police officers face both nationally^{35,39,59}, and worldwide^{13,62,68}.

In contrast to offenses of police sexual misconduct against civilians, many theorists hold that sexual harassment is often a manifestation of power and dominance more than a means to sexual gratification². That power and authority can also coerce victims of sexual misconduct against reporting the behavior, creating a "no-one will believe you over me" dynamic. Several studies have found that integration of female police officers challenged male colleagues' hypermasculine self-image and that

their resistance to working with female police officers may be due to feeling that their dominance is contested^{49,59}. Additionally, intersectional interpretations of social power in the workplace lead to distinct forms of harassment for any individuals perceived to have less social 'power'. Women face more sexual harassment on average than men, women of color report racialized forms of sexual harassment, and LGBTQ individuals report being targeted for not conforming to traditional gender roles^{3,11,31,45}.

Since the courts first determined that employing organizations can be held legally liable if they do not take sufficient steps to prevent sexual harassment, nearly all government agencies have adopted a formal sexual harassment policy and grievance procedure¹⁵. However, there is variation in how workplaces train their employees and the extent to which they enforce their policies. Federal employees report less harassment when they perceive their workplace as equitable, proactive in preventing harassment, and responsive to complaints of discrimination⁷⁴. A meta-analysis of 41 studies of workplace sexual harassment found that the strongest predictor of workplace sexual harassment was whether the employees felt that it was tolerated by the organization⁷⁹.

Non-Reporting Police Sexual Misconduct

Non-Reporting by Civilian Victims

Despite considerable effort, researchers have had difficulty estimating the exact prevalence of police sexual misconduct against citizens. This challenge is partially due to the hidden nature of police sexual misconduct, the "blue wall of silence"^{12,29,41} culture, and significant barriers community members face when reporting police sexual misconduct. However, efforts to document the reasons why most victims of police sexual misconduct are hesitant to report have been more successful. To start, the very personal nature of sex crimes in general results in many victims experiencing shame and fear that the process of reporting the details of the encounter will be a humiliating, demoralizing experience with a high risk of not being believed^{20,30,36}. Researchers have also suggested that the inherent trust placed in law enforcement officers can exacerbate the trauma a victim of PSM experiences²², making them less likely to feel safe approaching police officers.

Unfortunately, the experiences of victims who do report PSM often validate these concerns. As a result of attempts to report, many victims of PSM fear retaliation by police or are in fact ignored by police when attempting to file a complaint^{32,77,78}. Further, a report of nationally surveyed police departments found that many LEOs stated that up to 50% of all victims in sexual assault cases are lying^{6,34}.

Non-Reporting by Law enforcement Officers

Similar to the experiences of civilian PSM victims, few officers report instances of PSM or sexual harassment to their superiors, and those who do are often disappointed with the results^{5, 29,59}. Maher found that 75% of female officers surveyed had been sexually harassed by male coworkers, yet only 12% had reported it³⁹. This is not an uncommon finding⁴⁸. Unlike citizens who report PSM, female police officers also fear the consequences of reporting on a colleague and continuing to work in a culture historically known for its "blue wall of silence"^{12,29,67}.

Unfortunately, a WPLN report which interviewed police officers within MNPD indicates that the "blue wall of silence" is prevalent in Nashville as well⁴¹. One former MNPD officer tried to report a colleague's sexual misconduct but was met with severe retaliation from the department instead. The officer was ostracized, faced threats, was systematically undermined by her peers, and ultimately was forced to resign. This incident, along with the similar stories from within MNPD, illustrates how the "blue wall" operates to suppress complaints from both internal and external sources, reinforcing a culture of silence and blind loyalty towards certain officers. As such, female officers rarely report PSM because they fear not being believed, facing retaliation in the form of gossip or threats to their personal safety,

fear losing the respect and cooperation of their coworkers, and fear that they will sink any future career options or face unjustifiable dismissal because of reporting on a fellow officer^{13,53,59,70}.

The Need for Sexual Misconduct-Specific Policy

Governmental and nonprofit organizations have increasingly acknowledged the critical need for targeted policy safeguards addressing police sexual misconduct and sexual harassment within law enforcement agencies. Both EVAWI and the IACP have developed comprehensive guidelines aimed at managing and preventing such issues in police workplaces. Additionally, the DOJ has issued essential guidance to assist law enforcement entities in recognizing and curtailing gender bias in cases involving sexual assault and domestic violence, underscoring a concerted effort to promote fairness and accountability within the criminal justice field. The DOJ has made specific sexual misconduct policy suggestions to comparable cities to Nashville as well, like Louisville, Kentucky²⁷.

Thus, having a specific sexual misconduct policy has become a widely recognized best practice nationwide, and many police agencies have taken up the charge. The CPD, under the mandate of a consent decree⁶⁴, has taken significant steps by developing a comprehensive policy prohibiting police sexual misconduct. In May 2023, they also released a complete draft of this policy, inviting public input and feedback¹¹. This initiative provides a noteworthy model of how police departments can effectively address issues of sexual misconduct through robust and transparent departmental policies.

MNPD bears a crucial responsibility to follow suit and address the issue of police sexual misconduct, not only to maintain the trust of the community, but also to uphold the department's reputation. As Maher asserts, incidents of police sexual misconduct undermine the integrity of law enforcement and can significantly impair officers' effectiveness in carrying out their duties³⁷. Robust policies and proactive measures are essential to safeguarding both the community's trust and the department's public standing. As, the IACP Oath of Honor²⁵ goes:

“On my honor, I will never
Betray my integrity, my character
Or the public trust. I will always have the courage to hold
myself and others accountable for our actions.
I will always maintain the highest ethical
standards and uphold the values of my
community, and the agency I serve.”

Additionally, MNPD stands to benefit immensely from having a robust Police Sexual Misconduct policy. Many law enforcement leaders recognize that such a policy is paramount not only to upholding ethical standards but also to mitigating financial liabilities. In 2019 alone, a staggering \$139.6 million was paid out for sexual harassment claims to the US Equal Employment Opportunity Commission (EEOC)⁷⁶, underscoring the financial risks associated with such misconduct. Potential ramifications also extend to internal morale and productivity, recruitment challenges, health impacts on harassed employees, career volatility, and increased absences from work. Implementing and enforcing a stringent policy is therefore essential for MNPD to mitigate these risks, maintain operational effectiveness, and ensure public confidence in the agency.

Finally, MNPD has expressed a strong commitment to the 30X30 initiative, aiming to have a 30% female workforce by 2030²¹. Currently, female officers make up around 13% of MNPD's total officers⁷², which puts MNPD around the national average of 12%; a percentage that has not increased significantly since the early 2000s^{24,55}. This is partly because, as many studies report, the culture of many police departments is “permissive of police sexual misconduct and gender-based harassment”³⁸. To truly

support the 30X30 initiative, MNPD would be well-served to adopt a specific zero-tolerance sexual misconduct policy, ensuring a safe and equitable workplace for all its officers.

Based on national standards for police sexual misconduct policies, Mayor Cooper's unfulfilled 2020 recommendations, and in the interest of protecting the Nashville community and officers within MNPD, the CRB provides MNPD the following recommendation: that they adopt the following Zero-Tolerance Sexual Misconduct Policy.

Policy:

Purpose

To eliminate any instances of sexual misconduct within MNPD to protect both the Nashville community and the officers within MNPD. This policy is also designed to focus MNPD's approach to addressing sexual misconduct to center around the victim using trauma-informed care practices. This policy will define sexual misconduct and lay out a framework for addressing sexual misconduct based on best practice policies across the nation. Superficially, this policy draws on best practice standards from End Violence Against Women International's (EVAWI), the International Chiefs of Police's (IACP), and CPD's policies which represent the pinnacle of law enforcement sexual misconduct policies across the nation. Finally, this policy is designed to meet former Nashville Mayor Cooper's 2020 Policing Policy Commission's recommendation of creating a zero-tolerance sexual misconduct policy.

Definitions

Sexual Misconduct

EVAWI define sexual misconduct in Law enforcement as⁷⁶:

"sexual harassment, sexual assault, sexual battery, and any inappropriate or unwanted sexual behavior committed against a member of the community or fellow employee by agency (MNPD) personnel."

It also includes any sexual act committed by MNPD personnel while on-duty, or while acting under the color of law, or any sexual act committed while off-duty but involving MNPD or government equipment, or within MNPD/government property or vehicles, involving the use of a service weapon, or information obtained through law enforcement activity or databases, or secured through threat of taking or denying official action. Consent is not an affirmative defense when engaging in sexual misconduct. The term "MNPD personnel" is an inclusive term including all law enforcement MNPD employees, sworn and non-sworn.

Sexual misconduct also includes behavior that takes advantage of a law enforcement position to misuse authority and power (including force, or threats of force, arrest, charging, ticketing, reporting to immigration or child welfare authorities, refusal to investigate a crime, etc.) to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue (from a subtle suggestion to an overt action) by another person. It also includes any communication or behavior that is sexually inappropriate, whether it is with other officers or members of the community.

Legal Standing

Federal Laws

Title 18 USC. Section 242 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. This applies to all law enforcement personnel, sworn and non-sworn, including police officers, prison guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It includes all acts while on-duty and can include off-duty conduct when MNPD personnel are purporting to, or pretending to, act in the performance of their official duties (e.g., off-duty contacts or visits to crime victims, witnesses, or suspects, use of government vehicle or service weapon, threats of criminal prosecution or refusal to investigate). Consent is not an affirmative defense when engaging in sexual misconduct while acting under the color of law.

Title 18 of the United States Code, Section 250 (Civil Rights Offenses Involving Sexual Misconduct) makes it unlawful for any person to, while committing an offense under this chapter (Chapter 13-Civil

Rights) or under section 901 of the Fair Housing Act (42 U.S.C. 3631), engage in, or cause another to engage in, sexual misconduct.

Prison Rape Elimination Act, or PREA, "Title 34 of the United States Code, Section 30301" established a "zero-tolerance standard" for rape in prisons in the United States. Deliberate indifference to the substantial risk of sexual assault violates prisoners' rights under the Cruel and Unusual Punishment Clause of the Eighth Amendment. The federal statute defines "prison" as any confinement facility of a federal, state, or local government, whether administered by such government or by a private organization on behalf of such government, and includes any local jail or police lock up facility, and any juvenile facility used for the custody or care of juvenile inmates.

Finally, under the 14th Amendment in the United States Constitution, the Equal Protection Clause prohibits discriminatory enforcement of the law. That means that law enforcement agencies cannot selectively enforce the law- or fail to enforce the law- for cases that disproportionately affect certain demographics. Many courts across the country have extended this protection to include crimes that disproportionately affect women and children. Thus, agencies that have a policy, custom, or practice of failing to provide equal protection to community members- by improperly investigating such crimes- have been found to be discriminating based on sex.

Tennessee Laws:

In addition to federal law, the State of Tennessee has criminal rulings regarding sexual misconduct in the Statutory Definitions of Tennessee Sexual and Violent Sexual Offenses with Related Codes⁸. While the full codebook covers all the criminal aspects of sexual misconduct, there are multiple codes within it that pertain specifically to law enforcement officers, authority figures, and those who can exercise official authority over others.

Victim Rights

If any employee believes that they have been subjected to sexual misconduct, the employee has the right to file a complaint with MNPD, or an alternate reporting source. This may be done in writing or orally. Further, this policy does not preclude any employee from filing a complaint or grievance with an appropriate outside agency or other authority.

Any employee encountering sexual harassment is encouraged to:

- Inform the person that their actions are unwelcome and offensive; and
- Immediately document all incidents to provide the fullest basis for investigation.

Any employee who believes that they are being sexually harassed is encouraged to report the incident(s) as soon as possible so that steps may be taken to protect the employee from further actions that may be in violation of this policy and so that appropriate investigative and disciplinary measures may be initiated. Where the immediate supervisor is involved in the prohibited action, the employee may waive filing a complaint with that supervisor and may report to another entity, which may include a supervisor higher in the chain of command; OPA; the EEOC; the CRB; the OFS; the SAC; and/or SNLT.

MNPD ensures that the rights, needs, safety, dignity, and well-being of victims of sexual misconduct remain central to the responsibilities of MNPD and its employees. It is essential that the victim making reports or filing complaints are shown respect and that the reports are taken seriously throughout the investigative process.

Victim assistance and resources include, but is not limited to, the following:

- Being treated with compassion, dignity, and respect.
- Being informed about services and resources within MNPD and walked through the sexual misconduct complaint process for reporting within MNPD.

⁸ Please see Appendix B for the full list of the Tennessee State Codes.

- Being informed about external services and resources and walked through the sexual misconduct reporting process with external organizations.
- Being provided with a copy of this policy.
- Being assured of confidentiality.
- Having necessary actions taken to prevent further contact with the subject of the allegations, in a manner that does not adversely affect the victim's career within MNPD.

Prohibitions

Prohibited behaviors may include, but are not limited to, the following:

- Any criminal conduct of a sexual nature as defined by state, federal, or local laws, such as sexual assault, sexual battery, rape.
- Any criminal conduct that implicates law enforcement officers or other public officials, such as those in Tennessee's "Statutory Definitions of Tennessee Sexual and Violent Sexual Offenses".
- Exposing any uncovered genitalia, buttocks, or breasts to a member of the community or co-worker.
- Engaging in sexual acts or behavior while on-duty, when in uniform.
- Using MNPD/government equipment such as laptops and cellular phones for sexual gratification, such as sexting, taking unnecessary or inappropriate photos/videos of themselves, community members, detainees, or co-workers.
- Possessing or sending sexually inappropriate material while on-duty, unless the employee can demonstrate a legitimate law enforcement interest in the activity, for example as part of an investigation into criminal activity or employee misconduct.
- Using a MNPD position, badge, or identification card to solicit, initiate, or coerce sexual contact with anyone. This includes sexual "shakedowns", such as extorting sexual favors in exchange for not ticketing or arresting a member of the community, even if off-duty.
- Using a MNPD firearm, energy weapon, blunt instrument, or any other weapon to intimidate, force, or coerce sexual contact with anyone.
- Unnecessary contacts that are nonprofessional and sexually motivated, such as unwarranted call backs or visits to crime victims, witnesses, or suspects, making a traffic stop to get a closer look at the driver for nonprofessional reasons.
- Inappropriate and unauthorized use of MNPD resources or information systems, such as obtaining telephone numbers or addresses of community members, for purposes that are nonprofessional, sexually motivated, or as part of a pattern of domestic violence and/or stalking behaviors, even if off-duty.
- Attempting to initiate sexual contact or engaging in a sexual act with anyone contacted within the context of law enforcement duties and activities, even if off-duty.
- MNPD employee relationships with members of the community that constitute a conflict of interest when working for MNPD, such as MNPD personnel engaging in a sexual relationship with a victim of a crime during an ongoing investigation.
- Attempting to initiate sexual contact or engaging in a sexual act with any juvenile, including participants in a Police Explorer program or other youth program, such as Drug Abuse Resistance Education (DARE) or Gang Resistance Education and Training (GREAT), or between School Resource Officers and students.
- Voyeuristic acts committed against community members, such as looking in residences or vehicles for sexually motivated purposes, or as part of a pattern of stalking behaviors.
- Voyeuristic acts committed against detainees, both in MNPD vehicles and Davidson County jails/prisons, including invasions of privacy that are unrelated to official duties, such as peering at an arrestee using a toilet; requiring an arrestee to expose his/her buttocks, genitals, or

breasts; or taking images of all or part of an arrestee's naked body or of an arrestee performing bodily functions.

- Gratuitous physical contact with suspects or detainees, such as inappropriate, or unnecessary searches, frisks, or pat downs.
- Unlawful search to assign gender, such as the search or pat down of a person for the purpose of viewing or assigning gender based on the person's anatomy or genitalia or for any demeaning or harassing purpose is prohibited.

Any act of sexual misconduct committed by MNPD personnel may lead to disciplinary action up to and including separation from the department and based on the seriousness of the conduct, a criminal investigation and referral to the DA, when charges are warranted.

Early warning signs

MNPD personnel are expected to be mindful of early warning signs and behaviors that could lead to sexual misconduct and are required to follow the mandatory reporting requirements of this policy. Early warning signs include, but are not limited to:

- Aggressiveness, abuse of power, excessive or increasing use of force.
- Unusually high incidence of physical altercations or verbal disputes, in comparison with other personnel responding to the same types of calls or incidents.
- Public or employee complaints of aggression, harassment, stalking, or physical, and/or verbal abuse.
- Public or employee complaints regarding sexually suggestive comments/jokes, or comments about women that are objectifying/degrading with respect to gender, sexual orientation, or LGBTQ+ people in the sex trades, and survivors of sexual or domestic violence.
- Excessive/unnecessary call-backs or visits to the homes or workplaces of victims, witnesses, and suspects.
- Stalking or inappropriate surveillance activities and/or the misuse of police technology and information systems.
- Consistent patterns of time not accounted for, not answering calls for service, or patrolling or investigating out of assigned areas of responsibility.
- Suspicious patterns of enforcement and engagement activity, including traffic stops, ticketing, detentions, arrests, such as times, locations, race, gender, gender identity, age, etc.
- Suspicious patterns of activity such as frequent patrol of places where people engage in sexual activity, sex worker locations, vulnerable populations, campus residence halls, LGBTQ+ hangouts.
- Suspicious patterns regarding frequent volunteer transports, such as picking up intoxicated or vulnerable populations and offering rides, not calling in mileage.
- Suspicious patterns of use, or inconsistent use, of in-car or body-worn cameras.
- Testing/grooming behaviors or lack of appropriate boundaries with juveniles, including participants in youth programs, such as Police Explorer Programs, DARE, GREAT, or encountered as a Juvenile Investigator, School Resource Officer, etc.
- Violations of MNPD policies and procedures that could facilitate sexual misconduct (e.g., not calling in transport mileage, violating policies for in-car or body-worn cameras, patrolling, or investigating out of assigned areas, inappropriate pat downs, or searches).
- Rumors and reputation, such as “skirt chaser,” “child predator,” “peeper,” “bully”, etc.
- Reported or suspected violence against family members.
- Higher rank officers over-fraternizing with officers of a lower rank.

These early warning signs and patterns of concerning behavior are meant to deter potential misconduct and to guide intervention before policy violations occur. This effort is designed to protect

potential victims, and ensure employees maintain the high ethical standards of MNPD and the law enforcement profession.

Prevention

Mandatory Reporting

MNPD personnel are required to immediately report any knowledge, suspicion, or information regarding possible violations of this policy to their direct supervisor. If the suspected policy violation involves the direct supervisor, the incident/information shall be reported to the next person in the chain of command as soon as possible. If the reported incident involves the Chief of Police, the supervisor shall immediately notify the DA and the acting Mayor of Nashville and Davidson County.

Because of the sensitive nature of any complaints involving an individual in the chain of command, reports can also be made directly to the Unit responsible for conducting administrative investigations of officer misconduct and can be made to OPA, as applicable and appropriate. Any personnel who experience sexual misconduct also have a legal right to file a complaint with the US Federal EEOC and/or the Tennessee branch of the EEOC.

If MNPD personnel have knowledge or suspicion that officers or employees who work at another law enforcement agency have committed behaviors that would constitute a violation of this policy, they shall immediately provide this information to their direct supervisor. The supervisor will coordinate with the chain of command to determine if the information requires a criminal investigation, and if so, determine what agency has jurisdiction over that investigation. The supervisor will also ensure that information about a suspected code of conduct violation is reported to the agency of the suspected officer/employee as soon as practically possible.

Personnel who learn or suspect that they are being investigated by another law enforcement agency for behavior that could potentially constitute a violation of this policy (whether a criminal investigation or an administrative investigation for off-duty conduct), must immediately report this fact to their direct supervisor. The supervisor will notify the chain of command to ensure adherence to this policy.

Immediate action will be taken to maintain the complainant's privacy and protect the complainant from retaliation or other adverse consequences of reporting. Additionally, the complainant will have the option to refer their complaint to SNLT, the SAC, the OFS, and/or to the CRB. MNPD will provide the complainant the contact information for each organization the complainant wants to be referred to. When referred to a partner agency, the complainant has right to keep all their information confidential with the organization they are referred to. The complainant also has the right to release their information if they so choose. Personnel who fail to comply with the mandatory reporting requirements described in this policy will be subject to discipline up to and including, suspension, termination, and/or decertification.

Confidentiality

Any personnel receiving a report of possible policy violations, including sexual misconduct, shall not reveal information about the report, beyond what is required to fulfill mandatory reporting requirements, whether on-duty or off-duty.

Employee Responsibilities

Each employee of this MNPD shall be responsible for assisting in the prevention of sexual harassment by:

- Refraining from participation in or encouragement of any action that could be perceived as sexual harassment;
- Reporting observed acts of sexual harassment to a supervisor, OPA, or the CRB;

- Encouraging any employee who confides that they are being sexually harassed to report these acts to a supervisor, OPA, or the CRB;
- Encouraging any employee who is aware of sexual harassment to report these acts to a supervisor, OPA, or the CRB;
- Undergoing training to identify when another employee is engaging in sexually harassing behavior and learn the skills necessary to intervene (see “Training”).
- Awareness that vulnerable populations are at much higher risk of being victims of sexual misconduct.
- Encouraging any employee who is aware of sexual misconduct or harassment that targets vulnerable populations to report these acts to MHRC on the grounds of Title VI.
- Failure of any employee to carry out their responsibilities in good faith as defined in this policy may be considered in any performance evaluation or promotional decision and may be grounds for discipline.
- Reporting Sexual Misconduct (see “Mandatory Reporting”).

Supervisory & Command Staff Responsibilities

Supervisors are in a unique position to detect warning signs and patterns or indicators of possible sexual misconduct by MNPD personnel. Supervisors shall receive training on these early warning signs and supervisory responsibility for effective oversight of this policy. Oversight activities may include, but are not limited to the following:

- Collecting and analyzing data of activities related to the early warning signs and behaviors described in this policy (e.g., traffic stops, detentions, arrests, activity reports, radio logs, narrative reports, case dispositions, locations of activities, and subject populations).
- Conducting quality control audits to ensure compliance with operational policies (e.g., in-car and body-worn camera systems, access and use of criminal records, GPS monitoring).
- Conducting random call-backs by non-sworn employees or contracted sexual assault advocacy agencies, to members of the public, to obtain feedback on their interactions with an officer and the officer’s level of professionalism exhibited during that contact, including specific questions regarding sexual harassment or misconduct.
- Conducting reviews of MNPD personnel social media use and posted content.
- Conducting random observations and in-person supervision/support at calls for service, traffic stops, field detentions, pat downs, and searches.
- Conducting integrity audits where an officer has been the subject of a complaint or series of complaints for which complainants do not wish to proceed with an investigation.
- Monitoring the work environment for warning signs, patterns, or indicators that sexual misconduct may be occurring.
- Utilizing all reasonable means to prevent a prohibited act of sexual misconduct from occurring when they know or suspect that an employee will or may perform such an activity.
- Taking immediate action upon observing or receiving information regarding conduct that may violate this policy to prevent further sexual misconduct, regardless of whether the complainant wants any action taken on the complainant’s behalf; and
- Taking immediate action to prevent retaliatory conduct toward the victim and witnesses and to eliminate the hostile, humiliating, demeaning, or sexually offensive environment where there has been a complaint of sexual misconduct.

After Receiving a Report

When a supervisor receives a report of possible sexual misconduct committed by MNPD personnel, the supervisor will:

- Thank the complainant or other reporting party for reporting the potential violation and assure them that the report will be taken seriously, remain confidential, and thoroughly investigated.
- Refer the complainant to OPA, SNLT, SAC, OFS, or the CRB.
- Offer support and safety planning for the complainant or other reporting party. Complainants and reporting parties will be advised that their safety is the highest priority, and informed that they will be supported throughout the investigative process, including connecting them to an advocacy organization if they choose.
- Notify the chain of command as soon as practically possible, in addition to OPA and/or Tennessee Equal Employment Opportunity Office, as applicable and appropriate. Notification should include the supervisor's initial assessment of whether the conduct might violate MNPD policy, criminal law, and/or a person's civil rights.
- Evaluate the resources and steps necessary for a thorough investigation to be initiated by the proper authority, based on the initial assessment of the report.
- Thoroughly document incident details and steps taken for further review and follow-up by the authority or investigative body assigned to the administrative investigation.
- Secure any evidence and identify potential witnesses as soon as possible.
- Ensure that a crime report is written, and all other applicable procedures are followed if the reported incident meets the elements of a criminal offense.
- Once a supervisor observes or receives information regarding conduct that may violate this policy, they are responsible for taking immediate action to prevent further sexual harassment or misconduct, regardless of whether the complainant wants any action taken on their behalf. This includes reporting to and working with OPA, the CRB, and any local sexual assault support agencies to eliminate the hostile, humiliating, demeaning, or sexually offensive environment where there has been a complaint of sexual harassment.
- Circumstances in which the victim is underage require immediate notification of the parents or legal guardian and, where necessary, the appropriate child protective services agency.
- Supervisors shall take immediate action to prevent retaliatory conduct or interference with the complainant and witnesses.
- Any conduct covered by this policy that comes to the attention of a supervisor shall result in an investigation.
- Each supervisor has the responsibility to assist any employee or member of the public in documenting and filing a complaint of sexual harassment with the appropriate authority, such as OPA.
- If a situation requires separation of the parties, care should be taken to avoid action that punishes either party.
- Sexual harassment of a criminal nature, or that could potentially be criminal, shall be reported according to MNPD policy on criminal behavior.

Procedures for Investigating Sexual Misconduct Internally

All administrative and criminal investigations, as well as any administrative or criminal actions taken because of the investigative findings, will be conducted in accordance with all relevant federal, state, and tribal laws, and applicable MNPD policies, human resource guidelines and collective bargaining

agreements. Administrative and criminal investigations of law enforcement sexual misconduct should be conducted by an experienced special victims investigator whenever possible^h.

Investigators conducting criminal investigations will conduct a preliminary investigation over the course of 3-7 days to determine if there is basis for a full criminal investigation. Timeliness is core to deter witness tampering, reduce “pariah” status of individuals awaiting judgement, and reduce the liability of keeping a potentially criminally implicated officer active. Preliminary investigations should be efficient, swift, and just.

In some cases, MNPD may need to hand over the investigation to an external agency or investigative authority, including the DA and/or TBI. If a case falls under Title VI, it should be referred to MHRC. This may be the case when MNPD resources are limited, when someone of high rank is implicated in the report, or to avoid real or perceived conflicts of interest.

Any sustained complaints of policy violations and any resulting administrative or criminal actions will be documented in an employee’s personnel file. Any required documentation for decertification procedures will then be forwarded to the certifying MNPD, in accordance with state law, MNPD policy, and other relevant regulations.

If a case related to police sexual misconduct was referred to MNPD from the CRB, or a victim advocacy group, MNPD will assign the complainant’s case a de-identified case number. This case number will be relevant in the 'Auditing' section of this policy.

MNPD Responsibility

When presented with a sexual misconduct complaint, whether internally or from an external partner, MNPD shall:

- Not refuse a complaint, discourage the filing of a complaint, or provide false or misleading information about filing a complaint.
- Thoroughly investigate all reports of sexual misconduct.
- Maintain confidentiality throughout the investigatory process; tell only the required individuals only the required information needed for the case, both on-duty and off-duty.
- Follow recommended practices for trauma-informed investigations focusing on sexual harassment/misconduct.
- Complete investigations even if the accused employee leaves MNPD or if a settlement is reached between the MNPD and the complainant.
- Take appropriate corrective action upon a finding of “founded”.
- Ensure that any transfer or reassignment of any of the parties involved should be voluntary and should not be taken against the wishes of the complainant.
- Ensure that any retaliatory or interfering conduct shall result in discipline.
- Release an annual summary of complaints related to sexual harassment.

Concurrent Administrative and Criminal Investigations

When a report of suspected policy violation also includes potential violations of criminal law, both an administrative investigation and criminal investigation will be conducted. The investigations will run concurrently, ensuring the integrity of both processes. To ensure that a suspected officer’s rights (e.g., departmental, bargaining agreements, constitutional/case law) are upheld during the separate investigations, legal guidance should be sought.

Concurrent investigations are a recommended practice to ensure any necessary administrative actions are taken in accordance with the investigation findings as soon as practically possible, and

^h Please see Appendix C for a flowchart documenting the process of reporting a police sexual misconduct complaint

independent of any potentially lengthy criminal proceedings. MNPD's responsibility to professional ethics and public trust requires efficient and necessary actions being taken without unreasonable delay, following a thorough and objective administrative investigation.

Alternate Options to Report Sexual Misconduct

Sexual harassment, assault, and misconduct by law enforcement are significantly underreported due to victims' reluctance to report an offender who is a member of law enforcement. Therefore, the CRB and victim advocacy groups, like SNLT, the SAC or the OFS, are critical in assisting victims to report sexual misconduct by MNPD personnel by using a victim-centered approach and trauma-informed care.

MNPD will partner with the CRB and victim advocacy groups to assist in the appropriate reporting of the incident, including eliminating barriers to reporting and providing victim support services. When notified of a report of sexual misconduct by the CRB, and/or a victim advocacy group, MNPD will work with representatives from the reporting organization.

All victims can benefit from a variety of services offered by community-based agencies. For this reason, it is important that each victim of sexual misconduct by MNPD personnel be given a referral to MNPD FIP counselors with the Family Safety Center, and the SAC at 1-800-879-1999, ensuring that all victims have access to confidential and supportive services. The SAC offers victims of sexual misconduct the following services and more:

- Forensic medical examination
- Counseling services
- Advocacy services

Any instance of MNPD sexual misconduct that is referred to the CRB and/or a victim advocacy group will have a de-identifiable case number attached to it. At the conclusion of an administrative or criminal sexual misconduct investigation within MNPD, the CRB will receive that de-identified case number and conduct a review on MNPD's internal investigation of that complaint. See the "Auditing" section of this policy for more information.

Retaliation

Any members of the community or MNPD personnel reporting possible violations of this policy shall be protected from retaliation. No MNPD personnel shall harass or retaliate against any reporting person or potential witness.

Retaliation includes, but is not limited to, discouragement, shaming, humiliation, ostracism, intimidation, coercion, or adverse action against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation. Retaliation also includes not providing backup, aid, or support to another officer who reports misconduct, makes a misconduct complaint, or cooperates with an investigation, while on duty. MNPD personnel will speak and conduct themselves in a professional, trauma-informed manner and maintain a courteous attitude to minimize re-victimization.

While the accused have the right to conversation with their accuser under the 6th Amendment of the Constitution of the United States, that protection can be forfeited by wrongdoing, including retaliatory behavior and witness tampering.

No MNPD personnel who is the subject of a misconduct complaint will intentionally contact, cause another to contact, or take any action against a victim or a witness involved in the misconduct complaint in retaliation for the victim or witness having filed or provided information in support of a misconduct victim. If the accused department member makes such contact or takes such action, the victim or witness should immediately notify a supervisor.

MNPD personnel responding to and investigating reported violations of this policy will work with victims and service providers to address any fears in the reporting process, conduct safety planning, and develop steps to prevent and address potential for retaliation.

Retaliation is an egregious offense that shall not be tolerated. Any MNPD personnel found responsible for harassment or retaliation against another member of MNPD or member of the community will be subject to disciplinary action up to and including suspension, termination, and/or decertification.

Training

MNPD recognizes the value of training for prevention and appropriate response to sexual misconduct. A variety of strategies will be used for training personnel, including the training academy, in-service, roll call, and Field Training Officer (FTO) programs, as well as training bulletins and other national resources, to regularly reinforce this policy and provide mandatory comprehensive training.

Required topics will include:

- Law enforcement authority, oath, ethics, and civil rights.
- Defining police sexual misconduct and color of law, including case examples for on-duty and off-duty violations.
- Predatory behavior and common conduct of sexual offenders such as targeting, testing, grooming, isolation, and other “power and control” behaviors.
- Sexual harassment in the workplace.
- Early warning signs and bystander intervention strategies for sexual misconduct.
- Mandatory reporting responsibilities and reporting mechanisms.
- Responsibilities of supervisors.
- Confidentiality protections for reporting parties and witnesses.
- Prohibited retaliation against reporting parties and witnesses, and the consequences of such actions.
- Potential disciplinary outcomes and criminal prosecution.
- Special considerations regarding frisks and searches of persons.
- Bias trainings:
 - Gender Bias
 - Toxic Masculinity
 - Triggers of Bias

Training will also cover agreements with advocacy organizations, community review boards, or other agencies regarding reporting protocols (e.g., Memoranda of Understanding). For example, community members might be provided information that they can report sexual misconduct to an entity other than MNPD when MNPD is involved in the complaint – either the CRB, DA’s office, or another law enforcement agency.

Training will address the special considerations pertaining to vulnerable populations, including children, homeless individuals, victims of human trafficking, sex workers, and individuals with addictions, mental illness, and physical/cognitive disabilities, as well as LGBTQ+ community members.

All MNPD personnel shall receive training on MNPD’s sexual misconduct policy. However, additional training should be provided to supervisors and others in a leadership role, recognizing that supervisors are of particular importance in preventing, identifying, and responding effectively to sexual harassment.

All MNPD personnel will undergo regular and refresher training concerning sexual misconduct, prohibitions, and trauma-informed and victim-centered approaches to investigations of sexual misconduct, as defined in this policy annually.

Recruitment

Applicant Screening

One of the best prevention efforts is to ensure that recruits are screened carefully for abusive behaviors that might escalate to sexual misconduct. All potential MNPD candidates will therefore be asked if they have engaged in, or ever been investigated for, sexual harassment, sexual assault, domestic violence, vulnerable adult abuse, or child molestation. This includes any past discipline within their employment history, as well as their educational or military experience. Background investigations must also determine whether the candidate has any past arrests, convictions, suspended or deferred sentences, involvement in any diversion programs, and any protection orders related to sexual assault, domestic violence, vulnerable abuse, child abuse, or stalking.

Lateral candidates, such as candidates who are coming from other law enforcement agencies or have an active law enforcement credentials and/or commissions will need to provide all disciplinary records from the law enforcement agencies they are transferring from or that issued their credentials and/or commissions.

Background investigations are necessary for conducting a thorough contextual screening of an applicant to mitigate the risk of hiring an officer who would commit acts of police sexual misconduct in the future. Background investigations will be done for both new recruits and lateral transfers. The background investigation will include all places that the candidate has resided over the course of their adult life (18 and beyond), to make sure MNPD does not miss any potential deterrent, regardless of how much time has lapsed.

Candidates will also be asked questions to determine if they have engaged in power and control behaviors that are common for perpetrators of domestic violence, sexual assault, and child abuse, such as threats, intimidation, dominance, isolation, and use of child pornography. Candidates will also take the Harvard Implicit Bias Association Test to identify any potential warning signs of biased behavior.

Post conditional offers of employment will include a psychological screening of all viable candidates for indicators of abusive tendencies in their background. If substantial, or multiple indicators of abusive behavior are found, a “no-hire” decision will be made.

Auditing

Post Incident

OPA will maintain investigative files for sexual misconduct reporting including the de-identifiable number, classification, status of the investigation, and administrative notifications from the intake process to the final disciplinary decision. Additionally, files will be maintained if and through any grievance process, arbitration, proceeding, or appeals relating to the final disciplinary decision.

An after-incident review will be conducted at the conclusion of every investigation, both administrative and criminal, by the CRB. The review will include any cases that are considered “unfounded”. This review shall ordinarily occur within 30 calendar days of the conclusion of the investigation. The review will also consider whether the incident or allegation was motivated by perceived: race, ethnicity, sex, or gender identity/expression, and sexual orientation.

If an incident was referred to MNPD by the CRB or a victim’s advocacy group, then the CRB will review the case number associated with the de-identified case number.

Integrity Audit

In addition to after-incident reviews, MNPD will conduct an annual integrity audit in collaboration with the CRB. The annual integrity audit will:

- Assess the quality of MNPD sexual misconduct investigations. MNPD sexual misconduct investigations will fall into three main categories:
 - Administrative sexual misconduct investigations reviewed concerning MNPD personal.

- Criminal sexual misconduct investigations reviewed concerning MNPD personnel.
- Criminal sexual misconduct investigations MNPD receives from the community.
- Recommend changes in policies and practices to better prevent, detect, and investigate sexual misconduct.
- Provide aggregate data on the sexual misconduct reviewed to promote transparency, including:
 - The aggregate number of sexual misconduct cases across all three categories.
 - The number of sexual misconduct investigation cases cleared and the reasons why.
 - The nature of reports investigated, broken down by investigated type of sexual misconduct.
 - Demographic statistics of victims of sexual misconduct and alleged perpetrators of sexual misconduct.
 - The number of investigations referred to the Nashville DA's Office or other prosecuting agency for criminal review.
 - The number of investigations criminally prosecuted.
 - The number of investigations closed after the preliminary investigation.
 - The percentage of investigations closed for lack of a signed complainant affidavit.
 - The investigative findings and recommendations, including a summary breakdown of discipline recommended for investigations with sustained findings.

The MNPD report on the audit should then be made readily available to the public through the department website and sent to the mayor and the chair of the Metro Council.

Collaboration with External Organizations

Police sexual misconduct significantly underreported, but victims may be especially reluctant to report when the offender is a member of law enforcement. Partnerships with advocacy organizations, like SNLT, the SAC and the OFS, are critical to addressing this problem because they are often the first agencies to receive complaints about law enforcement sexual misconduct, and the first to provide supportive services for victims. MNPD will ensure there is an open, transparent, and ongoing dialogue between MNPD personnel and local advocacy organizations, to create an environment that is conducive for enhancing professionalism and promoting public trust.

Law enforcement ethics require MNPD personnel to hold themselves and their colleagues accountable for their actions- policing themselves to maintain the public's trust. The CRB can help establish and maintain that trust, when they are charged with investigating complaints of misconduct committed by law enforcement against members of the public. The CRB can help to improve community relations by:

- Fostering communication between communities and police agencies.
- Reducing public concern about high-profile incidents.
- Improving department policies and procedures.
- Identifying areas of concern and subsequently offering options to improve policing and policy recommendations.
- Assisting a jurisdiction in liability management to reduce the likelihood of costly litigation by identifying problems and proposing corrective measures before a lawsuit is filed.

Although civilian review is sometimes seen as controversial, it is an essential tool for the future and beneficial for community relations with law enforcement. MNPD, the CRB, SNLT, the SAC, and the OFS should work together to develop a memorandum of understanding (MOU) to offer a variety of reporting methods for potential policy violations. For example, community members may be offered the option of reporting sexual misconduct to the CRB, SAC, and/or the OFS instead of MNPD. Furthermore, these options may include anonymous reporting. All reporting protocols and MOUs shall identify the specific MNPD division, unit, or personnel to contact, to learn more about a complainant's reporting options. In

addition, all reporting protocols and MOUs must include safety planning for complainants and other reporting parties.

Once a reporting protocol and an MOU are developed, MNPD, the CRB and local advocacy organizations will need to work together to inform the public about their options for reporting law enforcement sexual misconduct. At a minimum, this will include posting reporting options on MNPD's website. Additional steps can also be taken to reduce barriers and encourage reporting, including using traditional media, social media, and outreach to community groups.

Future Research

The CRB took on the mantle of this report from the former COB, where researchers began this policy report to both provide a solution to the lack of a zero-tolerance sexual misconduct policy within MNPD and to ensure that members of the Nashville community and officers within MNPD feel safe and supported by the department. While the CRB has created a zero-tolerance sexual misconduct policy for MNPD, the issues of eliminating police sexual misconduct, and ensuring that both community members and MNPD officers feel safe and supported, are expansive and cover more ground than one policy can provide. This is demonstrated by the trend of complaints received by the CRB from citizens who felt that MNPD did not adequately investigate their sexual misconduct cases. While the nature of how MNPD investigates sexual crimes is outside the scope of this policy report, these complaints highlight a need for continued conversation around sexual misconduct policy reform. To this end, future research conducted by the CRB will aim to recommend best practices regarding trauma-informed victim interactions and domestic violence investigations.

Finally, while we understand the sensitivity of this subject matter, we wish to remind all members of the Nashville community that the Community Review Board is available 24/7 to receive accounts of police misconduct. We encourage any member of the community who has been victimized by police sexual misconduct to share their story. Together, we can work towards a future without police sexual misconduct in our community.

External Resources

[The Metro Nashville Community Review Board](#)

[Silent No Longer Tennessee](#)

[The Nashville Sexual Assault Center](#)

[The Metro Nashville Office of Family Safety](#)

[The Metro Nashville Human Resource Commission](#)

[The Mary Parrish Center](#)

[The US Federal Equal Employment Opportunity Commission](#)

[The Nashville EEOC Office](#)

[Statutory Definitions of Tennessee Sexual and Violent Sexual Offenses with Related Codes](#)

Appendix A

Acronyms

- COB:** The Nashville Community Oversight Board
- CRB:** The Metro Nashville Community Review Board.
- DA:** The Metro Nashville District Attorney's Office.
- EEOC:** The Equal Employment Opportunity Commission.
- EVAWI:** End Violence Against Women International
- IACP:** The International Association of Chiefs of Police
- HR:** Metro Nashville Human Relations
- MHRC:** The Metro Nashville Human Relations Commission
- MNPD:** The Metro Nashville Police Department.
- OFS:** The Metro Office of Family Safety.
- OPA:** The Office of Police Accountability, a division of MNPD.
- SAC:** The Nashville Sexual Assault Center.
- SNLT:** Silent No Longer Tennessee

Appendix B

Tennessee Criminal Sexual Codes

39-3703. Criminal Sexual Conduct- First Degree

A person is guilty of criminal sexual conduct in the first degree if that person engages in sexual penetration with another person and if any of the following circumstances exists:

1. The victim is twelve (12) years of age or under.
2. The victim is at least thirteen (13) but less than sixteen (16) years of age and either the actor is related to the victim by blood, or affinity to the third degree, or the actor is in a position of custodial or official authority over the victim and used this authority to coerce the victim to submit. The actor under this subsection must be at least three (3) years older than the victim.
3. The actor uses a weapon or any article used or fashioned in a manner calculated to lead the victim reasonably to believe it to be a weapon to force or coerce the victim to engage in sexual penetration.
4. The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes but is not limited to any of the following circumstances:
 - (a) When the actor overcomes the victim through the actual application of physical force or physical violence.
 - (b) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim reasonably believes that the actor has the present ability to execute these threats.
 - (c) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes but is not limited to threats of physical punishment, kidnapping, or extortion.
 - (d) When the actor, through concealment, or by the element of surprise, is able to overcome the victim. Concealment includes the situation in which the actor pretends to be the victim's spouse and the victim reasonably believes the actor to be the spouse.
5. The actor causes personal injury to the victim, and the actor knows or should, as a reasonable person, know that the victim is mentally defective, mentally incapacitated, or physically helpless.

39-3704. Criminal Sexual Conduct- Second Degree

- A. A person is guilty of criminal sexual conduct in the second degree if that person engages in sexual contact with another person, and if any of the following circumstances exists:
 1. The victim is under thirteen (13) years of age.
 2. The victim is at least thirteen (13) but less than sixteen (16) years of age, and either the actor is related by blood or affinity to the third degree to the victim, or the actor is in a position of custodial or official authority over the victim and the actor used this authority to coerce the victim to submit. The actor under this section, must be at least three (3) years older than the victim.
 3. The actor uses a weapon or any article used or fashioned in a manner calculated to lead a person reasonably to believe it to be a weapon, to force or coerce the victim to engage in sexual contact.
 4. The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact: Force or coercion includes but is not limited to any of the circumstances listed in 39-3703 (A)(4), (a) through (d).

5. The actor causes personal injury to the victim and the actor knows or should, as a reasonable person, know that the victim is mentally defective, mentally incapacitated or physically helpless.
- B. Second degree criminal sexual conduct is a felony punishable by imprisonment in the penitentiary for a period not less than two (2) years nor more than fifteen (15) years. Provided, however, if the victim of the offense dies or is seriously injured as the result of an assault committed by the defendant either directly before, after or during the offense and the defendant is convicted of a violation of this section only, such defendant shall be ineligible for probation as provided in 40-2901, parole as provided in 40-3612, work release, trustyship, furlough, or any other program or method whereby the offender's term of imprisonment in the penitentiary may be reduced or enjoys the privilege of supervised or unsupervised release into the community.

39-13-302. False Imprisonment

(note: the Sex Offender Law requires the victim to be a minor and the offender to not be the parent of the victim for this crime to be classified as a sexual offense)

- A. A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other's liberty.
- B. False imprisonment is a Class A misdemeanor.

39-13-511. Indecent Exposure

(a)

- (1) A person commits the offense of indecent exposure who:
 - (A) In a public place, as defined in § 39-11-106, or on the private premises of another, or so near thereto as to be seen from the private premises:
 - (i) Intentionally:
 - (a) Exposes the person's genitals or buttocks to another; or
 - (b) Engages in sexual contact or sexual penetration as defined in § 39-13-501; and
 - (ii) Reasonably expects that the acts will be viewed by another and the acts:
 - (a) Will offend an ordinary viewer; or
 - (b) Are for the purpose of sexual arousal and gratification of the defendant; or
 - (B)
 - (i) Knowingly invites, entices or fraudulently induces the child of another into the person's residence for the purpose of attaining sexual arousal or gratification by intentionally engaging in the following conduct in the presence of the child:
 - (a) Exposure of such person's genitals, buttocks or female breasts; or
 - (b) Masturbation.
 - (ii) For the provisions of subdivision (b)(1)(B)(i) to apply, the defendant must be eighteen (18) years of age or older and the child victim must be less than thirteen (13) years of age.
- (2) "Indecent exposure," as defined in subdivision (b)(1), is a Class B misdemeanor, unless the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, in which event, indecent exposure is a Class A misdemeanor. Additionally, "indecent exposure," as defined in subdivision (b)(1), is a Class E felony when the

defendant is eighteen (18) years of age or older, the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section.

(b)

(1) A person confined in a penal institution, as defined in § 39-16-601, commits the offense of indecent exposure who with the intent to abuse, torment, harass or embarrass a guard:

(A) Intentionally exposes the person's genitals or buttocks to the guard; or

(B) Engages in sexual contact as defined in § 39-13-501.

(2) For purposes of this subsection (c), "guard" means any sheriff, jailer, guard, correctional officer or other authorized personnel charged with the custody of the person.

(3) Notwithstanding subdivision (b)(2), a violation of this subsection (c) is a Class A misdemeanor.

(c) This section does not apply to a mother who is breastfeeding her child who is twelve (12) months of age or younger in any location, public or private.

39-13-527. Sexual Battery by an Authority Figure

A. Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:

1. The victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age; or
2. The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,
- 3.

(A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or

(B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.

B. Sexual battery by an authority figure is a Class C felony.

39-13-528. Offense of Solicitation of a Minor

A. It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

1. Rape of a child, pursuant to § 39-13-522;
2. Aggravated rape, pursuant to § 39-13-502;
3. Rape, pursuant to § 39-13-503;
4. Aggravated sexual battery, pursuant to § 39-13-504;
5. Sexual battery by an authority figure, pursuant to § 39-13-527;
6. Sexual battery, pursuant to § 39-13-505;
7. Statutory rape, pursuant to § 39-13-506;
8. Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
9. Sexual activity involving a minor, pursuant to § 39-13-529.

- B. It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.
- C. A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.
- D. A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state or solicited a law enforcement officer posing as a minor located within this state.

39-13-532. Statutory Rape by an Authority Figure:

- A. Statutory rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:
 - 1. The victim is at least thirteen (13) but less than eighteen (18) years of age;
 - 2. The defendant is at least four (4) years older than the victim; and
 - 3. The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the sexual penetration; or
 - 4. The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual penetration.
- B. Statutory rape by an authority figure is a Class C felony and no person who is found guilty of or pleads guilty to the offense shall be eligible for probation pursuant to § 40-35-303 or judicial diversion pursuant to § 40-35-313.

Appendix C

Police Sexual Misconduct Complaint Process Flowchart

Figure 1: Police Sexual Misconduct Incident Flowchart

Figure 2: PSM Administrative Investigation Flowchart

Figure 3: PSM Criminal Investigation Flowchart

Figure 1

Police Sexual Misconduct Incident Flowchart

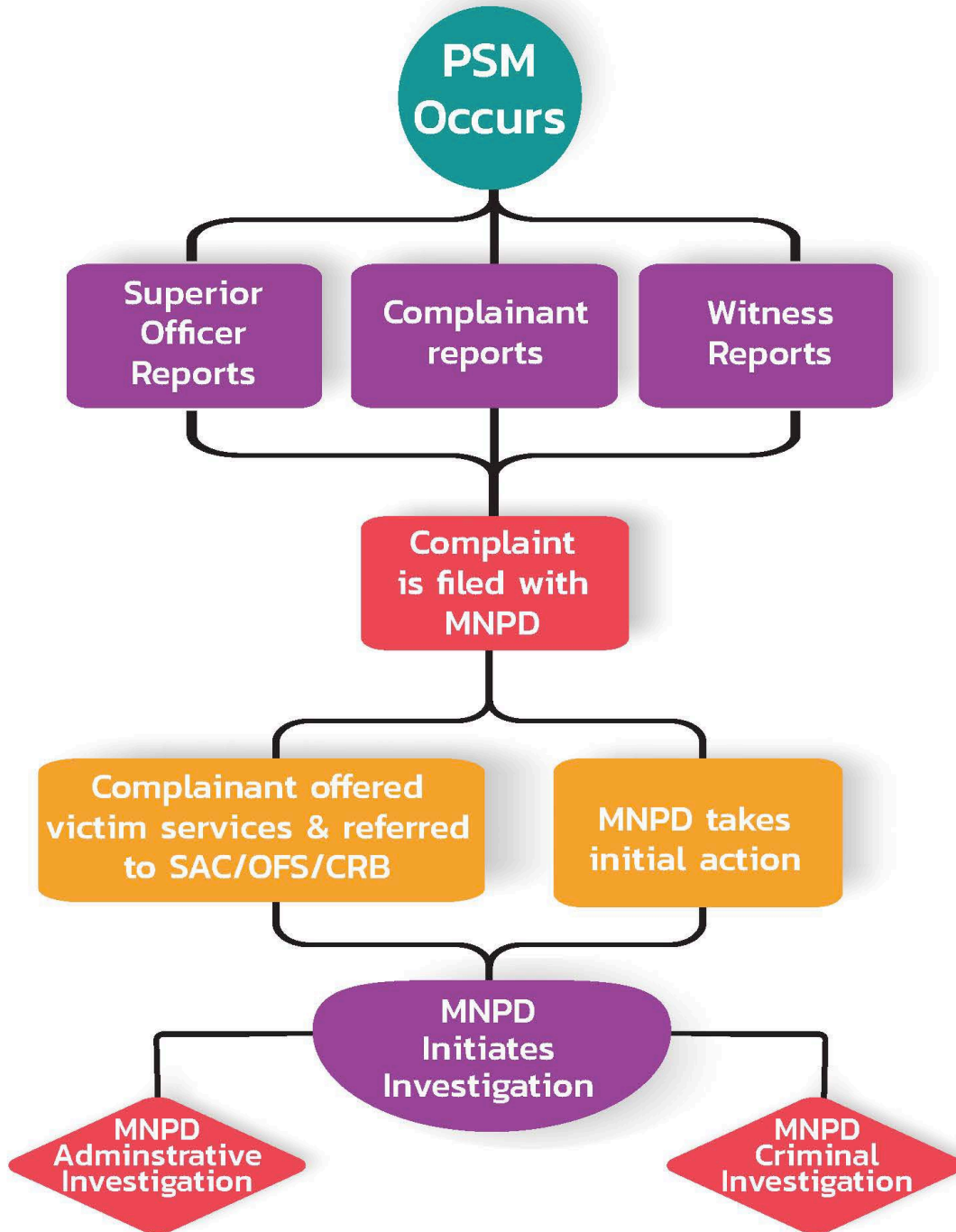


Figure 2

PSM Administrative Investigation Flowchart

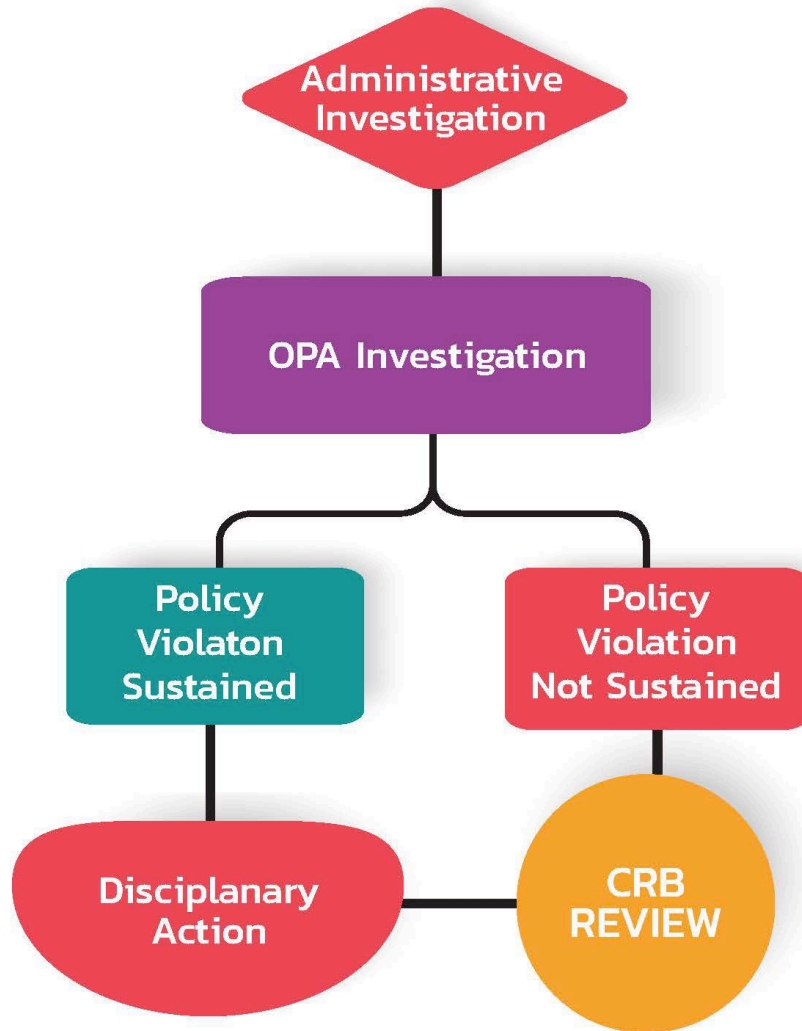
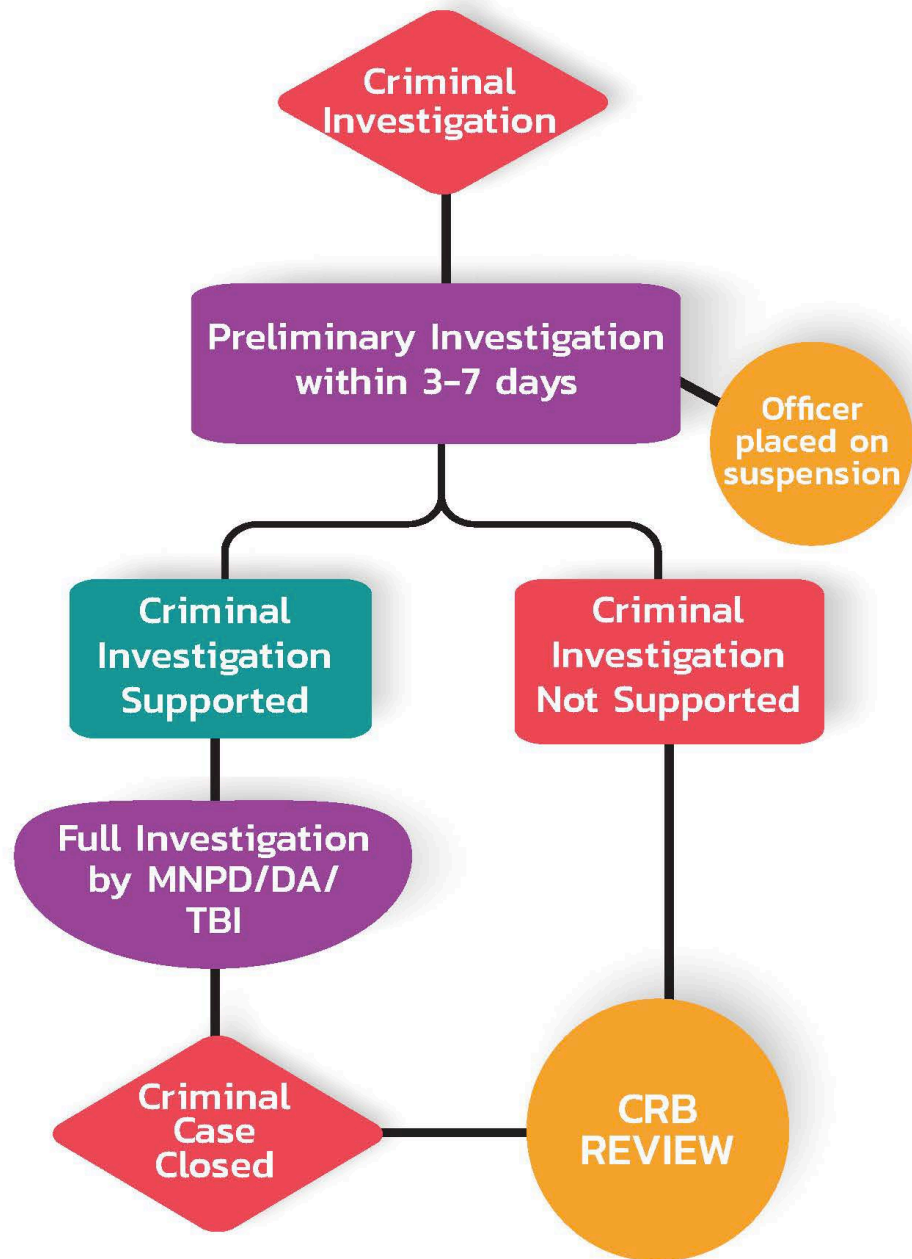


Figure 3

PSM Criminal Investigation Flowchart



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