

# Building Trust In Law Enforcement:

## *Recommendations on Constitutional Policing and Transparency*

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By Christopher P. Gerber, Esq., Siana Law



# In the wake of events that led to protests, riots, and an apparent loss of confidence in law enforcement, it has been critical for local elected officials to take action to ensure appropriate police services are provided.

In an arena that involves so many issues, officials should look at their department's internal affairs process, which should be designed to protect constitutional rights and civil liberties of the public as well as officers who are accused of misconduct.

Before making wholesale changes to policing, departments need to be thoroughly examined, including their management and supervision. This does not exclude the final policymakers, such as borough councils, who are ultimately in charge.

Addressing police misconduct has become, in some cases, politicized and resulted in a call for reform that overlooks the laws that are already on the books. If these were strictly followed, they would ensure lawful policing, quell discontent, and restore confidence in the men and women who wear the uniform and take the oath to serve and protect us.

## *Official Responsibilities*

Pennsylvania law lays out that the governing body (in boroughs, the council) has the exclusive power to hire, fire, suspend, and demote police officers. It follows that these roles should not be delegated to mayors, police chiefs, or any other government official.

The governing body should inquire *how* its police personnel are held accountable for misconduct and neglect and should adopt fair and effective internal affairs processes as part of constitutional policing.

Throughout the Commonwealth, there are an alarming number of municipal officials who do not know whether their department has an internal affairs policy or how a complaint of police misconduct is handled.

Many officials also mistakenly view the internal affairs function as within the authority of the chief of police. Such a misperception abdicates the obligation of the governing body to supervise the police department and exposes the municipality to substantial liability in civil rights lawsuits where plaintiffs often claim elected officials “turned a blind eye” and were deliberately indifferent to the victim's constitutional rights.

All of this leads to the conclusion, that elected officials and police command staff must have an internal affairs process that has a proper balance of transparency, confidentiality, accountability, and fairness to the complainant *and* to the police officer, who is the target of the investigation.

A deficient internal affairs process can almost guarantee an

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unjust outcome, either one that allows police misconduct to go unpunished or results in a wrongful termination of a police officer whose actions were justified. Due process in police administrative investigations goes both ways.

## Internal Affairs Policy

Implementation of the internal affairs (IA) policy is a positive start to assessing a department's level of compliance and professionalism, since it directly addresses the roles of each official in the process.

While the IA process is purely a managerial right that does not require collective bargaining, police unions should be involved in the process of their creation with the goal of instilling confidence that union members will be treated fairly in the event their conduct is called into question.

An effective IA policy should include the following provisions:

- All complaints of misconduct will be investigated, whether they are reported verbally, in writing, or anonymously.
- The designated investigator should receive appropriate training as prescribed by the governing body.
- Criminal investigations will be handled by the county district attorney or Attorney General's office.
- The chief of police or his designee must promptly inform the governing body of any allegations of police misconduct or neglect of duty, which could, if proven true, lead to the termination, suspension, or demotion of an officer such that the governing body may make an informed decision on designating the investigator.
- The target officer is provided due process rights that include notice of administrative charges, the supporting evidence, and an opportunity to respond before serious disciplinary action is taken.
- In cases that could result in termination, suspension, or demotion, the adjudicative process is kept separate from the investigative process.
- All officers must sign an acknowledgment of receipt and verify their understanding of the policy.
- IA records and reports are maintained in a confidential file that is kept separate from the officer's personnel file.
- An "early warning system" is established to identify patterns or practices that may warrant intervention or remediation before other misconduct arises.

This list is not exhaustive but covers the main areas that should be included in an IA process.

## Official's Role

Locally-elected officials should refrain from engaging in the investigative process. Instead, it should be conducted by a trained investigator from within the department or by a qualified attorney retained by the municipality.

Improperly "commingling" officials' adjudicative role with the investigation could violate an officer's due process rights since the official cannot act as a "judge" after engaging in the investigation.

A meaningful discussion of the foregoing issues between members of the governing body, mayors, managers, police chiefs, command staff, and members of police unions – under guidance of a qualified attorney versed in civil rights and labor law – can promote transparency, clarity of roles, and a fair system that will instill community trust in local law enforcement.

Impulsive calls to de-fund and abolish police departments should be countered with informed decision-making, strategic planning, and a meaningful assessment of police management through implementation of the municipality's internal affairs policy.



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