

# CODE BLUE

## Building Trust In Law Enforcement:

*Recommendations for Local Elected Officials  
on Constitutional Policing and Transparency*



By Christopher P. Gerber, Esquire

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 start by inquiring about their department's internal affairs process, a fundamental function designed to protect constitutional rights and civil liberties of the public as well as officers who are accused of misconduct.

Before blame is assigned to the police for the present climate, it is necessary to examine whether police departments are properly managed and supervised from the top --- by the final policymakers who are ultimately in charge, such as Borough Councils and Township Boards of Supervisors and Commissioners. Addressing police misconduct has, in this author's view, become unnecessarily politicized and resulted in a call for reform that overlooks the laws that are already on the books, which, if strictly followed, should 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.

### **Assessment of Department Operations: The Internal Affairs Process**

Pennsylvania law is well-settled that the governing body 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. The governing body's adoption of a fair and effective internal affairs process is an indispensable facet of constitutional policing.

Having represented local elected officials throughout the Commonwealth for over 25 years, it is alarming that many 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 exclusive 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 that the elected officials "turned a blind eye" and were deliberately indifferent to their constitutional rights.

Such acknowledgements underscore the immediate need for elected officials and police command staff to implement an internal affairs process that ensures 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 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.

Implementation of the internal affairs policy is a

positive start to assessing your 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 to allow comments with the goal of instilling confidence that their members will be treated fairly in the event their conduct is called into question.

An effective internal affairs policy should include the following provisions, which are not exhaustive:

- all complaints of misconduct will be investigated, whether they are reported verbally, in writing or even anonymously;
- the designated investigator should receive appropriate training as prescribed by the governing body;
- criminal investigations are 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;
- the internal affairs 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.

Local elected officials should also refrain from engaging in the investigative process, which should be conducted by a trained investigator from within the department or by a qualified attorney retained by the municipality. Improperly "commingling" of the official's adjudicative role with the investigation could violate a target 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 and among the 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 --- should serve to 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, in this author's view, be countered with informed decision-making, strategic planning and a meaningful assessment of police management through implementation of your municipality's internal affairs policy.



## About the Author



Christopher P. Gerber, Esquire is a partner with Siana Law who focuses his practice on civil rights, labor, municipal and employment law. He represents numerous municipal police departments and frequently lectures on issues that affect both public and private employers. He regularly conducts seminars for a variety of audiences, including the Pennsylvania Bar Institute, Chiefs of Police Associations, insurance carriers, municipal solicitors, and statewide legal education programs.

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