

Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Louisville Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The intent of this policy is to maintain the integrity of the department by conducting thorough and impartial investigations of complaints of member misconduct, to protect the community from member misconduct and to protect members from false or malicious allegations.

The Louisville Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and municipal statutes and ordinances..

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 PROFESSIONAL STANDARDS

Professional standards complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or municipal statutes or ordinances. Complaints may be generated internally or by the public. The Deputy Chief is responsible for supervising and controlling the professional standards investigations within the department and reports directly to the Chief of Police.

Professional standards investigations should remain confidential and are generally not of public concern, nor are they of concern to non-involved members of the organization. Due to the importance in maintaining confidentiality the professional standards files will be kept secured in the Deputy Chief's office.

1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Personnel Complaints

Class 1 Professional Standards Investigation - the allegation is serious in nature and/or serious discipline may result if the allegation is sustained. It may also include allegations of great concern to the community. Normally the Deputy Chief conducts the investigation.

Class 2 Professional Standards Investigation - the allegation is non-serious in nature and any resulting discipline may not exceed a permanent letter of reprimand. Normally the investigation is conducted by the affected member's immediate supervisor.

Referral - the allegation is not based on a member's intentional misconduct, but rather a complaint of a minor performance or protocol issue. A formal investigation is not conducted; however, the affected member's immediate supervisor is notified and makes the appropriate disposition decision.

1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- a. Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- b. Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- c. Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- d. Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- e. Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1010.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not

Personnel Complaints

immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1010.4.3 "CONTACT" COMPLAINTS

In regards to complaints regarding "contacts", the identity of the reporting person and the report of any such comments that constitute a complaint must initially be kept confidential by the receiving law enforcement agency, to the extent permitted by law. The receiving law enforcement agency shall be permitted to obtain some identifying information regarding the complaint to allow initial processing of the complaint. If it becomes necessary for the further processing of the complaint for the complainant to disclose the complainant's identity, the complainant shall do so, or, at the option of the receiving law enforcement agency, the complaint may be dismissed. (CRS 24-31-309)

1010.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

1010.6 BASIS FOR PROFESSIONAL STANDARDS INVESTIGATIONS

Any time the department determines that it is necessary to investigate events or circumstances that may lead to disciplinary action, a Professional Standards investigation is initiated. Member misconduct may be either minor or serious depending on the specific alleged act(s) and the likelihood of a consequence of non-serious discipline.

- A. Serious misconduct includes allegations which charge criminal misconduct, serious deviations from rules or general orders, or repeated less serious deviations and which involve the likely consequence of serious discipline if sustained.
 - 1. Some examples of serious misconduct are:
 - a. Any violation of law which would impair a member's ability to fulfill his/her duties or would jeopardize public safety. such criminal misconduct includes, but is not limited to;
 - 1. Felony - The commission of any felony is considered criminal misconduct.
 - 2. Controlled Substance Violation - Any violation of laws governing controlled substances or any use of controlled substances without medical supervision is considered misconduct.

Personnel Complaints

3. Negative Impact Offense - The commission of a crime with negative consequence to persons or property or the commission of which reflects unfavorably on the department because of the individual's status as a member, is considered criminal misconduct.
 - b. Intoxication while on duty.
 - c. Acceptance of a bribe.
 - d. Misuse of police powers.
 - e. Unauthorized release of confidential information.
 - f. Use of excessive force.
 2. Serious misconduct complaints are handled as Class 1 investigations. Complaints alleging serious misconduct are investigated regardless of time elapsed, unless the amount of time makes investigation of the allegation impractical.
- B. Minor misconduct includes allegations which are determined to be appropriate for review but which appear to involve the likely consequence of non-serious discipline if sustained.
1. Examples include, but are not limited to, discourtesy or other lesser violations of rules or general orders.
 2. Minor misconduct may be investigated by the Deputy Chief, or referred to the member's supervisor for investigation as a Class 2 Professional Standards investigation. Traffic accidents involving members driving city-owned vehicles are normally investigated as a Class 2 Professional Standards investigation. Complaints alleging non-serious misconduct which occurred more than six months prior to receiving the complaint are handled as supervisory referrals.
- C. Minor complaints in reference to job performance rather than intentional misconduct may be classified as a referral to a member's supervisor for disposition, Unless otherwise instructed, supervisors provide follow-up or disposition information to the Deputy Chief for the referral record. The Deputy Chief maintains a record of a referral for a period of three years.
- D. Inquiries from the public as the propriety of policies or procedures or general questions about department activities are not the subject of a Professional Standards investigation or supervisory review. Supervisors are encouraged to answer questions from the public concerning department operations.
1. If the basis for a community member's complaint appears to be an objection to a policy or procedure with an identified member, the supervisor of the identified member should be notified.
 2. The supervisor should inform the complainant of the propriety of the member's actions.
- E. Complaints against another agency's members or policies made mistakenly to this department are referred to the appropriate agency, if it can be identified.

1010.7 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

Personnel Complaints

1010.7.1 SUPERVISOR RESPONSIBILITIES

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

1. Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - a. The original complaint form will be directed to the Shift Supervisor of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - b. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Division Commander, Deputy Chief or the Chief of Police, who will initiate appropriate action.
2. Responding to all complaints in a courteous and professional manner.
3. Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Shift Supervisor, Deputy Chief and Chief of Police are notified via the chain of command as soon as practicable.

1010.7.2 NOTIFICATION TO COMPLAINANT

After completion of the Internal Affairs Investigation and final disposition and taking into account any restrictions provided by Colorado law, the Deputy Chief shall provide notification to the complainant and the employee of the outcome of the investigation.

Complainants will not be advised of the specific disciplinary action taken unless authorized by the Chief of Police.

1010.7.3 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Professional Standards, the following applies to employees:

1. Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
2. Unless waived by the employee, interviews of an accused employee shall be at the Louisville Police Department or other reasonable and appropriate place.
3. No more than two interviewers should ask questions of an accused employee.
4. Prior to any interview, an employee should be informed of the nature of the investigation.
 1. This should be provided in written form and include the employee's rights and responsibilities relative to the investigation.
 2. The employee should be informed of the ranks, names and commands of the person in charge of the interview and of all other persons to be present during the interview.
5. All interviews should be for a reasonable period and the employee's personal needs should be accommodated.

Personnel Complaints

6. No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
7. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
 2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
8. The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
 1. Upon request, the employee shall be provided copies of recordings, transcriptions and reports made of an interview session.
9. All employees subjected to interviews that could result in their discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
 - a. Attorneys or representatives present during interviews shall not be required to disclose any information received from the employee during the administrative investigation.
10. All employees shall provide complete and truthful responses to questions posed during interviews.
11. Employees may be compelled to submit to a deception detection device examination in the event that the investigator has reason to believe the employee is being untruthful. An employee's refusal to submit to such examination may be grounds for disciplinary action.

Information concerning administrative interviews shall not be released to the public unless approved by the Chief of Police or the authorized designee.

1010.7.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded. When the complainant admits to false allegation; the charges were found to be false, the member was not involved in the incident; or the complainant has voluntarily withdrawn the complaint prior to the conclusion of an investigation and a decision is made not to continue the investigation.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Personnel Complaints

Exonerated with Commendation - When the incident occurred, but the member's actions were justified, lawful and proper under cases of exceptional circumstances.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When an allegation is supported by a preponderance of the evidence.

No Finding - Cases that are, with the approval of the Chief of Police, handled in an alternative manner or cases in which a subject member resigns and the department elects not to continue the investigation.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations. The Chief of Police has the authority to address department members and discuss the professional standards investigation, in general terms and with limited details, when he/she determines it would be beneficial to the department as a whole.

1010.7.5 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.7.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation in a timely manner.

Personnel Complaints

Generally, Professional Standards investigations are generally completed within 60 calendar days after the initial receipt of the complaint, and supervisory reviews are generally completed within 30 calendar days after the initial receipt of the complaint. Extensions may be granted by the Chief of Police for good cause. In the event that an extension is granted, the member requesting the extension should notify the subject member as soon as practical.

Time constraints contained in this policy have been established to expedite the investigation and disposition of complaints against members and to minimize the strain and frustration of members and the public while awaiting investigation results. Occasionally, more time will be needed to properly investigate and reach disposition of a complaint. The failure to meet an established deadline and /or notification to the subject member shall not be the cause for dismissing a case or reversing or amending disciplinary action.

1010.7.7 NOTIFICATION TO ACCUSED

The Department shall notify an officer who is being investigated for an incident that could result in a report to the Colorado Peace Officer Standards and Training (POST) Board misconduct database of the department's duty to report misconduct to the database and the consequences of reporting (e.g., decertification) (CRS § 24-31-904).

1010.8 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1010.9 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- a. May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- b. Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- c. May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1010.10 CRIMINAL INVESTIGATION

Personnel Complaints

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Louisville Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction.

No disciplinary action should be taken until an independent administrative investigation is conducted.

1010.11 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review and include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1010.11.1 DIVISION COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Division Commander of the involved member shall review the entire investigative file, the member's personnel file, and any other relevant materials.

The member's supervisors, to include Corporals, Sergeants, Division Commanders, and Deputy Chief makes recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Chief of Police, the Division Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

1010.11.2 FORMS OF DISCIPLINE

The following methods may be considered for correcting poor job performance or misconduct:

- a. Training
- b. Counseling
 1. Counseling may be administered by the Chief of Police, Division Commander or other supervisor depending on the severity of the matter.
 2. The supervisor or staff member administering the counseling shall document the purpose and effect of the counseling.

Personnel Complaints

- c. Verbal warning
- d. Written warning
- e. Suspension
- f. Involuntary demotion
- g. Termination

The order of the above listed methods does not imply a required sequence. The Chief of Police should determine the method of correction by considering the actions of the member.

1010.11.3 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Division Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

1. Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
2. An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1010.12 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- a. The response is not intended to be an adversarial or formal hearing.
- b. Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

Personnel Complaints

- c. The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- d. In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- e. The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

1010.13 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

The Chief of Police or the authorized designee shall notify the Division of Criminal Justice when an officer resigned while under investigation for violating department policy (CRS § 24-31-903).

1010.14 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal discipline using the procedures established by the City personnel rules.

1010.15 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

Records and evidence of sustained violations resulting in disciplinary action are purged 10 years after the subject member's retirement or separation from the department.

Records and evidence from allegations resulting in dispositions of not sustained, exonerated or unfounded, and records generated from referrals not resulting in discipline, are purged after five years.

All Class 1 Investigations into allegations of excessive force or criminal misconduct, not resulting in discipline, are maintained throughout an employee's career.

In no instance are records or evidence related to pending civil or criminal cases (including appeal or statute of limitation periods) purged, regardless of allegation or disposition. The City Manager and City Attorney will be consulted before records pertaining to civil matters are purged.

1010.16 BRADY DISCLOSURE REQUIREMENTS

Brady Disclosure Requirements, as required by Brady v. Maryland 373 U.S. 83 (1963) and Giglio v. U.S. 405 U.S. 150 (1972).

- a. The Louisville Police Department shall exercise due diligence to ensure that any material of possible Brady relevance is made known, and available, to the 20th Judicial District Attorney's

Personnel Complaints

Office, as soon as reasonably possible when a finding of untruthfulness – or any other relevant exculpatory evidence that requires Brady disclosure – by any officer or employee who may be called to give testimonial evidence, has been substantiated in any internal investigation.

- b. The Chief of Police will ensure proper notification is made, in writing, to the District Attorney's Office. A copy of the Brady Notification Memorandum shall be provided to the subject employee, with additional copies placed into their personnel file and the corresponding IA file.
- c. Department members are responsible for informing their supervisor about any elements of their employment or any information that they may reasonably believe could affect their credibility as a witness and could be subject to Brady disclosure.

1010.17 PUBLIC DISCLOSURE OF INTERNAL INVESTIGATIVE FILES

- a. A completed internal investigation that examines in-uniform or on-duty conduct of a peace officer involving alleged misconduct with a member of the public shall be made available for public inspection upon request within the constraints of §24-72-303, C.R.S, as amended from time to time.
- b. Completed internal investigations that do not involve (1) an in-uniform or on-duty conduct by a peace officer, and (2) a member of the public, are not available for public disclosure except pursuant to a court order or as otherwise required by law mandating disclosure.
- c. If criminal charges are pending, an internal affairs investigation will generally not be considered completed until the final disposition of the criminal prosecution.
- d. Public disclosure of a completed internal investigative file under a criminal justice records request shall only be made after the statutorily-required redactions, if any, have been made.
- e. This section (1010.17) only applies to internal investigations that commence on or after April 12, 2019.

1010.18 DISCLOSURE OF FILES TO OTHER LAW ENFORCEMENT AGENCIES IN ACCORDANCE WITH C.R.S. §24-33.5-115

- a. Department members, or former Department members, who interview for a peace officer position with another law enforcement agency in Colorado, will be required to execute a written waiver that explicitly authorizes the Department to release such member's personnel files, including IA investigations, to the interviewing agency.
- b. The Department will disclose such files to other law enforcement agencies in accordance with the requirements of C.R.S. § 24-33.5-115, as amended from time to time.

1010.19 NOTIFYING THE P.O.S.T. BOARD OF UNTRUTHFUL STATEMENTS MADE BY A DEPARTMENT MEMBER IN ACCORDANCE WITH C.R.S. §24-31-305(2.5) (EFFECTIVE AUGUST 2, 2019.)

- a. Pursuant to the requirements of C.R.S. § 24-31-305(2.5), as amended from time to time, the Department shall notify the P.O.S.T. Board when it has determined, by a clear and convincing standard of evidence, that a Department member knowingly made an untruthful statement concerning a material fact or knowingly omitted a material fact on an official criminal justice record,

Personnel Complaints

while testifying under oath, or during an internal affairs investigation or other administrative investigation and disciplinary process.

- b. Notification to the P.O.S.T. Board shall be made only after the Department has completed an administrative investigation and the Department member has elected not to exercise, or has exhausted, his or her appeal rights (if any) set forth in this Manual or the City's Personnel Guidelines.
- c. If a Department member who is being investigated under this section, resigns or refuses to cooperate in the investigation, the Department will complete the investigation with or without the Department member's participation.
- d. Upon notification to the P.O.S.T. Board, a Department member's P.O.S.T. certification may be revoked by the P.O.S.T. Board.

1010.20 REVOKE PEACE OFFICER CERTIFICATION AFTER CONVICTION IN ACCORDANCE WITH C.R.S. 24-31-904

Notwithstanding any provision of law, if any peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force, a crime involving the failure to intervene in the use of unlawful force, or is found civilly liable for the use of unlawful physical force, or is found civilly liable for failure to intervene in the use of unlawful force, the POST Board shall permanently revoke the peace officer's certification. The POST Board shall not, under any circumstances, reinstate the peace officer's certification or grant new certification to the peace officer unless the peace officer is exonerated by a court. The P.O.S.T. Board shall record each decertified peace officer in the database created pursuant to section 24-31-303 (1)(r).

1010.21 CIVIL ACTION FOR DEPRIVATION OF RIGHTS

1. A peace officer, as defined in section 24-31-901 (3), employed by a local government who, under color of law, subjects or causes to be subjected, including failing to intervene, any other person to the deprivation of any individual rights that create binding obligations on government actors secured by the bill of rights, article II of the state constitution, is liable to the injured party for legal or equitable relief or any other appropriate relief.
2. (a) Statutory immunities and statutory limitations on liability, damages, or attorney fees do not apply to claims brought pursuant to this section. (b) Qualified immunity is not a defense to liability pursuant to this section.
3. In any action brought pursuant to this section, a court shall award reasonable attorney fees and costs to a prevailing plaintiff. In actions for injunctive relief, a court shall deem a plaintiff to have prevailed if the plaintiff's suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation. When a judgment is entered in favor of a defendant the court may award reasonable costs and attorney fees to the defendant for defending any claims the court finds frivolous.
4. Notwithstanding any other provision of law, a peace officer's employer shall indemnify its peace officers for any liability incurred by the peace officer and for any judgment or settlement entered against the peace officer for claims arising pursuant to this section; except that, if the peace

Personnel Complaints

officer's employer determines that the officer did not act upon a good faith and reasonable belief that the action was lawful, and then the peace officer is personally liable and shall not be indemnified by the peace officer's employer for five percent of the judgment or settlement or twenty-five thousand dollars, whichever is less. Notwithstanding any provision of this section to the contrary, if the peace officer's portion of the judgment is uncollectible from the peace officer, the peace officer's employer or insurance shall satisfy the full amount of the judgment or settlement. A public entity does not have to indemnify a peace officer if the peace officer was convicted of a criminal violation for the conduct from which the claim arises.

5. A civil action pursuant to this section must be commenced within two years after the cause of action accrues.

1010.22 NOTIFICATION OF POST

The Chief of Police or the authorized designee shall notify POST of any sustained findings of use or threatened use of unlawful force or failure to intervene by any officer currently employed by this department (CRS § 18-1-707; CRS § 24-31-904).

The Chief of Police or the authorized designee shall provide information regarding officer misconduct (e. g., knowingly making an untruthful statement, termination for cause, resignation or retirement pending investigation, resignation in lieu of termination for cause, conduct that subjects the officer to criminal investigation) to the POST Board misconduct database as required (CRS § 24-31-321; 4 CCR 901-1:17; 4 CCR 901-1:32).

The Chief of Police shall certify that the information provided to POST is accurate. If the Department determines that an entry was done in error, the Chief of Police or the authorized designee should inform POST upon the discovery of the error (CRS § 24-31-321).

1010.22.1 DISCLOSURE OF DOCUMENTS TO POST

Upon request from the POST Board, the Chief of Police or the authorized designee shall provide documents relevant to the incident, investigation, or associated discipline to the POST Board (CRS § 24-31-321).

