Massachusetts Department Of Correction **POLICY**	Effective Date 7/15/2022 Annual Review Date 6/15/2022	Responsible Division Deputy Commissioner, Field Services
Policy Name 103 DOC 522 PROFESSIONAL STANDARDS UNIT	M.G.L. Reference: M.G.L. c. 124, §§1 (b), (i), (q); M.G.L. c. 127, §§12, 33, 127 DOC Policy Reference: 103 DOC 237; 103 DOC 238; 103 DOC 408; 103 CMR 505 ACA/PREA Standards: PREA: 115.66; 115.71	
Attachments Yes ☒ No ☐ Inmate Library Yes ☒ No ☐	Applicability: Staff	
Public Access Yes ☒ No ☐	Location: Department Central Policy File Professional Standards Unit Policy File Each Institution's Policy File	

PURPOSE:
To establish Department of Correction (Department) policy and procedure for filing complaints of employee misconduct, and conducting fair, impartial, thorough, and timely investigations into such complaints.

RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:
Commissioner
Deputy Commissioner, Field Services
Chief of the Professional Standards Unit (PSU)
Superintendents/Division Heads

CANCELLATION:
103 DOC 522 cancels all previous Department policy statements, bulletins, directives, orders, notices, rules or regulations regarding Professional Standards.

SEVERABILITY CLAUSE:
If any part of 103 DOC 522 is, for any reason, held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.

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522.01 DEFINITIONS

Administratively Closed: Inquiries or investigations closed as a result of uncooperative complainants, or there is no independent evidence to support the continuation of an inquiry/investigation or other good cause that is determined by the Chief of the Professional Standards Unit (PSU).

Administratively Withdrawn: Inquiries or investigations closed as a result of a written withdrawal request submitted by the complainant when no other evidence exists to support the continuation of the inquiry/investigation.

Category I Complaints: Complaints investigated by the Superintendent/Division Head, which allege less serious infractions of the rules, regulations, policies, or post orders.

Category II Complaints: Complaints investigated by the Professional Standards Unit, which allege more serious infractions of the rules, regulations, policies, post orders, or federal, state, or local laws.

Chief of the Professional Standards Unit: Director responsible for the Professional Standards Unit. The Chief shall report directly to the Commissioner of the Department of Corrections.

Complaint: A written or verbal charge, accusation, or allegation of employee misconduct. The institution Superintendent or Division Head must conduct an inquiry into the alleged misconduct and if the elements of the misconduct meet the criteria of either a Category I or Category II Complaint. An Investigation Intake Form shall be submitted to the Professional Standards Unit.

Deputy Commissioner of Field Services: The executive staff whose duties include, but are not limited to, the management of: Central Transportation Unit, Professional Standards Unit, Office of Investigative Services, Department Duty Station, the PREA unit and Operational Services Division.

Division Head: The administrator responsible for the operations of a particular division.

Employee Misconduct: Conduct that violates Department policy, rules, regulations, and/or federal, state or local laws.

Inquiry: A close examination of a complaint in search of additional information to determine if an investigation is warranted.

Professional Standards Unit (PSU): The investigative unit within the Department of Correction responsible for investigating Category II Complaints of staff misconduct and tracking and monitoring each Category I Complaint.

Investigation: The collection of evidence that supports or refutes alleged misconduct.

Investigation Intake Form: The form used to record all complaints of misconduct against Department personnel or vendors, whether filed by an inmate, citizen, Department or contract employee, or another governmental agency.

Superintendent: The chief administrative officer of a state correctional institution.

522.02 PHILOSOPHY

It is the Department's philosophy that all complaints of staff misconduct are to be systematically examined and investigated when warranted to discover truth. The Department's success depends on the personal integrity and discipline of its employees. Public image is determined, in part, by the Department's professional response to allegations of misconduct against it or its employees. All investigations shall be conducted in a manner that respects the Department's employees as well as all witnesses, including inmates.

522.03 GOALS AND OBJECTIVES

A. The PSU shall investigate allegations of staff misconduct and violations of policy and procedure that may result in administrative review and possible discipline against staff, vendors and/or contract staff.

B. The Chief of PSU will determine which investigative unit (PSU or OIS), will conduct the investigation. The designated unit will work cooperatively with the respective District Attorney's Office and external law enforcement agencies to conduct the investigation if it has been determined to be a criminal matter.

C. The PSU will report the results of any criminal investigation involving staff through the CPU. The CPU will notify the designated District Attorney's Office for its review and/or action.

D. At all times, sworn, civilian, and contract employees are expected to conduct themselves in a manner that shall favorably reflect on the Department. Maintaining high standards ensures an atmosphere of trust and cooperation between citizens and the Department. Increased public cooperation enhances the Department's ability to achieve its goals and objectives.

E. An investigation may inquire into an employee's on-duty or off-duty conduct, if such inquiry is reasonably and directly related to the employee's fitness for duty. The investigation is to be limited to inquiries pertaining to whether the employee's conduct violates any rules, regulations, Department post orders or all applicable laws or in any way discredits the Department.

F. In matters involving Executive Orders (EO) involving Workplace Violence (EO 442), Sexual Harassment (EO 240), Establishing a Policy of Zero Tolerance for Sexual Assault and Domestic Violence (EO 491), and Discrimination and Retaliation (EO 526) and/or involving retaliation for an individual's report of such conduct, however, the Commonwealth Human Resources Division's Investigations Center of Expertise (COE) conducts a review of allegations in the first instance to determine whether the allegation(s) fall(s) within its purview. If so, the COE conducts an investigation and reports its findings to the Department's DC of Field Services. The DOC reviews those findings to determine whether further inquiry or investigation is necessary. If not within COE's purview, the COE refers the allegation(s) to the DC of Field Services for review and further action, if necessary. For further information regarding the Investigations COE process, go to mass.gov, search for Human Resources Division, then scroll down to "What would you like to do?" and find "Investigations Center of Expertise."

G. The Department shall impose no standard higher than a preponderance of the evidence in determining whether allegations of staff misconduct are substantiated.

H. The Department shall ensure that the rights of all parties are clear and enforced.

522.04 RESPONSIBILITY OF THE PROFESSIONAL STANDARDS UNIT

The PSU shall process and track all allegations/complaints of employee misconduct and, if applicable, conduct investigations into such complaints.

A. The Chief of PSU (or designee), shall:

1. Review all Investigation Intake Forms for processing;

2. Notify the appropriate higher authority when a staff member is accused of employee misconduct;

3. Respond to each complaint by notifying the complainant in writing that the complaint was received and further information shall be forthcoming upon their request for information;

4. Coordinate employee misconduct investigations with the Superintendent/Division Head and/or designees;

5. Establish guidelines, priorities, training, and management systems to ensure an efficient and effective PSU operation;

6. Monitor investigative progress and provide functional supervision of all staff assigned to the PSU;

7. Review PSU reports to ensure that investigations are complete, objective, impartial and thorough;

8. Review and enforce policies and procedures pertaining to employee misconduct;

9. Provide a direct liaison with outside law enforcement agencies, e.g., state/local police, district attorneys' offices and the Massachusetts Attorney General's Office;

10. Maintain PSU files in an organized, secure, and confidential manner;

11. Direct and assist in the coordination of those investigations involving sensitive and/or complex issues, i.e., involvement with outside law enforcement, surveillance and covert operations;

12. Maintain a secure computer database of all investigations and complaints.

B. Investigators assigned to the PSU shall:

1. Conduct investigations into allegations of staff misconduct, as assigned;

2. Obtain necessary documentation and other evidence;

3. Identify, locate, and interview all relevant parties (complainant, suspect, witnesses);

4. Work with outside agencies when necessary, i.e., surveillance, task forces and covert operations;

5. Form a recommended conclusion based on the information compiled;

6. Prepare comprehensive reports of investigative findings in a timely manner;

7. Attend various hearing throughout the administrative process, i.e., arbitration, civil service, etc.

522.05 PROCEDURES FOR FILING A COMPLAINT

Any person with knowledge of employee misconduct shall report any such act and cooperate fully in the investigative process. Failure to report or refusal to cooperate in the investigative process, by Department personnel shall be grounds for disciplinary action, up to and including termination.

A. Complaints Made by Department and Contract Personnel

1. Any employee who believes that he/she/they has been subjected to, a witness of, or has knowledge of employee misconduct shall immediately file a confidential incident report detailing his/her/their allegations and submit the incident report to his/her/their Superintendent/Department Head/Division Head**.** The institution Superintendent/Department Head/Division Head will conduct an inquiry into the alleged misconduct. This inquiry shall include gathering relevant information in an attempt to verify the credibility, nature and severity of the allegation, and to screen out frivolous claims and those best resolved at the institutional level. In addition, when appropriate, this initial inquiry shall include taking steps to resolve the matter via mediation or other conduct resolution matters. If, after the institution conducts this inquiry, the Superintendent/Department Head/Division Head believes that a formal investigation is necessary and if the elements of the misconduct meet the requirements of either a Category I or Category II complaint, a PSU Investigation Intake Form shall be submitted to the PSU. Depending on the severity of the allegations the Superintendent/Department Head/Division Head may, when appropriate, refer the allegation to the PSU via an investigative intake without completing an inquiry.

   All interviews which are part of inquiries into staff misconduct that may result in administrative action shall be audio recorded.

B. Complaints Made by Inmates

1. Any inmate who believes that he/she/they have been subjected to or a witness of employee misconduct may immediately report the alleged misconduct, either verbally or in writing, directly to a staff member, e.g., Superintendent, Deputy Superintendent, Director of

Security, Shift Commander, Inner Perimeter Security, Correction Program Officer, Housing Unit Officer.

2. If an inmate reports alleged misconduct verbally, it shall be incumbent upon the staff member who receives the complaint to document the alleged misconduct by filing a confidential incident report. Such confidential incident report shall then be submitted to the Superintendent/Department Head/Division Head.

3. Upon receipt of an inmate complaint of staff misconduct, the Superintendent/Department Head/Division Head, or his/her/their designee shall conduct an inquiry into the alleged misconduct. This inquiry shall include gathering relevant information in an attempt to verify the credibility, nature and severity of the allegation, and to screen out frivolous claims and those best resolved at the institutional level. If after this inquiry, normally completed in thirty (30) days unless an Internal Investigation Waiver Form (Attachment #2) is approved for just cause, the Superintendent/Department Head/Division Head, or his/her/their designee believe that the elements of the misconduct meet the requirements of either a Category I or Category II complaint, an Investigation Intake Form shall be submitted to the Professional Standards Unit.

4. Whenever an inmate, patient or civilly committed individual files an institutional grievance or complaint regarding a use of force (UOF) incident, the institution or division shall conduct an inquiry. The inquiry shall be conducted by a trained investigator and completed prior to the submission of the Use of Force (UOF) package). Note: in accordance with the 103 CMR 505, *Use of Force* policy, specifically, "505.13: (5) A copy of the report described in 103 CMR 505.13 (1), and a completed UOF reporting form 505-1 (available at http://www.mass.gov/lists/department-of-correction-public-policies, and at each inmate library attached to 103 CMR 505, *Use of Force*) shall be submitted to the Director of the Operational Services Division, (Director of Operational Services) by the Superintendent/Department Head/Division Head within twenty (20) business days from the time of the incident." The results of the inquiry shall be attached to the final UOF package and addressed in the Superintendent's/Department Head/Division Head's cover letter, including a determination as to whether or not there is a reasonable belief that staff misconduct occurred. If the Superintendent/Department Head/Division Head determines that staff misconduct occurred, an Investigative Intake shall be submitted to the PSU. Additionally**,** the Superintendent shall render a final determination regarding whether or not the

UOF package is compliant with the 103 CMR 505, *Use of Force* regulation.

5. Inmates who are illiterate, who cannot read or write legibly or who cannot speak English are authorized to obtain assistance from their Correction Program Officer (CPO) or other staff member. Use of the language line is permitted for those inmates who cannot speak English. Deaf and Hard-of-Hearing inmates who are approved for Qualified Sign Language Interpreter Services, as referenced in 103 DOC 408, *Reasonable Accommodations of Inmates*, specifically 408.11(A)(7), shall be provided such services. Inmates with a Disability approved for Auxiliary Aids and/or Services or Reasonable Accommodations, as referenced in 103 DOC 408.11, shall be provided such Aids, Services, or Accommodations.

6. Inmates shall not be subject to adverse action, including disciplinary charges, for filing a complaint of staff misconduct, except for inmates who abuse the process by filing false reports, or an excessive number of frivolous and/or unfounded complaints, or for inmates who intentionally and in bad faith misrepresent or omit material information as referenced in Section 103 DOC 522.06 (D). In deciding whether to initiate an investigation into the complaints/allegations of inmates, the Chief of PSU may consider whether the inmate making the complaint/allegation had engaged in the aforementioned conduct in the past.

7. It is the responsibility of each Superintendent to include a section in the inmate orientation booklet concerning employee misconduct. A telephone "hotline" has been set up through the inmate telephone system that will allow inmates to report employee misconduct. This number, 508-422-3425, can be universally accessed by all inmates.

C. Complaints Made by Persons Outside of the Department

1. Complaints, regardless of nature, may be lodged in person, by mail (regular and electronic), or by phone (to the Superintendent/Department Head/Division Head or DOC TIP Line) at any time. Every reasonable effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. Any employee, who interferes with, discourages, or delays the making of such complaints shall be subject to disciplinary action up to and including termination.

2. Persons making complaints by mail or phone shall normally be contacted by an investigator for the purpose of conducting an

inquiry into allegations and subsequently completing an Investigation Intake Form, if appropriate. Persons seeking to file a complaint at a correctional institution or at Department Headquarters shall, upon request, be given a copy of an Investigation Intake Form. When complaint forms are given out, the complainant shall be instructed to complete the form and return it as soon as possible to the PSU.

3. The Department of Correction shall maintain a toll-free Tip Line in the event that a member of the public has information regarding allegations of staff misconduct. The number of the toll-free Tip Line is as follows:

1-866-MDOC-TIP
1-866-636-2847

The staff member shall follow up with the appropriate institution to conduct an inquiry to make a determination if an intake shall be submitted for investigation. When the Tip Line receives an allegation/complaint of employee misconduct, the staff receiving the call shall ensure that all information is documented. If the complainant wishes to remain anonymous, then a notation shall be made. This documentation shall be logged within the information with disposition noted.

4. In addition, information regarding how to file an allegation/complaint of staff misconduct, to include forms for filing an allegation/complaint, shall be posted on the Department's internet page; www.mass.gov/DOC.

522.06 INVESTIGATION INTAKE FORM

A. Upon receipt of a complaint/allegation of employee misconduct, the Superintendent/Department Head/ Division Head shall conduct an initial inquiry by gathering relevant information and seeking to resolve appropriate matters.

B. If, after conducting this initial inquiry, the Superintendent/Department Head/Division Head believes that an official investigation is appropriate, a standard complaint form shall be used to record the complaint. This form shall be referred to as the Investigation Intake Form. This form shall be completed and electronically submitted to the PSU within twenty-four (24) hours of making this determination.

C. The PSU shall assign an identifying number to each Investigation Intake Form. Only those forms with an assigned complaint number shall be considered as official complaints for record keeping purposes.

D. Supervisory issues including disobedience/insubordination shall not be a formal intake and shall normally remain the responsibility of the institution or division to handle. Rudeness and discourtesy exhibited on the job shall normally remain under the purview of the institution Superintendent/Department Head/Division Head as well. Staff conflicts not involving physical contact shall also be viewed as an internal matter unless the institution Superintendent/Department Head/Division Head believe that an investigation may further escalate the situation and therefore possibly lead to a workplace violence incident developing. Allegations of discrimination, sexual harassment and/or hostile work environment harassment may fall within the COE's purview. If the Chief of PSU determines this is the case, the allegations shall be forwarded to the COE for such a determination. If not, the Department may investigate the allegations and submit them by way of intake.

E. Intakes shall not be submitted for medical errors (e.g. dropped or lost medications) that do not immediately point to staff misconduct. These matters are best handled by the Health Services Division. If during the course of their review it is determined that Department staff misconduct may have occurred, an Investigation Intake Form shall be submitted. Matters involving conflicts between medical or mental health providers shall be handled by the vendor. Conflicts involving a Department employee and vendor shall be handled by the respective Superintendent/Department Head/Division Head unless it involves discrimination, sexual harassment, workplace violence, domestic violence, or retaliation for reporting such conduct. In such cases, the Chief of PSU will review these allegations to determine whether they should be referred to the COE.

F. Any complainant, upon written request, may be provided with the intake number assigned to their complaint.

522.07 TRIAGE

A. PSU shall establish procedures for screening and evaluating allegations of employee misconduct, in part, to determine the validity of such complaints. All investigations shall be conducted in a manner that is fair, impartial, thorough and timely. PSU shall maintain a database of all Inquiries, Category I and Category II investigations.

B. The Chief of PSU or his/her/their designee and the Captains in charge of PSU shall review and discuss all Investigation Intake Forms submitted to

determine if an Intake Investigation Intake Form merits a formal investigation by the DOC or should be referred to the COE for determination as to whether the allegations fall within the COE's scope as outlined herein. The Chief of PSU or his/her/their designee may screen out all cases that in his/her/their opinion do not necessitate a formal investigation. The Chief or his/her/their designee may order an inquiry to be conducted if more information is required prior to making a decision. If the intake does warrant a formal investigation, the intake shall be assigned as either a Category I or Category II investigation.

C. The Chief of PSU or his/her/their designee shall screen all intakes and return to the institution/department/division any intakes that do not require a Category I or Category II investigation including all those involving supervisory and conflict issues as referenced in Section 103 DOC 522.06 (D).

D. The Chief of PSU or his/her/their designee shall screen out all intakes that are considered frivolous, repetitious or knowingly false submitted by any party. If the triage team has questions concerning the validity of an intake, an inquiry may be initiated to gather more information before a decision is reached.

E. Investigations of workplace violence, discrimination, sexual assault, sexual harassment and/or domestic violence and/or of retaliation for reporting such conduct, shall be referred to the COE as deemed appropriate by the Chief of PSU in accordance with 103 DOC 237, *Prevention and Elimination of Workplace Violence* and 103 DOC 238, *Policy for the Prohibition of Sexual Assault, Domestic Violence, Harassment and Stalking*.

522.08 CATEGORIES OF EMPLOYEE MISCONDUCT INVESTIGATIONS

Guidelines have been established to identify employee misconduct that shall be investigated by the PSU, those that shall be investigated by the Superintendent/Department Head/Division Head. The Chief of PSU shall have ultimate discretion to determine which office shall conduct the necessary investigation. The Chief of PSU shall determine whether allegations should be referred to the COE for its determination whether the allegations fall within the COE's scope.

A. CATEGORY I - INVESTIGATION BY A SUPERINTENDENT/DEPARTMENT HEAD/DIVISION HEAD

1. Institution and department or division level investigations, in general, involve allegations/complaints that may reasonably be addressed and resolved by the Superintendent/Department

Head/Division Head responsible for the employee about whom the complaint is made.

2. Supervisory issues including disobedience/insubordination, rudeness and discourtesy, as well as conflicts not involving physical contact, shall normally be handled internally without the need for a formal investigation. Although all of these instances shall be addressed and taken seriously by institution, department, or division staff, they are best handled through the internal disciplinary or supervisory process.

3. The following are some, but not necessarily all, examples of employee misconduct that would be reviewed and/or investigated as a Category I complaint:

   a. Serious security violations.
   b. Misuse of state property.
   c. Serious staff conflicts that if not addressed may lead to workplace violence issues.
   d. Infractions of the rules, regulations, policies, or post orders if serious enough to warrant an investigation. Minor infractions of these issues shall remain with the institution Superintendent/Department Head/Division Head to handle.
   e. Introduction of Contraband.
   f. Other cases as determined by the Chief of PSU.

4. Reoccurring allegations of these types of complaints of staff misconduct, however, may be addressed by the PSU.

B. CATEGORY II- INVESTIGATION BY PSU

1. PSU investigations, in general, involve allegations of serious employee misconduct, or complex or sensitive matters, requiring an investigation.

2. The following are examples of some, but not necessarily all, Category II complaints to be investigated:

   a. Felonious conduct.
   b. Use of alcohol or drugs at the workplace.
   c. Undue familiarity with an inmate, former inmate, parolee, or his/her/their family or friends.
   d. Staff sexual misconduct with inmates.
   e. Excessive force on an inmate.
   f. Theft of state property.
   g. Assaults.

h. Physical abuse.
i. Workplace violence.
j. Civil rights violations.
k. Existence and/or violation of an Abuse Prevention Order
l. Staff arrests.
m. Infraction involving discrimination, harassment and retaliation.

3. It is important to note that while staff misconduct is at times based on limited information, as an investigation unfolds, the level of seriousness may increase or decrease, thereby redirecting who shall be responsible for conducting the investigation. If, during an investigation, a Superintendent/Department Head/Division Head believes that a Category I complaint has risen to the level of a Category II complaint, he/she/they may contact the Chief of PSU to request a reconsideration of the category level of the complaint. The Chief of PSU shall make the final determination of the category level of complaint. The Chief of PSU may also elevate on his/her/their own initiative change the level of complaint.

522.09 INVESTIGATIONS

A. As detailed above, Category I complaints shall be assigned to the Superintendent/Department Head/Division Head of the area in which the employee, against whom the complaint was filed, is assigned. All category II complaints shall be assigned to a PSU investigator. Investigations of workplace violence, discrimination, sexual harassment, sexual assault, domestic violence, and retaliation for reporting such conduct shall be referred to the COE as deemed appropriate by the Chief of PSU, in accordance with 103 DOC 237, *Prevention and Elimination of Workplace Violence.*

All Category I and II investigations shall be formatted as follows:

Section One	Introduction
Section Two	Investigative Action, Summary of Evidence And Witness Statements
Section Three	Findings and Conclusions

B. Category I investigations shall normally be completed within sixty (60) days of assignment for non-criminal cases. Category II investigations shall normally be completed within one hundred twenty (120) days of assignment for non-criminal cases. Extensions of time may be granted by the Chief of PSU or designee, upon written request stating sufficient grounds for the request (Attachment #1).

C. The assigned investigator shall complete a fair, impartial and thorough investigation. Most investigations shall involve conducting interviews of the complainant, the employee against whom the complaint was filed, and witnesses, as well as collecting all available evidence that supports or refutes the allegations in the complaint.

The investigator shall inform all persons interviewed of the existence of a complaint and the general nature of its allegations.

The investigator shall instruct the staff person being interviewed of his/her/their obligation to cooperate in the investigation and that failure to cooperate may lead to disciplinary action, up to and including termination. An employee being investigated for conduct with the potential of a criminal complaint being filed shall be issued an internal Investigation Waiver Form (Attachment #2) after consultation with the Chief of PSU.

In the case of an inmate, the investigator shall instruct the inmate being interviewed that frivolous or false complaints may lead to discipline**.**

All Category I and II interviews shall be audio recorded. Upon written request and at the conclusion of the investigation, a copy of the audio recording shall be provided to the employee if disciplinary charges are brought against him/her/them.

All Department employees/vendors shall be required to submit to an audio -recorded interview. Inmates and/or citizens shall be recorded as long as they do not object. If inmates and/or citizens do object, the refusal shall be read onto the digital audio -recorder, the audio -recorder shall be turned off, and the refusal statement shall be documented in the investigative report investigations involving cell phones as potential evidence the investigator shall provide the Department employee or vendor with an Employee/Vendor Staff Permission to Search Personal Cellular Telephone form (Attachment #3).

D. At the conclusion of the investigation, a written report shall be prepared by the investigator, which shall include the following:

1. A copy of the original complaint.

2. Copies of any statements taken from the complainant or from witnesses to the alleged incident.

3. Copies of any statements or reports submitted by the Department employee under investigation.

4. Audio recorded interviews.

5. A summary of all evidence gathered.

6. An evaluation of the complaint and a recommended finding(s).

E. The Superintendent/Department Head/Division Head shall review all final reports of Category I complaint investigations. The Superintendent/Department Head/Division Head shall recommend a decision based upon his/her/their review, at which time the investigation shall be forwarded to the Chief of PSU for administrative review and final approval.

F. The Chief of PSU or their designee shall administratively review all final reports of Category II complaint investigations. The final report shall be placed in a six-part folder and include the following:

1. Investigative Report/Executive Summary

2. Executive Review/Decisions

3. Reports

4. Supportive Documentation and Evidence

5. Miscellaneous

After acceptance by the Chief of PSU or his/her/their designee, the final report of Category II complaints, if sustained in any portion, shall be forwarded to the Deputy Commissioner of Field Services for final review. All other findings, with the exception of sustained, shall be forwarded to the Chief of PSU or designee for final review.

In addition, all final reports of Category II complaints made by staff alleging discrimination, harassment or retaliation, shall be forwarded to the Office of Diversity/Equal Opportunity (ODEO) to determine whether, based on the facts found, a violation of the discrimination/retaliation policy has occurred. After a determination is made by the ODEO, the final report shall be forwarded to the Chief of PSU for preparation for the Deputy Commissioner of Field Services final review.

G. Also at the conclusion of the investigation, both the complainant and the employee who was charged with misconduct shall be promptly notified, in writing, as to the final results of the investigation. Notifications of Category I complaints shall be made by the Superintendent/Department Head/Division Head. Notification of Category II complaints shall be made by the Chief of PSU or his/her/their designee.

H. When warranted, the initiation of appropriate disciplinary action following an investigation shall be done in accordance with Department policy, and applicable civil service laws.

Also, when warranted, the respective District Attorney's Office shall be notified when the allegations against an employee may result in criminal prosecution by way of notification to CPU.

I. If during the process of an internal investigation, the complainant indicates a desire to withdraw the complaint, every effort shall be made to ensure that this decision is made voluntarily, and a signed statement to this effect shall be obtained from the complainant. The Chief of PSU or his/her/their designee shall make the final decision if an investigation should be withdrawn after the withdrawal request is presented to the investigator. A withdrawn complaint does not necessarily end an investigation; however, if no evidence has been found to sustain the allegations, the investigation may be administratively withdrawn with the approval of the Chief of PSU or his/her/their designee. Any attempt, directly or indirectly, on the part of a Department employee to obstruct any internal investigation or to threaten or persuade a complainant to withdraw a complaint is prohibited and shall result in disciplinary action, up to and including termination.

J. The departure of the alleged abuser or victim from the employment or control of the Department shall not provide a basis for terminating an investigation.

K. If an investigation is administratively withdrawn, the investigator shall submit a brief but thorough report chronicling the actions taken, reason for the complainant's withdrawal and any documentation/evidence gathered which refutes the initial allegations. A copy of the written withdrawal request from the complainant shall be included in the report package along with any other pertinent documentation and forwarded to the Chief of PSU or his/her/their designee for review and approval.

L. If an inmate or civilian complainant refuses to cooperate during the investigation process, e.g. shall not provide an interview statement, and no other evidence has been found to sustain the allegations made within the complaint, the investigation may be "exceptionally cleared" or "administratively withdrawn" with the approval of the Chief of PSU or his/her/their designee. All staff members are required to fully cooperate in all investigations in accordance with the rules and regulations.

M. If an investigation is, administratively withdrawn or exceptionally cleared, the investigator shall submit a brief but thorough report chronicling the actions taken and any documentation/evidence which refutes the initial

allegations. All pertinent documentation shall be included in the report package and forwarded to the Chief of PSU or his/her/their designee for review and approval.

N. If, during the course of an investigation, an investigator develops information that an employee who was not the principal of the original investigation may have violated the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction, that accused employee must be notified of these findings verbally prior to the completion of the investigation and allowed to issue a statement in his/her/their defense. The investigator shall include this information in the Findings and Conclusion Section of the Executive Summary.

522.10 DISPOSITION OF COMPLAINTS

Investigations of employee misconduct shall result in one or more of the following findings:

Sustained: The investigation disclosed a preponderance of evidence demonstrating that the conduct in question occurred and constituted a violation of Department policy, rules and regulations, post orders, or federal, state or local laws.

Not sustained: There is insufficient evidence to prove or disprove the complaint.

Exonerated: The evidence demonstrates that the behavior in question did occur, but that such behavior did not constitute a violation of Department policy, rules and regulations, post orders, or federal, state or local laws.

Unfounded: The complainant acted in bad faith by either knowing that the allegation was false or recklessly filing the complaint or the facts proved that the event did not occur. Any employee who knowingly makes a false accusation may be subject to disciplinary action, up to and including termination. Any inmate who knowingly makes a false accusation may be subject to disciplinary action.

Misconduct Not Based on the Original Complaint: The investigation revealed there was misconduct by an employee, contract employee, volunteer, or vendor which was not mentioned in the original complaint.

Administratively Closed: Inquiries or investigation closed as a result of uncooperative complaints when there is no independent evidence to support the continuation of an inquiry/investigation or other good cause that is determined by the Chief of PSU or his/her/their designee.

Administratively Withdrawn: Inquiries or investigations closed as a result of a written withdrawal request submitted by the complainant when no other evidence exists to support the continuation of the inquiry/investigation.

Policy Failure: The allegation is true, but the staff member was acting in a manner consistent with policy, which indicates a policy revision is required.

Exceptionally Cleared: A factor external to the investigatory process, such as the complainant's refusal to provide essential information, or failure otherwise to cooperate with the investigation, results in the inability to properly conduct and complete the investigation.

522.11 CONFIDENTIALITY OF PROFESSIONAL STANDARDS UNIT

A. All investigations, inquiries, or complaints shall be afforded the highest possible degree of confidentiality.

B. In order to ensure that the individual rights of employees who are the subject of a PSU investigation are protected, all materials relevant to an investigation of staff misconduct shall be processed and stored in a manner that prevents unauthorized access.

C. Investigators, administrators, witnesses, and other parties shall not discuss any aspect of an on-going investigation with any persons without proper approval of the Superintendent/Department Head/Division Head, Chief of PSU, or Deputy Commissioner of Field Services.

522.12 DATA COLLECTION

To improve the quality, efficiency and effectiveness of staff misconduct investigations, a database in PSU shall be maintained relative to these investigations. The database may be utilized to track all cases to ensure that they are resolved promptly and preserved electronically. In addition to quality control within the PSU, the database shall be utilized as a tool to provide statistical analysis of trends and ensure accountability.

In the event of a department wide loss of computer infrastructure; a contingency plan for Continuity of Operations Plan (COOP) is located in the Field Services Division Office.

522.13 QUALITY CONTROL

In order to protect the integrity of the investigatory process, the Chief of PSU shall review and sign all Category II investigation reports, as well as review five (5) percent of Category I investigation reports monthly.

In addition, the Chief of PSU shall publish a quarterly and an annual summary of complaint statistics. This report shall include but not be limited to the number of complaints filed, by type of complaint, and the disposition of the investigation. These statistical reports shall be developed and maintained in order to identify policy or training issues, which may prevent further occurrences of employee misconduct.

Attachment #1

(ON LETTERHEAD)

Department of Correction
Request for Extension of Time for Completion of an Investigation

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TO: Chief, Professional Standards Unit

FROM:

DATE:

RE: DOC-

In accordance with the provision of 103 DOC 522.09(B), I am requesting an extension of time to complete the following investigation: .

I am unable to complete the above investigation within the required 120 days for the following reason(s): .

I am requesting an extension of days.

Reviewed by Captain: _____ _____ Date: _____
Print Signature

Recommend Approval: Yes_____ No_____

Reviewed by Deputy Chief: _____ _____ Date: _____
Print Signature

Recommend Approval: Yes_____ No_____

Comments:_____

Approved_____ Denied_____

Comments:_____

_____
Chief's Signature Date

Attachment #2

MASSACHUSETTS DEPARTMENT OF CORRECTION
Internal Investigations Waiver Form

Date: _____

TO:

FR: _____ Chief, Professional Standards Unit
(Name)
RE:

You are directed in accordance with the Rules and Regulations Governing All Employees of the Massachusetts Department of Correction to respond fully and promptly to any questions, written or oral, relative to an investigation being conducted by the Department of Correction.

Invocation of your rights against self-incrimination under the 5th Amendment to the US Constitution and Article 12 of the Massachusetts Declaration of Rights is sufficient to comply with this directive. This may be accomplished by checking off the appropriate box at the bottom of this page. You cannot be disciplined for asserting your rights. However, the investigation will continue and a recommendation will be made based on the available information.

You may also comply with this directive by asserting your 5th Amendment privilege against self-incrimination and waiving your Article 12 privilege. If you choose this option, you are waiving your right to transactional immunity and you are required to answer questions relevant to the investigation and/or submit a detailed report. The answers and/or report you provide and any evidence derived therefrom cannot be used against you in a criminal proceeding. Criminal proceedings may be based upon evidence obtained from other independent sources.

Failure to answer questions or submit a report relevant to the investigation, absent an assertion by you of your constitutional privilege(s), is considered failure to obey and comply with an order, which could result in disciplinary action, up to, and including, termination.

I understand my constitutional rights under the 5th Amendment of the US Constitution and Article 12 of the Massachusetts Declaration of Rights, and respond as follows:

[ ] *I wish to assert my constitutional rights under both the 5th Amendment of the US Constitution and Article 12 of the Massachusetts Declaration of Rights*.

[ ] *I wish to assert my constitutional rights under the 5th Amendment of the US Constitution against self-incrimination, but agree to waive my Article 12 privilege. I will answer questions and submit a report, but my responses and the contents of my report cannot be used against me in a criminal proceeding. I understand, however, that criminal proceedings can be instituted against me based upon evidence obtained from other sources*.

I have read the above statement the Fifth Amendment and Article 12 provisions on the next page following this form:

EMPLOYEE'S SIGNATURE: _____ DATE:_____ TIME: _____

CONTRACTOR'S SIGNATURE: _____DATE: _____TIME:_____

SIGNED IN THE PRESENCE OF: _____DATE: _____TIME:_____

The Fifth Amendment to the US Constitution provides, in pertinent part:

> **No person shall be…compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law…**

Article 12 to the Massachusetts Declaration of Rights provides, in pertinent part:

> **No subject shall be held to answer for any crimes or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his counsel, at his election.**

EMPLOYEE'S SIGNATURE: _____ DATE: _____ TIME: _____

CONTRACTOR'S SIGNATURE: _____ DATE: _____ TIME: _____

Attachment #3

(ON LETERHEAD)

MASSACHUSETTS DEPARTMENT OF CORRECTION

EMPLOYEE/VENDOR STAFF PERMISSION TO SEARCH PERSONAL CELLULAR TELEPHONE

Acknowledging my right to refuse to consent to a search of my personal cellular telephone or cellular telephone in my possession or under my control (e.g., in my assigned locker), I,_____, voluntarily and without coercion give my permission to the correctional staff of the Massachusetts Department of Correction to conduct a complete and thorough search of the cell phone (s) located at _____, including but not limited to, the digital call log, photographs, videos, all digital data (e.g., text messages), downloaded materials, search histories of browsers, electronic mail, Face Book, Instagram, Twitter or any other social media.

Cell Phone Number: _____

Subscriber Information: _____

Print Name (Owner/Possessor of Cell Phone): _____

Signature: _____

Date Signed:_____

Witness (Print Name): _____

Witness (Signature): _____

Witness (Print Name): _____

Witness (Signature): _____