

LAW ENFORCEMENT-RELATED INTERNAL AFFAIRS:

POLICY, PRACTICE, AND LEGAL CONSIDERATIONS

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INTERNAL AFFAIRS: THE WHY



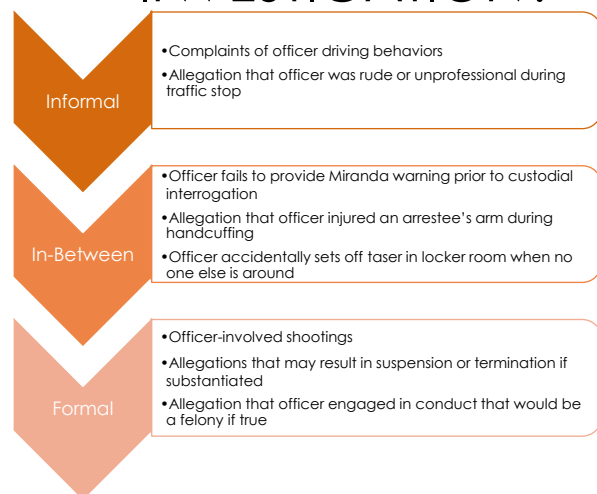
- The purpose of law enforcement is to protect communities, hold individuals accountable, and ensure justice.
- The purpose of Internal Affairs is two-fold:
 - Provide the public a fair and effective avenue for redress of grievances against members of the law enforcement agency, and
 - Protect members of the law enforcement agency from false allegations.

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WHAT COUNTS AS AN INTERNAL INVESTIGATION?

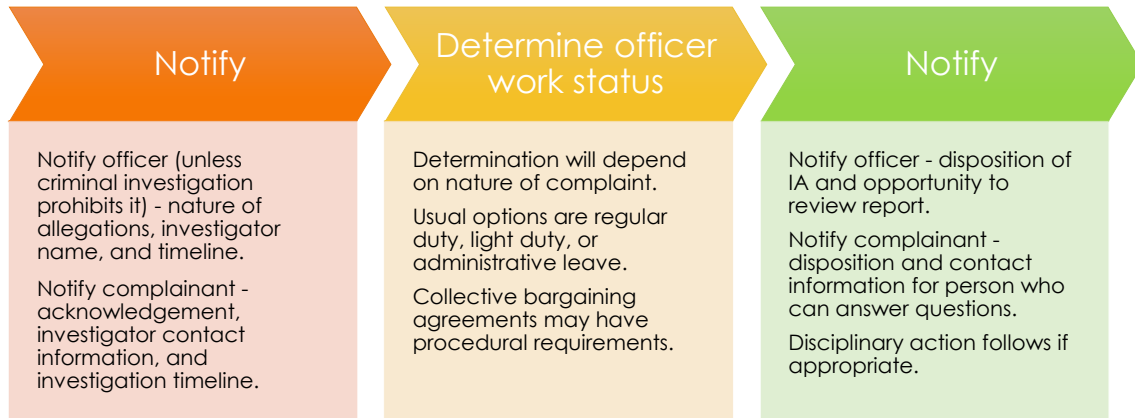
Any investigation conducted by a law enforcement agency of an alleged violation by its own member(s) of a law, rule, regulation, or policy that the member is required to follow.

In other words, there's a spectrum:



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WHAT SHOULD THE DEPARTMENT DO WITH THE OFFICER DURING A FORMAL IA INVESTIGATION?



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SHOULD THE DEPARTMENT ISSUE A PUBLIC STATEMENT?

- Generally, no. Not until the investigation is complete.
- When it may make sense to issue a statement before investigation is complete:
 - Need to identify victims/witnesses
 - Egregious officer behavior
 - Serious allegations that are clearly false
 - Incident garnering a lot of media attention
- Avoid pitfalls when crafting public statements.



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EXAMPLE PUBLIC STATEMENT

- The department is concerned about the allegations (or is taking the allegations seriously) and intends to conduct a thorough independent investigation.
- The department welcomes the input of any citizen in the community having information or perspective on the issue.
- The department is committed to quickly determining the need for any corrective action.
- The department will immediately address any criminal allegations against officers and will protect the public by reassigning the accused officers or putting them on administrative leave, as the situation warrants.

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CCJRA REQUESTS FOR INTERNAL INVESTIGATION FILES (PRIOR TO APRIL 2019)



- The CCJRA requires records of "official action" to be open for inspection, with few exceptions. C.R.S. § 24-72-303(1).
- "Official action" is defined in C.R.S. § 24-72-302(7) and does not include those records contain within internal investigation files.
- All other CCJRA records are subject to balancing test and may be withheld if it is determined the disclosure would be contrary to public interest.
- An agency should not have a blanket policy denying the release internal investigation files.

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BALANCING TEST

- The balancing test commonly used originates from *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005).
- The test includes:
 - The privacy interests of individuals who may be impacted by a decision to allow inspection;
 - The agency's interest in keeping confidential information confidential;
 - The agency's interest in pursuing ongoing investigations without compromising them;
 - The public purpose to be served in allowing inspection; and
 - Any other pertinent consideration relevant to the circumstances of the particular request.

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CCJRA REQUESTS FOR INTERNAL INVESTIGATION FILES (POST APRIL 2019: HB 19-1119)

- C.R.S. § 24-72-303 now includes certain completed internal investigation files as records that must be open for inspection.
- The following internal investigation files fall under the required disclosure:
 - Completed investigations (including appeal process);
 - In-uniform or on-duty conduct of a peace officer; and
 - Related to an incident of alleged misconduct involving a member of the public.



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CONSIDERATIONS

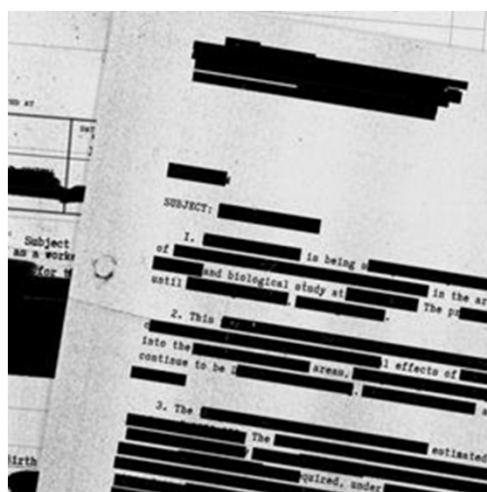


- If an internal investigation file does not fit within the definition of files that must be disclosed, apply the *Harris* balancing test to determine if the files will be released pursuant to a CCJRA request.
- HB 19-1119 is not retroactive and only applies to internal investigations initiated after April 12, 2019.
- The *Harris* balancing test may still be used for any CCJRA request for files of internal investigations initiated prior to this date.

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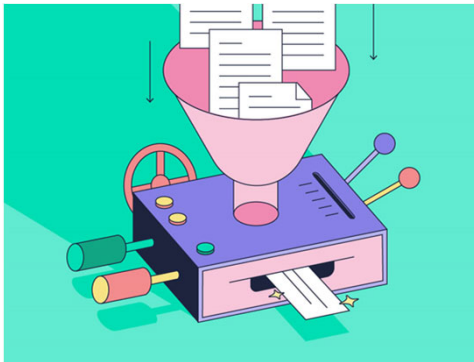
REDACTIONS

- C.R.S. § 24-72-303(4)(b) requires certain information to be redacted from the internal investigation file before release.
- C.R.S. § 24-72-303(4)(c)(I) permits certain information to be redacted from the internal investigation file before release.



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WHAT ABOUT SUMMARIES?



- C.R.S. § 24-72-303(4)(a) allows a law enforcement agency to first provide a summary of the investigation file.
 - Must release entire file if requested after review of the summary.
- C.R.S. § 24-72-303(4)(c)(I)(B) allows a law enforcement agency to first provide an official transcript of video interviews contained in the internal investigation file.
 - Must release video interview if requested after review of the transcript.

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BODY-WORN CAMERAS AND INTERNAL INVESTIGATIONS

- C.R.S. § 24-31-902(1)(a)(II)(A) requires officers to wear and activate a body-worn camera (BWC) during specified situations.
- Serious consequences in criminal proceedings and administrative internal investigations if officer tampers with or fails to activate BWC. (C.R.S. § 24-31-902(1)(a)(III)-(IV)).



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BODY-WORN CAMERAS AND INTERNAL INVESTIGATIONS

- When agency receives complaint of police officer misconduct, C.R.S. § 24-31-902(2) requires the agency to release, upon request, all unedited video/audio recordings of the incident to the public within 21 days.
- Certain redactions required or permitted, however.
- Can extend release time to 45 days if releasing video would substantially interfere with investigation.



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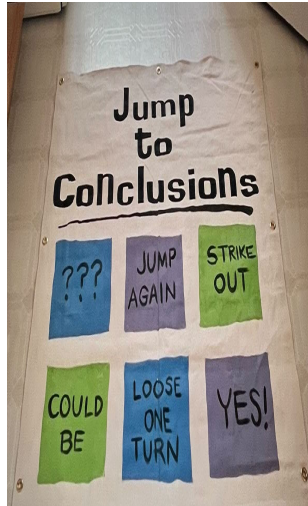
BEST PRACTICES TO PREVENT NEED FOR INTERNAL INVESTIGATIONS



- Good recruitment and hiring practices (see, e.g., C.R.S. § 24-33.5-115)
- Clear, comprehensive, transparent policies and procedures
- Training and education
- Consistent, periodic employee reviews and early intervention

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CONCLUSIONS



Help your client make reasonable and defensible decisions in IA matters.

These matters can be high profile and may involve risk of litigation from involved members of the public as well as agency employees.

Be mindful of mandatory records/ BWC release requirements and reasonable application of the *Harris* factors.

Creating, being familiar with, and consistently following internal investigation policies will mitigate the risk of liability.

Implement good documentation and file storage practices.

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THE END

That's all Folks!

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