

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

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**FILED**

2001 JUN 14 P 2:47

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia State Police TITLE NUMBER: 81

RULE TYPE: Legislative CITE AUTHORITY: §15-2-21 and §15-2-25

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10

TITLE OF RULE BEING AMENDED: West Virginia State Police Professional Standards Investigations,  
Employee Rights, Early Identification System, Psychological  
Assessment and Progressive Discipline

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: NA

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 16, 2001 AT 5:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Superintendent

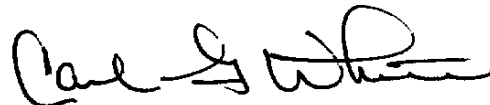
West Virginia State Police

725 Jefferson Road

South Charleston, West Virginia

25309-1698

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Lieutenant Colonel Carl G. White

Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

56.00

*West Virginia State Police  
Title 81  
Series 10*

*Summary of Purposed Rule*

This rule is a repeal and replace of the previously filed and approved rule regarding the Professional Standards Section of the West Virginia State Police and related activities.

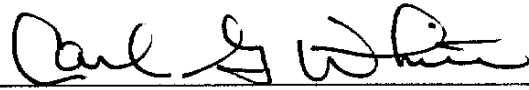
The rule as purposed will clarify several minor operating practices and restructures the rule so that it is easier to understand and follow the complaint intake, investigation and resolution process and to more closely define the progressive discipline schedule. Several new definitions have been added and others that were not used in the previous rule were deleted.

This purposed rule more clearly defines the responsibilities of the Officer-in-Charge of the Professional Standards Section.

*West Virginia State Police  
Title 81  
Series 10*

*Circumstances Requiring Filing of Rule*

Colonel Howard E. Hill, Jr. was appointed by Governor Bob Wise as the Superintendent of the West Virginia State Police. Colonel Hill, recognizing that there exists a strong interest by the State Legislature in regards to the State Police processes for citizen complaint intake, investigation and resolution and the administration of discipline within the State Police, appointed a commissioned officer to oversee the operations of the agency's Professional Standards Section. This resulted in a review of the current legislative rule governing Professional Standards which identified several areas of the rule where improvements could be made that would make the rule easier to understand and implement.



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Lieutenant Colonel Carl G. White  
West Virginia State Police

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia State Police

Address: \_\_\_\_\_  
725 Jefferson Road  
 \_\_\_\_\_  
South Charleston, West Virginia 25309-1698  
 \_\_\_\_\_

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$0	\$0	\$0	\$0	\$0
<b>PERSONAL SERVICES</b>	\$0	\$0	\$0	\$0	\$0
<b>CURRENT EXPENSE</b>	\$0	\$0	\$0	\$0	\$0
<b>REPAIRS &amp; ALTERATIONS</b>	\$0	\$0	\$0	\$0	\$0
<b>EQUIPMENT</b>	\$0	\$0	\$0	\$0	\$0
<b>OTHER</b>	\$0	\$0	\$0	\$0	\$0

2. Explanation of Above Estimates:

This rule will continue current practices and there will be no increase or decrease to operating or other expenses associated with implementation.

3. Objectives of These Rules:

To govern citizen complaint intake investigation and resolution, establish certain employee rights when under investigation or while being questioned in connection with an administrative investigation, provide for the identification and disposition of employees with potential problems, provide for the psychological testing of identified employees and establishing a schedule of progressive discipline.

Rule Title: West Virginia State Police Professional Standards Investigations, Employee Rights, Early Identification System, Psychological Assessment and Progressive Discipline

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Potential savings in insurance and legal fees/awards through improved complaint investigation and employee discipline.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

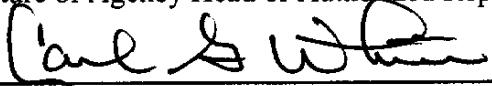
None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 14, 2001

Signature of Agency Head or Authorized Representative:



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2001 JUN 14 P 2:47

TITLE 81  
LEGISLATIVE RULE  
WEST VIRGINIA STATE POLICE

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 10  
WEST VIRGINIA STATE POLICE PROFESSIONAL STANDARDS INVESTIGATIONS,  
EMPLOYEE RIGHTS, EARLY IDENTIFICATION SYSTEM, PSYCHOLOGICAL  
ASSESSMENT AND PROGRESSIVE DISCIPLINE

**§81-10-1. General.**

1.1. Scope. -- This legislative rule explains the processes employed by the West Virginia State Police in dealing with allegations of employee misconduct, enhanced reporting for use of force incidents, progressive employee discipline, and internal systems aimed at evaluating and addressing employees suffering from either job-related or non-job related stress.

1.2. Authority. -- W. Va. Code §§15-2-21 and 15-2-25.

1.3. Filing Date. -- .

1.4. Effective Date. -- .

1.5 Repeal of former rule - This legislative rule repeals and replaces West Virginia State Police Administrative Rule 81CSR10 filed on March 27, 1996 and effective April 1, 1996.

**§81-10-2. Definitions.**

As used in this rule, unless used in a context that clearly requires a different meaning, the term:

2.1. Administrative or Internal Investigation: An investigation conducted at the direction of the Superintendent and pursuant to a special order, by or on behalf of the Professional Standards Section (hereinafter "Section"), concerning non-criminal, administrative matters intended to determine if misconduct has occurred and whether administrative sanctions are warranted for employees named in complaints.

2.2. Case File: The entire collection of

confidential documents and certain items of tangible evidence, including the final report, relating to an internal investigation or inquiry.

2.3. Complaint: Any allegation of an act by an employee which is contrary to written rules, procedures, directives, or orders of the agency. An allegation of an act or omission which, if substantiated would constitute a violation of the law. Any allegation which tends to indicate an actual or potential defect in agency rules, policies, procedures, directives, orders, or the delivery of services.

2.4. Conduct Unbecoming: misconduct of a substantial nature affecting the rights and interests of the public, or that casts aspersions or doubt upon a law enforcement officer's honesty and/or integrity and that directly affects the rights and interests of the public.

2.5. Counseling: refers to a documented discussion with the employee about a work performance or behavior problem which, if not corrected, could lead to a disciplinary action.

2.6. Critical Incident: Any incident where an employee is caused to employ potentially lethal force in the form of a firearm, a vehicle, or other potentially lethal force. An incident resulting in the death or severe injury of a co-worker or any other person. The use of deadly force by anyone against the employee or a co-worker leading to death, physical, or psychological injury.

2.7. Discharge: an involuntary dismissal from employment ordered by the Superintendent and effected by written State Police Special Order.

2.8. **Disciplinary action:** refers to formal, corrective measures based on a violation of established standards of conduct, which includes discussion of the offense, an explanation of the evidence, and issuance of a written notice by the Superintendent.

2.9. **Early Identification System:** A system designed to analyze data pertaining to complaints lodged against employees and employee uses of force in an effort to identify employees who may be experiencing stress or other problems which may adversely effect job performance

2.10. **Employee:** Any employee of the West Virginia State Police.

2.11. **Employee Grievance Process:** The process employed by employees to address and resolve perceived adverse supervisory decisions, policy failures, and other work-related complaints.

2.12. **External Complaint:** a complaint initiated by someone other than a State Police employee.

2.13. **Internal Complaint:** a complaint initiated by an employee of the State Police.

2.14. **Internal Inquiry:** An investigation conducted not pursuant to a special order, by or on behalf of the Professional Standards Section, concerning non-criminal, administrative matters intended to determine if misconduct has occurred and whether administrative sanctions are warranted for employees named in complaints involving less serious violations.

2.15. **Investigator:** means any supervisory member authorized by the Section to conduct an internal investigation or inquiry as provided for in this rule.

2.16. **Officer-in-Charge, Professional Standards Section (hereinafter OIC):** means that member designated by the Superintendent to oversee and direct the operations of the Section.

2.17. **Superintendent:** means the Superintendent of the West Virginia State Police or his or

her duly authorized agent.

2.18 **Suspension:** involuntary separation during a limited period for disciplinary reasons.

### **§81-10-3. Professional Standards Section Organization and Responsibilities.**

3.1. The Section will be under the command of the OIC, and will report and be directly responsible to the Superintendent. The Superintendent shall staff the Section with appropriate investigators to conduct internal investigations and inquiries, personnel inspections, and facility inspections.

3.2. The OIC shall be responsible for the organization and management of the Section. The OIC shall supervise the Section's office staff and receive all complaints, assign internal inquiries, make recommendations to the Superintendent with regards to the assignment of internal investigations, and shall administer the early identification system and the employee grievance process.

3.3. The OIC shall cause all complaints, including those terminated or resolved at a lower level, to be recorded in a central log and assigned an individual case number. Complaints involving the Americans with Disabilities Act, Age Discrimination in Employment Act, or the Civil Rights Act, shall be acted upon in collaboration with the agency Equal Employment Opportunity Counselor. The OIC shall ensure the confidentiality of all documents and reports relating to the investigation of any complaint through strict control of the Section's files.

3.4. The OIC shall cause a letter to be sent to the complainant (if known) acknowledging that the complaint has been received for processing. The letter shall include the individual case number assigned to the matter and the name of a person who can relate the status of the investigation. Also, the OIC shall notify the employee, in writing, concerning the nature of the complaint, its status, and if any investigation is forthcoming, as soon as a determination of the necessary scope of the investigation is complete. There is no duty under this section to notify an employee or com-

plainant if the notification would hinder or jeopardize any investigation of the complaint or if the matter is handled as an internal inquiry. The OIC will advise investigators regarding procedures used in the investigations, review case files for completeness, and forward case files through the proper chain of command to the Superintendent for final review. The OIC shall send closing letters to all concerned parties upon completion of each investigation.

3.5. The OIC shall prepare an annual statistical report concerning the Section's activities which shall be available to employees and members of the public.

3.6. The OIC shall apprise the Superintendent of situations or facts concerning employee complaints and investigations that may draw media attention.

3.7. The Section shall make information available to the general public regarding the procedures to be followed in registering complaints against the State Police or its employees. The information may be disseminated through the media, informational pamphlets at each State Police facility, or through any other reasonable means.

3.8. Investigators assigned to either internal investigations and/or inquiries shall forward to the OIC an accurate and complete report, and the remainder of the case file, within thirty (30) working days of the day the investigation or inquiry is received by the investigator unless an extension is granted by the OIC. Investigators will also perform inspection and other duties as assigned by the OIC.

3.9. The OIC or other Section member may be contacted during off-hours for emergency complaints by contacting the Communications Section of the State Police at (304) 746-2158.

3.10. The Section's address is: West Virginia State Police, Professional Standards Section, 725 Jefferson Road, South Charleston, West Virginia, 25309-1698.

#### **§81-10-4. Incidents to be Investigated.**

4.1. The State Police shall investigate through internal investigation or inquiry, all complaints received by the Section.

4.2. The OIC shall determine the criteria for the assignment of minor complaints for internal inquiry to line supervisors as investigators in cases such as alleged rudeness, tardiness, or other complaints of a similar nature. The OIC shall have the discretion to assign internal investigations to specially trained members not permanently assigned to the Section. Once assigned, that investigator may be relieved of his or her regular duties as may be required to complete the investigation. Investigators assigned to internal investigations or inquiries shall report directly to the OIC, and shall not discuss the investigation with anyone not assigned to the Section or specifically authorized by the OIC or Superintendent to receive the information.

4.3. The OIC shall immediately notify the Superintendent of any complaint received by the Section alleging the commission of a serious misdemeanor or felony by an employee.

#### **§81-10-5. Complaint Filing Procedure.**

5.1. Complaints will be accepted by any State Police employee. Whenever possible employees receiving complaints will attempt to refer the complainant to the effected employee's immediate supervisor who shall prepare the Personnel Complaint Form, or directly to the Section (see section 5.5. below), before accepting the complaint themselves. If the immediate supervisor is not available and the complainant does not wish to contact the Section directly, the State Police employee shall take the complaint.

5.2. All complaints against employees will be accepted and will be documented, on a Personnel Complaint Form, by the employee accepting the complaint. The completed form shall be forwarded via facsimile to the Section as soon as possible, with the original mailed directly to the Section.

5.3. The Personnel Complaint Form shall state with particularity the allegations including the name of the involved employee, dates, times, location, a detailed description of the alleged misconduct, names of witnesses, and the remedy requested by the complainant. The Personnel Complaint Form shall contain a section that advises the complainant that providing false information to the State Police is a violation of W. Va. Code §15-2-16, and that the State Police may pursue criminal and/or civil sanctions if the investigation determines the complaint or any statements made are without foundation, basis, false or not factual. The form shall advise the complainant that they may be required to testify in court or administrative hearings regarding the complaint.

5.4. Failure of any employee to accept, record, and/or forward to the Section any complaint the employee receives is a violation of State Police policy and shall result in disciplinary action, provided employees receiving complaints are deemed to have complied with complaint reporting requirements if the provisions of section 5.5. below are met.

5.5. Employees receiving complaints shall advise complainant(s) that they may contact the Section directly in order to file a complaint in lieu of registering the complaint at the local State Police office. The complainant may contact the Section by calling (304) 746-2110, or by writing to or appearing at the Section's offices.

5.6. Employees taking complaints shall not make or retain any copies of the Personnel Complaint Form or any related documents (other than those kept in the normal course of business) in order to ensure the confidentiality of the investigative process.

5.7. Members accepting complaints involving the use of force by a State Police employee where the alleged victim of the use of force is present at the time the complaint is registered, shall take or cause to be taken detailed color photographs of the alleged victim whether or not any visible evidence of physical injury exists; provided, that the alleged victim consents to the taking of such photographs.

#### **§81-10-6. Records Retention.**

6.1. In order to better facilitate the operation of a progressive system of discipline and to provide for the various statutes of limitations pertaining to civil litigation, records and documents associated with complaints will be retained by the Section for a period of ten (10) years from the completion of the investigation.

6.2. Case files shall be stored by the Section in a secured environment and with access restricted to the Superintendent, the OIC and members and civilian employees of the Section. Documents, evidence and other items related to the investigation or inquiry that are in the possession of investigators or other employee working with the investigator and outside of the Section office shall be stored and handled in a manner that will ensure their confidentiality and integrity. Further, no duplicate copies of any item pertaining to a Section investigation or inquiry shall be made, retained, or disseminated by any investigator or employee outside of the Section, except at the direction of the OIC.

6.3. All case files shall be considered confidential.

#### **§81-10-7. Operational Procedures.**

7.1. If an investigation or inquiry conducted by or at the direction of the Section leads to information indicating that criminal charges could be filed, the investigator shall immediately notify the OIC who shall cause the Superintendent to be notified. The Superintendent may authorize a separate criminal investigation to be initiated by a member other than the investigator assigned to the internal investigation or inquiry. If criminal charges are filed against an employee, the Superintendent may authorize the initiation or continuation of an on-going administrative investigation.

7.2. By virtue of W.Va. Code §15-2-21, the Superintendent has the sole discretion to demote, discharge, and suspend employees from duty. The Superintendent, upon receiving a complaint against an employee or upon otherwise learning of

misconduct by an employee, may temporarily relieve the employee from duty pending further investigation, with or without compensation, pursuant to State Police operating policy and procedure. During any administrative suspension attendant to an internal investigation or inquiry, the employee will be required to surrender his or her State Police identification, and if a member, badges, State Police issued weapon(s), or other State Police property is his or her possession or control. Further, members will be relieved of any police authority during the pendency of any administrative suspension.

7.3. The investigator, when possible, shall record the complainant's statement on audio or video tape or by handwritten statement signed by the complainant. Complainant interviews will not be summarized or paraphrased by the investigator in lieu of a handwritten or recorded statement. The investigator shall not permit conversations "off the record" unless the subject of the interview agrees and the record reflects when the conversation goes off of the record, the purpose for doing so, and the time. Any tape(s) made pursuant to this section shall become an exhibit included in the case file. The OIC may cause the tape to be transcribed and the transcription shall become a part of the case file.

7.4. The investigator, when possible, shall record any witness statements on audio or video tape or by handwritten statement signed by the witness. Witness interviews will not be summarized or paraphrased by the investigator in lieu of the recorded or handwritten statement. The tapes, transcriptions, and written statements shall be included in the case file by the investigator. The investigator shall not permit conversations "off the record" unless the subject of the interview agrees and the record reflects when the conversation goes off of the record, the purpose for doing so, and the time. Any tape(s) made pursuant to this section shall become an exhibit included in the case file. The OIC may cause the tape to be transcribed and the transcription shall become a part of the case file.

7.5. Investigators shall gather all physical evidence connected with the case including but

not limited to photographs, video tapes, audio tapes, reports, logs, drawings, sketches, pertinent records, and other background evidence.

7.6. During the internal investigation or inquiry, the investigator shall avoid making assertions concerning his or her perception of the investigation which may result in the complainant(s) reaching a premature or inappropriate conclusion regarding the final disposition of the matter. Further, the investigator shall not make like assertions after having interviewed one principle or faction involved in the allegations.

7.7. The investigator shall include in the case file a notation of any instances of poor cooperation on the part of the complainant(s), the employee who is the subject of the complaint, or any witnesses or other persons interviewed during the internal investigation or inquiry.

7.8. The facts ascertained during an internal investigation or inquiry shall be detailed in an internal investigation report. The OIC shall determine the reporting format and the substance of all forms used pursuant to this rule. The investigator shall state a conclusion of fact for each allegation of misconduct alleged by the complainant or revealed by the investigation or inquiry from among the following dispositions:

- 1) Sustained: The validity of the complaint has been established and proven by a preponderance of the evidence.
- 2) Not Sustained: The complaint is not established by the evidence and can be neither proven nor disproved by the evidence available.
- 3) Unfounded: The complaint is without foundation, basis, it is false, or not factual.
- 4) Policy Failure: The allegation is true, and although the action of the State Police or the employee was not inconsistent with State Police policy, the complainant suffered harm.
- 5) Exonerated: The incident occurred, but the employee acted lawfully and properly.

6) Withdrawn: The complaint was withdrawn by the complainant.

7.9. The investigator shall submit the investigation/inquiry report and the remainder of the case file as required by section 3.8. The OIC shall review the entire case file for content, form, and completeness. The OIC will formulate recommendation's for final disposition of the complaint and forward the case file, with recommendations, to the Superintendent for final disposition.

#### **§81-10-8. Employee Rights and Conduct During an Internal Investigation or Inquiry.**

8.1. Prior to an employee being questioned in connection with an internal or administrative investigation, the employee shall be apprised of the nature of the allegations in the complaint, the name of the investigator(s) assigned to the case, and the names of all persons present during the interview session.

8.2. Interviews shall be conducted at reasonable times and places at the discretion of the investigator.

8.3. Interviews shall be conducted while the employee is normally on-duty unless the employee agrees to participate in an interview while off-duty. In cases where the OIC determines that the allegations involve extremely serious matters of public interest or allegations which may bring the State Police into disrepute, the employee may be questioned during off-duty or non-waking hours. This shall not apply in instances where the Superintendent has placed the employee on administrative or other leave pending the outcome of the investigation or inquiry.

8.4. All interviews with the employee who is the subject of the investigation or inquiry shall be tape recorded, on either audio or video tape. The interview will not be summarized or paraphrased by the investigator in lieu of a recorded or handwritten statement. The investigator shall not permit conversations "off the record" unless the employee agrees and the record reflects when the conversation goes off of the record, the purpose

for doing so, and the time. All tape(s) made pursuant to this section shall become an exhibit included in the case file. The OIC may cause the tape to be transcribed and the transcription shall become a part of the case file. Copies of the original tape(s) or transcription shall be made available only to the employee who made the statement with the understanding that the employee will not disclose the contents of either; unless the employee is required to disclose as a means of defending themselves. Any breach of this procedure is an offense that may subject the employee to disciplinary action.

8.5. An employee questioned in connection with an internal investigation or inquiry has no right to counsel and no right to avoid self-incrimination. An employee may consult with legal counsel prior to or following an administrative interview. Employees who are either subject to or questioned in connection with an internal investigation or inquiry are required to answer all questions truthfully, file written reports as ordered by the Superintendent or OIC, and testify in administrative hearings. Employees are required to cooperate fully with the investigator(s) in all phases of any internal investigation or inquiry.

8.6. The investigator shall advise employees subject to an internal investigation or inquiry of the "Administrative" or "Garrity" warnings. The investigator shall read the provisions of the form into any taped record of the interview. The investigator and the employee shall sign the acknowledgement section of the form. The investigator may give a copy of the warning form to the employee, but the original form shall be retained by the investigator and included as an exhibit in the case file.

8.7. During an internal investigation or inquiry interview, no more than two investigators shall be present with the employee during questioning. The investigators shall not subject the employee to offensive language, threaten punitive action, or make promises of reward as an inducement to answer questions.

8.8. Internal investigation or inquiry

interviews shall be of a reasonable duration, considering the complexity and gravity of the allegations in the complaint. The employee shall be afforded reasonable time away from the interview for meals and physical necessities.

8.9. The State Police will generally limit the use of polygraph examinations to those cases in which the allegations are relatively serious. The use of polygraph examinations must be approved by the Superintendent or the OIC.

8.9.1. Polygraph results will be included as additional evidence to be considered by the Superintendent, OIC, and the investigator(s). No conclusion should be drawn solely on the outcome of the polygraph examination or an agreement or refusal, if the complainant is not an employee, to take a polygraph examination.

8.9.2. Investigators will not offer polygraph examinations during the initial interview of a complainant. However, it may be mentioned as a possibility later on in the investigation and may be conducted at the request of the complainant, and if the complainant is an employee the polygraph may be ordered.

8.9.3. If the OIC determines that all leads have been appropriately pursued in cases where the complainant is not an employee, and that the offer of a polygraph examination is appropriate, the complainant, will be requested to take the examination prior to employee. If the complainant refuses to take the examination, the employee may still be required to submit to the test. When the complainant is an employee, the OIC shall determine the order of polygraph administration.

8.9.4. An employee, who is the subject of the internal investigation or inquiry, may request to take the examination before the complainant. The decision will be made by the OIC if the incident is of a serious nature and would justify modification of the preceding section. The operator shall inform the employee of the "Administrative" or "Garrity" Warnings, and the employee shall sign a waiver of liability prior to the administration of the polygraph examination.

8.9.5. An employee who refuses to take a polygraph examination when so ordered may be dismissed from employment at the discretion of the Superintendent.

8.9.6. Questions used in the polygraph examinations shall be pertinent to the subject of inquiry except that the polygraph examiner may utilize control questions as may be necessary to validate an examination within the scope of acceptable polygraph procedure.

8.9.7. The results of a polygraph examination of an employee shall be confidential and available only to the employee, the Superintendent, the OIC, the investigator, and grievance evaluators participating in the State Police's employee grievance procedure.

8.9.8. State Police polygraph operators shall be utilized for internal investigations and inquiries. No one operator will be used by the Section exclusively when multiple operators are available.

8.10. As part of an internal investigation or inquiry, an employee who is the subject of the investigation or inquiry may be required to:

8.10.1. Submit to medical or laboratory examinations.

8.10.2. Submit to a chemical test of his or her breath for the purpose of determining the alcoholic content of their blood.

8.10.3. Be photographed.

8.10.4. Participate in a line-up.

8.10.5. Submit financial disclosure statements, although no employee shall be required or requested to disclose any item of his or her property, income assets, source of income, debts or personal domestic expenditures, including those of any member of his or her family, or household, unless such information is necessary in investigating a possible conflict of interest with respect to the performance of his or her official duties, or unless such disclosure is required by

law, or unless such information is related to an investigation.

8.10.6. Submit to psychological examinations.

8.10.7. Submit to searches of any State Police supplied equipment and any personal items stored within that State Police equipment by an employee or any State Police equipment secured by a lock owned by an employee. State Police equipment includes but is not limited to vehicles, lockers, desks, cabinets, and briefcases.

8.11. An employee may, when approved by the OIC, be required to submit to an examination or test when the examination is specifically directed and narrowly related to a particular internal investigation or inquiry being conducted. The requirement will not apply if in conflict with current applicable law. An example of the use of this process would be in the determination of drug use by an employee. An examination might also be required to determine fitness for duty, for example, excessive weight, apparent intoxication, alcoholism, or psychological problems.

8.12. As a part of an internal investigation or inquiry, the State Police shall, to the degree possible, protect an employee from exposure to the news media with or without the employee's written consent. The State Police shall not, pursuant to an internal investigation or inquiry, release an employee's home address, home telephone number, or photograph without the employee's consent.

8.13. Upon completion of the investigation or inquiry and review by the OIC and the Superintendent, the OIC shall notify the employee who is the subject of the investigation or inquiry that the investigation is complete. If no disciplinary action is forthcoming, the employee shall be so notified and advised that the matter is closed. If disciplinary action is authorized by the Superintendent, the employee shall be notified, in writing, by the OIC. The employee will be given a written statement detailing the charges attendant to the disciplinary action with appropriate citations to codes, policies, procedures or accepted

operating practices where applicable.

8.14. When an employee is notified by the OIC concerning pending disciplinary action, the OIC shall inform the employee of the results of the internal investigation or inquiry, the substance of the sustained allegations, and the scope of the prospective discipline. The employee will be given a copy of the case file upon request, but excluding the identity of confidential sources, and recommendations as to charges, disposition, or punishment. The employee shall sign a receipt indicating that he or she has taken possession of the case file material, and execute a confidentiality agreement with the State Police agreeing to not disclose any of the material contained in the case file for any purpose other than to defend themselves. A violation of this procedure may subject the employee to disciplinary action.

8.15. The employee will be given at least ten calendar days to review the case file and will be permitted to appear before the Superintendent to present a defense in the matter; provided, that the OIC receives the employee's written request to appear before the Superintendent within the ten day period. The employee may seek redress for any disciplinary action through the State Police employee grievance process. The provisions of this subsection do not apply to probationary members of the State Police as defined in W. Va. Code §15-2-21 et.seq., or to civilian employees during the first six months of employment.

8.16. If a criminal investigation is initiated by the State Police or another law enforcement agency regarding the allegations or events referenced in the complaint filed against a State Police employee, any information obtained pursuant to "Administrative" or "Garrity" warnings during the internal investigation or inquiry of that complaint shall not be available to the criminal investigator(s) unless the employee was apprised of and waived his or her constitutional rights as detailed in the State Police Miranda Warnings Form.

#### **§81-10-9. Early Identification System.**

9.1. The Early Identification System shall be

maintained and administered by the Section. An Internal Review Board consisting of the Deputy Superintendent, Chief of Staff Services, Deputy Chief of Field Operations, OIC, and any other persons authorized by the Superintendent shall be formed to review and evaluate employees who are identified by the system. The system shall produce quarterly, bi-annual, and yearly reports for review by the Internal Review Board naming employees who have entered the system based on external citizen complaints, internal complaints, or use of force incidents. Employees who have received two or more complaints (internal and/or external) or who have been involved in three or more use of force incidents during a three month period shall be subject to review by the Internal Review Board. The Board may determine that no further action is required, that the employee be referred to the employee assistance program, that the employee be referred for remedial training, or that the employee be subject to review by the employee's immediate supervisor to attempt to determine the reason(s) for the employee's conduct or any circumstances that may have contributed to the conduct and evaluate the employee's current performance.

9.2. If the employee is subjected to supervisory review, the immediate supervisor shall forward a written summation of his review and evaluation to the Internal Review Board within thirty days. The Board shall review the supervisor's summation and either determine that no additional review or other action is warranted or recommend some other action to the Superintendent. In instances where the employee is referred to the employee assistance program, the Superintendent will determine if an additional action is required in relation to the employee once the referral report is received.

9.3. The annual report will serve as a secondary system to the system's quarterly report. The report will contain names of all employees entered into the system during the preceding year who have either received four or more internal and/or external complaints, or who have been involved in six or more use of force incidents. The analysis will serve to identify those employees who do not necessarily meet the

criteria for review based on the quarterly report, but who exhibit a pattern of conduct over a longer period of time that warrants review.

9.4. The system's reports should be provided to identified employee's supervisors as another resource in attempting to determine if job stress and/or performance problems exist with their subordinates. The reports should be reviewed in conjunction with other criteria known to the supervisor to facilitate a fair and meaningful assessment of the employee. The system reports make no conclusions or determinations concerning job stress and/or performance problems.

9.5. The Section shall also provide data to the Internal Review Board that will assist that body in determining if subordinates of certain supervisors tend to be employees frequently identified by the system. The data may be used by the Board in order to identify supervisors who may be employing ineffective or inappropriate management techniques. The names of any such supervisors so identified shall be forwarded to the Superintendent for review and action.

#### **§81-10-10. Psychological Assessment Program.**

10.1. This program provides a process for mandatory psychological review of employees in situations where an employee's job performance or actions may be detrimental to the State Police's mission and cause the employee's psychological fitness for duty to be in question. Through this process, the employee's level of psychological fitness for duty is determined. And in instances where the employee is determined to be unfit for duty with a reasonable prognosis that rehabilitation to full duty psychological fitness can be achieved, to make assistance available, when appropriate, to facilitate the employee's return to psychological fitness.

10.2. An employee is considered to be psychologically fit for duty when there is reasonable assurance that he or she can:

10.2.1. Exercise independent judgment;

10.2.2. Recognize parameters of

authority; and

10.2.3. Function effectively within the rules, guidelines, and policies of the State Police.

10.3. The following are examples, although not all inclusive, of circumstances in which an employee's psychological fitness for duty may be in question:

10.3.1. Suspected substance abuse (alcohol, other drugs).

10.3.2. Questionable duty judgment or continued citizen complaints regarding conduct on or off-duty.

10.3.3. Supervisory problems, such as when previous attempts through performance review and discipline have had little, if any, effect on resolving the undesired behavior.

10.3.4. Excessive use of sick leave, disability leave, or Worker's Compensation claims.

10.3.5. Return from sick leave and/or leave of absence precipitated by psychiatric, psychological, and/or stress related illness and/or substance abuse.

#### 10.4. Procedures.

10.4.1. The supervisor shall consult the employee's Troop or Section Commander. If, in the opinion of a supervisor, an employee's immediate action(s) or culmination of previous actions bearing on the above criteria indicate a question of psychological fitness for duty, the Troop or Section Commander will evaluate the situation based upon the circumstances surrounding the incident(s) and make a recommendation to the Superintendent concerning the employee's duty status.

10.4.2. The Superintendent may place an employee involved in a critical incident as defined by this rule or whose psychological fitness for duty is in question on administrative leave, with or without pay pursuant to State Police operating

policy and procedure. During any administrative suspension attendant to a psychological fitness for duty evaluation, the employee will be required to surrender his or her State Police identification, and if a member, badges, State Police issued weapon(s), or other State Police property is his or her possession or control. Further, members on administrative leave pending a psychological fitness for duty evaluation will be relieved of any police authority during the period of administrative leave. The employee shall remain on administrative leave for a period of time determined by the Superintendent pending a determination of the employee's psychological fitness for duty or completion of any investigation related to any critical or other incident. If the employee's psychological fitness is at issue, the employee shall return to duty only after he or she is deemed to be psychologically fit. The Superintendent may consult a doctoral level clinical psychologist, psychiatrist, or licensed counselor in determining an employee's fitness for duty.

10.4.3. If a psychological fitness for duty assessment is deemed appropriate by the Superintendent, the employee shall be notified as required for internal or administrative investigations. The notification shall include a statement of the general circumstances that prompted the action, the appointment time, date, and location of the meeting with a psychotherapist designated by the State Police. The State Police shall be responsible for costs of the initial fitness for duty interview/testing and any required follow-up except in the case of a non-job related injury where the employee shall be financially responsible for additional treatment not required by the State Police. If an employee is referred for psychological fitness for duty assessment as a result of an action(s) which may result in disciplinary action against the employee, such disciplinary action shall be delayed pending assessment and recommendation by the psychotherapist designated by the State Police.

#### 10.5. Employee Responsibility.

10.5.1. During evaluation and subsequent treatment if deemed necessary, the employee will

truthfully answer all questions directed to him or her and provide complete information and documents deemed necessary. The employee will submit to all examinations and sign waivers concerning access to records and reports that may be prepared or generated by the State Police psychotherapist. In addition, State Police employees with knowledge of the effected employee's behavior may be interviewed.

#### 10.6. Psychotherapist Responsibility.

10.6.1. The psychotherapist designated by the State Police shall, based upon his or her professional assessment of the employee's psychological fitness, render a written report to the Superintendent which shall include the following recommendations:

10.6.1.1. Employee returned to full duty unconditionally or with treatment recommended; or

10.6.1.2. Employee returned to full duty conditional upon treatment; or

10.6.1.3. Employee returned to limited duty conditional upon treatment; or

10.6.1.4. Employee declared unfit for duty and referred for treatment.

10.6.2. If, during the employee's initial assessment by the State Police's psychotherapist, it is determined that the employee should be referred for treatment, the Superintendent shall issue a Special Order directing the employee to attend and successfully complete a therapeutic or counseling program approved by the State Police. Failure to attend and successfully complete the program shall be considered in the determination of any subsequent disciplinary action.

10.6.3. The State Police psychotherapist shall assist the employee in arranging for outside treatment. Employees shall be referred only to licensed psychiatrists, doctoral level clinical psychologists, or licensed counselors. In situations where outside referral is necessary, there shall be extensive communications between the

State Police psychotherapist and the employee's treating psychotherapist in relation to the employee's progress in treatment and continued psychological fitness for duty. These communications shall include, but are not limited to, pertinent information such as:

10.6.3.1. Is the employee attending scheduled appointments?

10.6.3.2. Is the employee making reasonable progress in his or her treatment?

10.6.3.3. Has anything occurred which could cause the psychotherapist to re-assess the employee's duty status?

10.6.4. Evaluation results, opinions, recommendations, and confidential notes provided to the State Police psychotherapist by an outside consultant shall be interpreted and monitored, but not ordinarily communicated to the Superintendent. The Superintendent, with the advice of the State Police psychotherapist, may initiate appropriate personnel action predicated on the recommendations.

10.6.5. Communications between the Superintendent and the State Police psychotherapist or outside consultant(s), regarding test results, written opinions, recommendations, notes, reports, and actions taken are confidential. These documents shall be secured in the Section's office in locked cabinets or secure magnetic media.

#### **§81-10-11. Progressive discipline.**

##### 11.1. Standards of Conduct:

The following standards are intended to be illustrative but not all inclusive of the type of conduct expected of employees:

11.1.1. An employee is expected to attend work regularly and report in a timely fashion. Any extraordinary time off-duty should be planned in advance. Unexpected time-off should be communicated immediately to the employee's supervisor.

11.1.2. Employees are expected to apply themselves to their assigned duties during the time they are being compensated, except for reasonable time provided to take care of personal needs.

11.1.3. Employees are expected to meet established performance standards whether published in administrative rules, operating policy and procedure, State Police memorandum or notices or otherwise. Conditions or circumstances, as they become known, which shall prevent them from performing effectively or from completing their assigned tasks should be reported to the employee's immediate supervisor. Likewise, unclear instructions or procedures should be brought to the attention of the employee's supervisor.

11.2. Supervising for Better Work Performance.

11.2.1. Supervisors should assist employees in understanding their work assignments; the standards of conduct contained in this rule; and the goals, objectives, and performance standards of their positions.

11.2.2. Supervisors should be aware of inadequate or unsatisfactory work performance or behavior on the part of employees and attempt to correct the performance or behavior immediately. Such corrective action may take the form of a verbal warning or a documented counseling session, depending on the severity of the situation.

11.3. Progressive Discipline.

Unacceptable conduct shall be divided into three types of offenses according to their severity. The offenses listed herein are illustrative only, and are not intended as an exclusive list of all disciplinary offenses.

11.3.1. Group I Offenses:

11.3.1.1. Unsatisfactory attendance; or excessive tardiness.

11.3.1.2. Abuse of State Police time such as unauthorized time away from work area,

use of State Police time for personal business, abuse of sick leave, or failure to notify a supervisor promptly of the completion of assigned work.

11.3.1.3. Use of obscene or abusive language or failure to deal with the public in a courteous, kind and respectful manner.

11.3.1.4. Inadequate or unsatisfactory job performance.

11.3.1.5. Disruptive behavior.

11.3.1.6. Chargeable accident as defined by State Police policy.

11.3.1.7. Violations of the motor vehicle code, except those defined as Serious Traffic Offenses under W. Va. Code 17C-5-1 et. seq., which shall be included as Group III offenses.

11.3.1.8. Negligently caring for, damaging, destroying or losing any equipment or State Police property for which an employee is responsible.

11.3.1.9. First group offenses include those types of behavior less severe in nature, but which require correction in the interest of maintaining a productive and well managed work force.

11.3.1.9.1. Sustained Group I Offenses shall be cumulative in nature. Upon the accumulation of three "active" Group I offenses, the Superintendent may suspend the employee without pay, but such suspension shall not exceed five working days. The Superintendent may discharge an employee who accumulates four active written notices. The Superintendent may demote or suspend the employee for up to thirty working days in lieu of discharge if mitigating circumstances exist.

11.3.1.9.2. The Superintendent may order counseling, issue a verbal warning, issue a written reprimand or suspend for one working day for a single Group I offense.

11.3.1.9.3. Sustained Group I offenses shall remain "active" for two years from the date of issuance. This is all encompassing and not extendable should another Group I written notice be issued during the two year period.

11.3.2. Group II Offenses.

11.3.2.1. Failure to perform assigned work, or otherwise comply with State Police policy and procedure or administrative rules.

11.3.2.2. Violating safety rules where there is not a threat to life.

11.3.2.3. Unauthorized time away from the work area or duty post or leaving the work site without permission during working hours.

11.3.2.4. Failure to report to work without proper notice to his or her supervisor.

11.3.2.5. Refusal to work overtime.

11.3.2.6. Group II offenses include more severe acts and behavior. Corrective action for these offenses include counseling, verbal warning, written reprimand or and suspension without pay. Employees; however, may not be suspended in excess of ten working days for an offense of this nature.

11.3.2.7. The Superintendent may discharge an employee who commits an additional Group II offense or if more than one Group Two offense is committed during the same incident while a previous such offense is "active." The Superintendent may also discharge an employee who accumulates three "active" first group offenses and one active second group offense. The Superintendent may demote or suspend the employee for up to thirty working days in lieu of discharge if mitigating circumstances exist.

11.3.2.8. If an employee is not discharged due to mitigating circumstances, the Superintendent shall notify the employee that any subsequent violation during the "active" life period, regardless of level, may result in

discharge.

11.3.2.9. Sustained Group II offenses shall remain "active" for three years from the date of issuance.

11.3.3. Group III Offenses.

11.3.3.1. Absence in excess of three days without notifying his or her supervisor.

11.3.3.2. Having the odor of an alcoholic beverage upon the breath, consuming alcohol or unlawful use or possession of controlled substances while on the job.

11.3.3.3. Reporting to work under the influence or when his or her ability is impaired by alcohol or a controlled substance.

11.3.3.4. Insubordination or serious breach of discipline.

11.3.3.5. Falsifying any records such as, but not limited to: vouchers, reports, insurance claims, time records, leave records, or other official state documents, or knowingly making any false statement.

11.3.3.6. Willfully or negligently damaging or defacing state records, state, or employee property.

11.3.3.7. Theft or unauthorized removal of state records, state, or employee property.

11.3.3.8. Gambling on state property.

11.3.3.9. Acts of physical violence or fighting (except official police actions).

11.3.3.10. Violating safety rules where there is a threat to life.

11.3.3.11. Sleeping during work hours.

11.3.3.12. Participating in any kind of work slowdown, sit-down, or similar concerted

interference with State Police or state operations.

11.3.3.13. Unauthorized possession or use of firearms, dangerous weapons, or explosives.

11.3.3.14. Threatening or coercing employees or supervisors.

11.3.3.15. Criminal convictions for acts of conduct occurring on or off the job which are plainly related to job performance or are of such a nature that to continue the employee in the assigned position could constitute negligence in regard to the State Police's duties to the public or to other state employees.

11.3.3.16. Failure to take a polygraph examination or to answer fully and truthfully any question relating to any offense requiring submission to a test.

11.3.3.17. Failure to take physical or mental examinations as required.

11.3.3.18. Using public office for private gain.

11.3.3.19. Violation of any law or engaging in criminal conduct on or off the job, except such actions as may be deemed Group I or II offenses.

11.3.3.20. Engaging in dishonest or immoral conduct that undermines the effectiveness of the State Police's activities or employee performance, whether on or off the job.

11.3.3.21. Disobedience of a lawful command of a supervisor.

11.3.3.22. Disclosure of confidential information to any person except those who may be entitled to such information or when directed by the Superintendent or a supervisor.

11.3.3.23. Taking any action which shall impair the efficiency and/or reputation of the State Police or its employees.

11.3.3.24. Acceptance of any bribe, gift, token, moneys, or other things of value intended as an inducement to perform or to refrain from performing any official act, or any action of extortion or other means of obtaining money or any thing of value through his or her position.

11.3.3.25. Manifesting cowardice, feigning illness, or otherwise attempting to shirk official duty.

11.3.3.26. Involvement in any compromise between persons accused of a crime and the person or persons who may have suffered from criminal acts with the purpose of allowing the accused to escape punishment.

11.3.3.27. Failure to answer fully and truthfully any questions specifically directed and related to official duties or job fitness attendant to an internal or administrative investigation.

11.3.3.28. The use of unnecessary force during an arrest/custody procedure.

11.3.3.29. Deviation from established procedures in the disposition of summons or arrest cases.

11.3.3.30. Unauthorized or misuse of any state funds or other lawfully obtained funds as determined by policy and procedure.

11.3.3.31. Theft or misappropriation of property stored in a State Police evidence room or of property destroyed pursuant to a valid court order.

11.3.3.32. Libeling or slandering another employee, either on or off-duty.

11.3.3.33. Conduct unbecoming.

11.3.3.34. Interference with the rights or property of others.

11.3.3.35. Violations of the motor vehicle code defined as Serious Traffic Offenses under W. Va. Code §17C-5-1 et. seq.

11.3.3.36. Group III offenses include acts and behavior of such a serious nature that a first occurrence would warrant the Superintendent discharging an employee.

11.3.3.37. The Superintendent may discharge the employee or suspend the employee for up to thirty working days without pay in lieu of discharge. The Superintendent may demote and/or suspend the employee for up to thirty working days in lieu of discharge if mitigating circumstances exist or issue a written reprimand.

11.3.3.38. If the employee is not discharged due to mitigating circumstances, he or she shall be notified by the Superintendent that any subsequent written notice during the "active" life period, regardless of level, may result in discharge.

11.3.3.39. Sustained Group III offenses shall remain "active" for four years from the date of issuance.

11.3.4. The offenses listed are not intended to be all inclusive. Accordingly, conduct which in the judgment of the Superintendent, although not listed in these groups of offenses, seriously undermines the effectiveness of the State Police's activities or the employee's performance shall be treated consistent with provisions of this rule.

11.3.5. The Superintendent reserves the right to demote or discharge an employee for job abolition, budgetary reduction, reduction of work, State Police reorganization, or for other reasons not related to the employee's job performance but which nevertheless requires the Superintendent to demote or discharge the employee. In these instances, the employee shall be notified in writing why he or she is being demoted or discharged. This notice shall include instructions indicating how the employee may apply for another position within the West Virginia State Police.

11.3.6. Employees found to have engaged in discrimination on the basis of race, color, religion, national origin, political affiliation, handicap, age, or sex (including sexual

harassment) may be counseled or disciplined with either a Group I, II, or III offense, depending upon the specific facts and circumstances surrounding the incident, pursuant to State Police operating policy and procedure.