



ICMS #: 2020-0025

January 29, 2020

**Complaint:** [REDACTED], complainant, alleges that Austin Police Department (APD) officers may have violated APD policy by failing to properly make arrests or investigate an incident in which he was involved. He states in part:

“The whole incident started as a hate crime because my friend is a gay woman, 3 guys beat me up outside of the 7/11, I am disabled. I told the worker at 7/11 to call the cops. These 3 guys beat me up and beat up my female friend. The officers did not investigate this hate crime, they let the 3 guys go, they arrested my friend, and they let me go and drive after being beat up. I am 10% disabled and the officers didn't arrest the guys for harm to a disabled person.”

*This notice of formal complaint is a request for Internal Affairs to initiate an investigation in order to determine if the employee conduct is within compliance of APD policy, Civil Service Rules, and Municipal Civil Service Rules.*

**Recommended Administrative Policies to Review (to include but not limited to):**

**301.1 RESPONSIBILITY TO THE COMMUNITY—PURPOSE AND SCOPE**

All persons deserve protection by fair and impartial law enforcement and should be able to expect similar police response to their behavior wherever it occurs. Employees will serve the public through direction, counseling, assistance, and protection of life and property. Employees will be held accountable for the manner in which they exercise the authority of their office or position. Employees will respect the rights of individuals and perform their services with honesty, sincerity, courage, and sound judgment.

**301.2 IMPARTIAL ATTITUDE AND COURTESY**

Employees are expected to act professionally, treat all persons fairly and equally, and perform all duties impartially, objectively, and equitably without regard to personal feelings, animosities, friendships, financial status, sex, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity or gender expression or social or ethnic background.

**309.1 POLICY**

When encountering persons who are in violation of Texas Penal Code 49.02, and who meet the criteria outlined in this order, officers shall divert publicly intoxicated individuals to the custody of a responsible adult or the Sobering Center (herein referred to as the “Center”) as an alternative to arrest (Tex. Code of Crim. Pro. Art. 14.031).



### 309.3 AUTHORITY

In lieu of arresting an individual who is not a child as defined by Texas Family Code, Section 51.02 and who commits an offense under Texas Penal Code, Section 49.02, a peace officer may release the individual if:

(a) The officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and

1. The individual:

(a) is released to the care of an adult who agrees to assume responsibility for the individual;

(b) verbally consents to voluntary treatment for substance use in a program at a treatment facility licensed and approved by the Health and Human Services Commission, and the program admits the individual for treatment; or

(c) verbally consents to voluntary admission to a facility that provides a place for individuals to become sober under supervision, and the facility admits the individual for supervision.

### 401.2 INITIAL RESPONSE AND INVESTIGATION

(c) The primary officer shall make a preliminary determination if a crime has been committed.

### 402.2 INCIDENT REPORTING

A well-written report can help make a case just as easily as a poorly written report can ruin a case. Employees have the responsibility to write clear, factual, and complete reports.

#### 402.2.2 REPORT WRITING

(a) All reports shall accurately reflect:

2. All pertinent information seen, heard, or assimilated by any other sense.

3. Any action(s) taken.

(b) Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing.

### 438.5 PROCEDURE FOR INVESTIGATING AN ALLEGED HATE CRIME

Whenever any member of the Department receives a report of a suspected hate crime, or other activity that reasonably appears to involve a potential hate crime, the following should occur:

(a) Officers will be assigned to the incident to conduct a preliminary investigation.

(b) A supervisor should be notified of the circumstances as soon as practicable.

(c) Once all "in progress" aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of suspects), the assigned officers will take all reasonable steps to preserve available evidence that may tend to establish that a hate crime was involved.



- (d) Officers will interview available witnesses, victims and others to determine what circumstances, if any, indicate the situation may involve a hate crime.
- (e) Officers should not tell individuals they are a victim of a hate crime as the determination is not made by law enforcement, however, officers should treat victims with empathy.
- (f) Officers or supervisors may request additional assistance from the appropriate Investigative Unit or other resources to further the investigation.
- (g) Officers should take photographs and collect physical evidence such as hate literature, spray paint cans, and symbolic objects used by hate groups (e.g., graffiti, clothing with symbols, letters).
- (h) Officers will provide victims of any suspected hate crime with a Victim Assistance Information pamphlet.
- (i) Officers will complete an incident report and include:
  1. The title code that relates to the specific offense (e.g., assault, robbery). In addition, the Hate Crime Information title code 4601 shall be added. This will result in the report routing to the Hate Crimes Review Committee report queue for review.
  2. The “BIAS” box must be filled out if there is any suspicion of a hate crime. This is required for inclusion in the Department's report to the FBI.
  3. Specific facts (e.g., racial slurs, ethnic slurs, other derogatory slurs, signs and symbols) used during the incident to indicate the likelihood a hate crime occurred. It is important to quote the exact language used by the suspects whenever possible.

#### 900.1.1 RESPONSIBILITY TO KNOW AND COMPLY

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

Recommended Classification: *The OPO is permitted to make a preliminary recommendation on the classification of administrative cases.*

**The OPO recommends that this allegation receive an A classification.**