

CHAPTER: 600

Inspector General

DEPARTMENT ORDER:

608 – Criminal Investigations

**OFFICE OF PRIMARY
RESPONSIBILITY:**

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Arizona Department of Corrections Rehabilitation and Reentry



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Department Order Manual

ACCESS

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A handwritten signature in black ink, appearing to be "David Shinn", written over a horizontal line.

David Shinn, Director

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STANDARDS

American Correctional Association (ACA) Standards: 5-ACI-3A-42, and 5-ACI-3D-17

PURPOSE

This Department Order establishes guidelines for the investigation and prosecution of inmates, employees, visitors, or any other individuals suspected of committing crimes while in the Department's jurisdiction; and ensures crimes are immediately reported, crime scenes are protected and investigations are conducted in a prompt and professional manner.

PROCEDURES

1.0 CONSTITUTIONAL RIGHTS OF PERSONS - There are two basic prerequisites guiding when Miranda warnings (Constitutional Rights) are required.

- 1.1 Custody – Anytime a full authority peace officer deprives a person of freedom of action in a significant way; and
- 1.2 Interrogation – Questioning after a subject's freedom of action is significantly hampered; Miranda warnings must be provided to the subject.
 - 1.2.1 The burden of proof as to the degree a subject's freedom is hampered either by act or omission by a full authority peace officer, and what the subject perceives as to his freedom of action at the time of questioning falls upon the full authority peace officer.

2.0 CRIMINAL ACTIVITY

- 2.1 Off-site Criminal Activity
 - 2.1.1 When the Department becomes aware of criminal activity not involving Department operations or occurring on Department property, the information shall be immediately reported to the local law enforcement agency having jurisdiction.
 - 2.1.2 When the Department becomes aware of off-site criminal activity related to Department Operations, the information shall be immediately reported to the Criminal Investigations Unit (CIU) for investigation.
 - 2.1.3 CIU shall notify the law enforcement agency with jurisdiction prior to conducting an investigation or making an arrest within that agency's jurisdiction, unless there is an emergency. The agency with jurisdiction shall be given the option to participate in the investigation, perform the investigation or arrest. Arizona Revised Statute (A.R.S.) §41-1604(B)(I)
- 2.2 On-site Criminal Activity – All on-site criminal activity shall be referred to CIU for possible investigation. On-site includes criminal activity relating to Department operations or criminal activity that originated on Department property.

2.3 Investigations Specific to Criminal Allegations Against Staff and/or Contract Employees

- 2.3.1 The CIU Supervisors shall:
 - 2.3.1.1 Notify their respective CIU Manager in writing (brief synopsis of allegation) of investigations into allegations of staff and/or contract employees' involvement in criminal acts.
 - 2.3.1.2 Communicate with their respective CIU Manager about any significant plans of action to be taken as part of the investigation (i.e., buy bust, surveillance, or ruse – wherein investigative staff acts as co-conspirators in the legal act, etc.).
 - 2.3.1.3 Keep the CIU Manager apprised of any significant findings/information throughout the course of the investigations.
- 2.3.2 The CIU Managers shall apprise the Inspector General of criminal allegations against staff and/or contract employees and provide updates of significant activities/findings
- 2.3.3 The Inspector General shall ensure the Deputy Directors are kept apprised of criminal allegations against staff and/or contract employees.
- 2.4 Arizona Certified Law Enforcement Officers may wear casual clothing (such as jeans and athletic shoes), when engaging in such duties as undercover operations, surveillance, arrest/search warrant activities, crime scene processing, or in pursuit of absconders and escapees. In all other activities, investigators shall be dressed in accordance with Department Order #503, Employee Grooming and Dress.

3.0 **CRIME SCENE PRESERVATION {5-ACI-3A-42} {5-ACI-3D-17}**

- 3.1 All employees who encounter a crime or have information about a crime, or possible crime, shall immediately report the information to the closest CIU Office through their chain of command. After duty hours, the Central Office Communications Center shall be contacted and the appropriate institution shall contact an available criminal investigator.
- 3.2 Chiefs of Security and Shift Commanders shall ensure security staff secures and protects crime scenes, until they are relieved by CIU investigators, and shall:
 - 3.2.1 Separate possible suspects, witnesses and victims from each other and the general population.
 - 3.2.2 Record all comments made by any person who may have been involved in the crime as a suspect, victim or witness along with documenting the individual's demeanor and conduct. Whenever possible the comments shall be recorded verbatim and not summarized.
 - 3.2.3 Establish a perimeter restricting access to the crime scene, excluding all nonessential personnel. Unauthorized persons, including employees with no direct responsibility for securing or investigating the crime scene shall be instructed to leave the area.
 - 3.2.4 Record the names of all persons who were present at a crime scene.
 - 3.2.5 Record names, dates, and time of all people entering and exiting the crime scene. Record why they were at the scene, what they did and if anything was removed.

3.2.6 Protect physical evidence.

3.2.6.1 Physical evidence shall not be touched or disturbed in any way, including weapons, except as necessary for security reasons.

3.2.6.2 If, for security reasons, it is necessary to touch or move any item of evidence, it shall be done in such a way as to preserve the evidentiary value. Any movement of evidence shall be thoroughly documented by the staff member who moved it.

3.2.6.3 Photographs and/or video recordings shall be taken of the evidence prior to it being moved or removed. All photographs shall be preserved as investigative material.

3.2.6.4 Upon arrival, the CIU investigator shall take control of the crime scene and be provided with all physical evidence gathered at the scene.

4.0 CRIME SCENE EVIDENCE, AND VICTIM CONSIDERATIONS {5-ACI-3D-17} - The Inspector General or designee, CIU Manager or unit Supervisor shall ensure assigned investigative staff responds and:

4.1 Performs a competent and thorough investigation of crimes that occur at Department institutions.

4.2 Properly packages, marks (for identification) and protects physical evidence.

4.3 Maintains the chain of custody for each item of physical evidence.

4.4 Makes all evidence available to the appropriate prosecutor.

4.5 Processes, forfeits and disposes of physical evidence in accordance with Department Order #909, Inmate Property, and the applicable Inspector General/Criminal Investigations guidelines and/or statutes.

4.6 Advises victims of their rights in accordance with A.R.S. §13-4405, Information Provided to Victim by Law Enforcement Agencies.

4.6.1 In accordance with A.R.S. §13-4401(19), inmate victims are specifically excluded from this requirement.

5.0 PRESERVATION OF BIOLOGICAL EVIDENCE AND RETENTION PERIODS {5-ACI-3A-42}

5.1 In accordance with A.R.S. §13-4221, CIU Supervisors shall ensure their unit's local evidence room retain all identified biological evidence that is secured/collected in connection with felony sex offenses or homicides originating from a Department prosecution action, having occurred within the Department's jurisdiction and/or where in the representative investigation was completed by Department investigators for:

5.1.1 The period of time that a person who was convicted of a felony sex offense or homicide remains incarcerated for that offense or until the conclusion of the person's supervised release.

5.1.2 Unsolved/cold case felony sex offenses or homicides biological evidence shall be retained for a period of 55 years or until a person is convicted of the crime and remains incarcerated or under supervised release for that offense.

- 5.2 In cases in which a conviction has occurred, the assigned case investigator, in consultation with the Arizona Department of Public Safety Crime Lab (State Crime Lab) and the assigned prosecutor, may retain probative samples of the biological evidence and dispose of bulk evidence that does not affect the suitability of the probative sample for deoxyribonucleic acid (DNA) testing. In all such instances, prior to the disposal of any bulk evidence the CIU Supervisors shall ensure:
 - 5.2.1 Written approval is obtained from the County Attorney or Attorney General.
 - 5.2.2 Reasonable efforts are made to provide written notice to the victim.
- 5.3 This does not preclude the Department from disposing of evidence in a case in which a conviction has been obtained after the expiration of the defendant's sentence. Under any other circumstances, the Department may dispose of physical evidence:
 - 5.3.1 After the conclusion of the convicted defendant's direct appeal and first post-conviction relief proceeding.
 - 5.3.2 After the time for initiating the direct appeal and first post-conviction relief proceeding has expired, with the agreement of the County Attorney or the Attorney General and then, upon written notice to the defendant, any counsel of record and the victim if no other law requires that biological evidence be preserved or retained.
- 5.4 This section does not limit the Department's discretion concerning the conditions under, which biological evidence is retained, preserved or transferred among different entities if the evidence is retained in a condition that is suitable for DNA testing.

6.0 PROSECUTION DECISIONS

- 6.1 Cases requiring review/consideration for submission for prosecutorial review/prosecution:
 - 6.1.1 Homicides - premeditated, intentional, reckless, negligent
 - 6.1.2 Sexual Offenses
 - 6.1.3 Aggravated Assault
 - 6.1.4 Criminal Damage – In cases wherein damage and associated costs to repair or replace are significant.
 - 6.1.4.1 Criminal Damage as defined by A.R.S. §13-1602:
 - 6.1.4.1.1 Class 4 felony if the damage is ten thousand dollars or more.
 - 6.1.4.1.2 Class 4 felony if the property of a utility is damaged in an amount of five thousand dollars or more or if the damage causes an imminent safety hazard to any person.
 - 6.1.4.1.3 Class 5 felony if the damage is two thousand dollars or more, but less than ten thousand dollars or if the damage is inflicted to promote, further or assist any criminal street gang or syndicate with the intent to intimidate and the person is not subject to 6.1.4.1.1 or 6.1.4.1.2 of this section.

- 6.1.4.1.4 Class 6 felony if the damage is two hundred and fifty dollars or more, but less than two thousand dollars.
- 6.1.5 Kidnapping – In cases where in death, physical injury, a sexual offense occurs, or in cases in which it is perpetrated to aid in the commission of a separate felony.
- 6.1.6 Arson – Wherein death occurs or there is an imminent threat of harm or intended cause to harm and with extensive damage to property (i.e., Criminal Damage, as outlined in this Department Order.
- 6.1.7 Promoting Prison Contraband:
 - 6.1.7.1 Wherein the matters involving deadly weapons, dangerous instruments or explosives and dangerous or narcotic drugs and marijuana (if in quantities obviously beyond personal use and intended for distribution), all of which are Class 2 felony.
 - 6.1.7.2 Wherein the matters involving a cellular phone or other wireless communications device is a Class 5 felony.
 - 6.1.7.3 Failure to report a violation or attempted violation of promoting prison contraband is a Class 5 felony.
- 6.1.8 Rioting
- 6.1.9 Public Corruption
- 6.1.10 Criminal Enterprises/Organized Crime – Significant cases involving a multitude of felony offenses.
- 6.1.11 Intense Media or Public Interest - Cases attracting intense media or public interest where in wrongdoing or negligence on the part of Department staff is or could be perceived.
- 6.1.12 Violations of Statute - In all other violations of statute, the review and submission of the cases will be based on the merits and effect the matter has on the Department and the public.
- 6.2 In determining whether cases will be submitted for prosecution the following factors shall be considered:
 - 6.2.1 Is the crime a major (felony) or minor (misdemeanor) offense
 - 6.2.2 Victim’s desire/cooperation
 - 6.2.3 Length and expiration of current and/or future sentences/commitments
 - 6.2.4 Committing offense
 - 6.2.5 Repetitive offense
 - 6.2.6 Injury incurred or potential for injury
 - 6.2.7 Cost to repair or replace damaged items

- 6.2.8 Impact on inmate population, staff and/or Department
- 6.2.9 Amount of good time inmate may have to lose
- 6.2.10 Violence and disciplinary history of inmate
- 6.3 The CIU Manager shall:
 - 6.3.1 Review and staff all cases intended for presentation with the respective CIU Supervisor and make appropriate notification to executive staff.
 - 6.3.2 Approve presentation of cases to respective state or county prosecuting authorities.

7.0 INMATE DEATH INVESTIGATION REVIEWS

- 7.1 All inmate deaths shall result in the initiation of a criminal investigation.
- 7.2 All inmate deaths, with the exception of attended natural deaths, shall result in the initiation of an administrative investigation in accordance with Department Order #601, Administrative Investigations and Employee Discipline.
- 7.3 The Inspector General shall forward every completed administrative investigation report regarding an inmate death to the Assistant Director for Prison Operations and the appropriate Regional Operations Director who shall conduct a review of operational and related security practices.

8.0 SEXUAL ASSAULT

- 8.1 Sexual Assault/Abuse Significant Information Reporting
 - 8.1.1 When the CIU is notified of potential incidents of sexual assault/abuse, they are to ensure a Significant Incident Report (SIR) is generated by the affected unit.
 - 8.1.2 When a unit initially reports an assault (physical injury) in a Significant Incident Report (SIR) and it is subsequently discovered through further investigation by CIU investigators to have the elements of sexual assault/abuse, the Central Office Communications Center shall be notified by CIU to change/update the title of the SIR in question.
 - 8.1.2.1 The Central Office Communications Center shall be given a brief synopsis of new allegations to update the original SIR status.
 - 8.1.3 In instances where the CIU independently receives an allegation of sexual assault/abuse from a victim, third party, or anonymous source, the CIU shall:
 - 8.1.3.1 Notify the affected unit.
 - 8.1.3.2 Cause the initiation of an SIR, which provides a brief synopsis of the allegation, with the Central Office Communications Center.
 - 8.1.4 In all cases, CIU shall place the SIR number in the "Comments" section of the Criminal Investigations Bureau face sheet.

- 8.2 Sexual Assault Medical Examinations – The use of outside forensic examination services (i.e., Sexual Assault Nurse Examiner (SANE), etc.) are authorized during the course of investigations involving sexual assaults.
 - 8.2.1 Cost incurred for outside forensic services are billed in accordance with A.R.S. § 13-1414, Expense of Investigations. Any medical expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in A.R.S. § 13-705 or a sexual assault shall be paid by the county in which the offense occurred.

- 8.3 Notifications to Inmate Victims of Sexual Assault/Abuse
 - 8.3.1 Following an investigation into an inmate’s allegation that he or she suffered sexual abuse in a Department facility, the CIU shall:
 - 8.3.1.1 Inform the inmate victim at the conclusion of the investigation as to whether the allegation has been determined to be substantiated, unsubstantiated or unfounded.
 - 8.3.1.2 Document the case status and inmate victim notification(s) or attempted notifications accordingly in the CIU database.
 - 8.3.2 Following an inmate’s allegation that a staff member has committed a sexual offense against the inmate, the CIU shall:
 - 8.3.2.1 Subsequently inform the inmate victim (unless the investigation determines the allegation is unfounded) whenever the staff member is:
 - 8.3.2.1.1 No longer posted at the inmate’s unit.
 - 8.3.2.1.2 No longer employed at the facility.
 - 8.3.2.1.3 Indicted on a sexual offense.
 - 8.3.2.1.4 Convicted of a sexual offense.
 - 8.3.2.2 Document any and all staff member movement, court actions and inmate victim notifications or attempted notifications accordingly in the CIU database.
 - 8.3.3 Following an inmate’s allegation of a sexual offense by another inmate, the CIU shall:
 - 8.3.3.1 Subsequently inform the alleged victim whenever the suspect inmate has been indicted on the sexual offense or convicted of the alleged sexual offense.
 - 8.3.3.2 Document any and all court actions and inmate victim notifications or attempted notifications accordingly in the CIU database.
 - 8.3.4 Obligation to report under this standard shall terminate if the inmate victim is released from custody.

9.0 SIGNIFICANT CASE TRACKING AND INFORMATION DISSEMINATION

- 9.1 Upon the initiation of a homicide, sexual assault, escape, riot, or other case deemed significant, the CIU Supervisor's shall:
 - 9.1.1 Continuously communicate with the assigned case agent to ensure progression of investigative activities and ensure additional support, if necessary, is provided to aid the case agent in the completion of the case.
 - 9.1.2 Establish completion dates for tasks assigned to assisting investigators and monitor completion of the tasks of the case agent to ensure timeliness in report completion.
- 9.2 Criminal investigations are to be suspended when all worthwhile investigative leads have been explored, no new/additional information, or actions in furtherance of criminal activity has taken place for a period of 90 calendar days. They will be closed when an arrest has been made and no further investigation is warranted. All cases accepted for prosecution will remain pending until the matter(s) are adjudicated. All unsolved homicides will remain pending until such time a resolution is determined. If new leads are developed in a case after it has been closed or suspended, then the case may be reopened.

10.0 USE OF FORCE

- 10.1 Full authority peace officers are authorized to carry and use deadly force and less than lethal force devices such as, handguns, shotguns, Oleoresin Capsicum (OC) chemical agents, Conducted Electrical Weapons (i.e., TASERS) and impact weapons in the performance of their duties provided they have been properly trained in the use of said weapons.
 - 10.1.1 Full authority peace officers carrying deadly and less than lethal force weapons shall receive periodic training in the techniques of use and associated liability of such weapons.
- 10.2 All full authority peace officers shall follow the use of force progression as outlined in Department Order #804, Inmate Behavior Control.
- 10.3 Uses of physical and deadly force are authorized in accordance with Department Order #804, Inmate Behavior Control and A.R.S. Title 13, Chapter 4, Justification.

11.0 PUBLIC RECORDS REQUEST FOR CRIMINAL INVESTIGATION REPORTS

- 11.1 The CIU staff receiving inquires relating to criminal investigations from victim's family members, private legal counsel, media sources and other public entities shall not release information to the requesting party and shall refer them to Legal Services, Media Relations, and/or the Office of Victim Services.
- 11.2 Upon receipt of a public information request from Legal Services, with the approval of the Inspector General, the CIU staff shall provide all requested materials to Legal Services for those cases determined not to be "on-going" or closed within their files.
 - 11.2.1 A case may be considered "on-going" if the matter is pre-indictment in nature (i.e., case before or going to grand jury or wherein the prosecutor has not yet filed formal criminal charges).

- 11.2.2 If there is concern about the integrity of a case being jeopardized, concerns for the safety/well-being of persons, or other confidentiality issues associated with the release of information, CIU Supervisors shall advise their respective CIU Manager. The CIU Manager shall, when necessary, consult with the Inspector General or Legal Services staff for disposition to ensure disclosure doesn't hinder the fair administration of justice.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms

AUTHORITY

- A.R.S. §1-215(28), General Rules of Statutory Construction; Definitions
- A.R.S. Title 13, Chapter 4, Justification
- A.R.S. §13-705, Dangerous Crimes Against Children; Sentences; Definitions
- A.R.S. §13-1414, Expenses of Investigation
- A.R.S. §13-1602, Criminal Damage; Classification
- A.R.S. §13-3871, Authority of Peace Officers
- A.R.S. §13-4221, Preservation of Biological Evidence; Retention Period; Definitions
- A.R.S. §13-4401(19), Crime Victim's Rights; Definitions
- A.R.S. §13-4405, Information Provided to Victim by Law Enforcement Agencies
- A.R.S. §41-741(9), State Personnel System; Definitions
- A.R.S. §41-1604(B)(I), Duties and Powers of Director