



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Susan Sinz, Director of Civil Service

FROM: Lisa Davis, Chief of Police

DATE: January 27, 2025

SUBJECT: Temporary Suspension of Police Officer Todd Gilbertson #7066
Internal Affairs Control Number 2024-0812

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Todd Gilbertson #7066 from duty as a City of Austin, Texas police officer for a period of forty-five (45) days. The agreed suspension is effective beginning on January 28, 2025, and continuing through March 13, 2025.

I took this action because Officer Gilbertson violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Ofc. Gilbertson in violation of Rule 10:

I. Summary of Incident

On August 12, 2024, at approximately 12:10 pm, Austin Police Department (APD) Ofc. Todd Gilbertson responded to a home remodeling company located in central Austin for a "Check Welfare Urgent" call. The call notes stated there was a female subject, Ms. X, in the restroom, unresponsive, and who had a bottle of alcohol next to her.

Ofc. Gilbertson arrived on scene and received additional information from an Austin Travis County Emergency Medical Services (EMS) paramedic, RH. RH advised Ofc. Gilbertson that Ms. X was drunk, a victim of domestic abuse, and that she did not want to speak to EMS. Ofc. Gilbertson then entered the restroom with RH, where Ms. X was located with a second paramedic, NT. RH then handed Ofc. Gilbertson a sticky note with the name of the suspect that allegedly assaulted Ms. X. With little or no preliminary introduction or comment, Ofc. Gilbertson then addressed Ms. X, giving her three (3) options: "*we can call someone to come pick you up, responsible, we can go to the sobering center, or we can go to jail, what would you like to do?*"

Ms. X sobbed and responded in a quiet voice that she did not want to go to jail. Ofc. Gilbertson replied, "*yeah you're going to jail*" unless she took one of the other options that he gave her. RH then prompted Ms. X, NT, and Ofc. Gilbertson to all relocate from the restroom to a private office conference room. Once in the conference room, RH asked Ms. X "*do you feel safe at home*" and Ms. X shook her head "*no.*" RH then asked her "*do you need a place to go?*" and Ms. X nodded "*yes.*" RH then stated to her "*I'm gonna call someone else,*" in apparent reaction to Ofc. Gilbertson's communication with Ms. X. RH then stepped out of the conference room to consult with his Chain of Command at EMS.

Ofc. Gilbertson reacted to RH's statements and his leaving the room by asking NT, "*who's he calling?*" followed by "*it sounds like your partner wants to handle this himself, so I guess you don't need me.*" This prompted NT to try to exit the room to speak with RH. Before he could exit Ofc. Gilbertson stated to NT, "*because if APD is handling this, I can do it, if he wants to do it, I'll leave.*"

NT then asked Ofc. Gilbertson, "*did you get the run down on this?*" to which Ofc. Gilbertson affirmed that he did. NT then stated "*the only thing that I got out of [Ms. X] is she was assaulted and that person [as NT pointed to the name on the sticky note given to Ofc. Gilbertson] hits her at home.*" While he stated this, Ms. X continued to sob. Ofc. Gilbertson then lifted up the sticky note and replied, "*I cannot take a statement from her because she is hammered drunk.*" NT then advised Ofc. Gilbertson he would go see who RH called and then NT stepped out of the room leaving Ofc. Gilbertson with Ms. X.

Ofc. Gilbertson then told Ms. X, "*call your mom*" as she continued to sob. He then asked Ms. X to provide her last name, to which she replied while still sobbing and sniffing, "*I am not answering that.*" This prompted Ofc. Gilbertson to tell Ms. X, "*you have to answer that, it's a crime for you not to and I'll arrest you for it.*" Ofc. Gilbertson then stated, "*and you think you know more than me, I'll take you to jail and take your fingerprints.*" Ofc. Gilbertson then continued to berate Ms. X for "*being drunk*" at her workplace and her

“poor decision making.” Ms. X continued to sob and Ofc. Gilbertson reiterated *“call your mom”* or choose one of the other options, jail or the sobering center.

A few moments later, NT re-entered the conference room to advise Ofc. Gilbertson that RH had found a safe placement for Ms. X via the Austin-Travis County EMS Community Health Paramedic Program (CHP). NT also advised Ofc. Gilbertson, *“if you gotta go, we’ll take care of her.”* Ofc. Gilbertson continued to express his annoyance or frustration and stated *“that’s fine with me”* as Ms. X was still sobbing. Ofc. Gilbertson then said, *“this isn’t even my area, I don’t understand why I got assigned to this call.”* Ofc. Gilbertson then reiterated his frustration with RH to NT about calling APD, as he took issue with RH reasserting himself into the handling of the situation. NT expressed to Ofc. Gilbertson that he did not want to get involved in that issue and that Ofc. Gilbertson should address that directly with RH. Ofc. Gilbertson then proceeded to leave the scene at about 12:30pm.

Shortly thereafter, an EMS supervisor contacted Sgt. B, who was overseeing supervisory duties that day for Ofc. Gilbertson’s shift. The EMS supervisor spoke to Sgt. B about how Ofc. Gilbertson had acted on-scene and handled the call. This conversation prompted Sgt. B to contact Ofc. Gilbertson to get his perspective on what happened. After speaking with Ofc. Gilbertson, Sgt. B completed an External Complaint Contact Form (CCF). In the CCF, Sgt. B stated that he told Ofc. Gilbertson to write a report for the call and that an external complaint would likely be coming from EMS.

Also, before he called Ofc. Gilbertson, Sgt. B initiated steps to ensure the call was properly handled. Sgt. B contacted a detective, who was working backfill, to follow-up on the call. The backfill detective made sure all of the necessary steps were taken, including having a Victim Services Counselor respond to meet with Ms. X.

That day, at 2:49pm, RH filed an external complaint with the Office of Police Oversight (OPO), which was forwarded to Internal Affairs (IA). The complaint stated, in part:

I am a Paramedic with ATCEMS. We responded to a call EMS Incident #24225-0228. The subject declined EMS and no obvious medical need was observed. The subject reported to EMS that it was not safe for her to go home as she is being physically abused there. The decision was made to request APD to the scene as the subject made an outcry...

[T]he officer was informed the subject was declining EMS and may be intoxicated. Furthermore, she expressed she is being physically assaulted at home...

[T]he officer told the subject she had three options: call someone for a ride, go to the sobering center, or go to jail. At this point the subject became increasingly upset...

My issue with this interaction is the officer threatened the victim with jail... the subject scared out of her mind that she was going to be taken to jail.

IA also received two internal complaints from Ofc. Gilbertson’s Commander. They stated:

On August 12, 2024, Officer Gilbertson responded to a Check Welfare [service call]. Upon arrival, Officer Gilbertson received information from EMS that the victim was intoxicated, she did not want to call her significant other due to domestic abuse, and she had been assaulted. The subsequent actions of Officer Gilbertson during this incident, to include the manner in which he interacted with the victim and EMS, and his failure to investigate and document the alleged assault may have violated policy. [And]

On August 12, 2024, Officer Gilbertson responded to a Check Welfare [service call]. Sgt. [B] later instructed Officer Gilbertson to write a report documenting his actions on this call. It does not appear that Officer Gilbertson wrote the report.

II. IA Investigation

IA reviewed the evidence in this case, including most notably Ofc. Gilbertson's Body Worn Camera (BWC) footage, which depicted the above-stated facts. IA also interviewed several witnesses, most notably EMS paramedic NT, Sgt. B, and Ofc. Gilbertson. IA's attempts to reach EMS paramedic RH and Ms. X were unsuccessful. However, their entire interactions with Ofc. Gilbertson from August 12, 2024, were captured on BWC.

Sgt. B's October 23, 2024, IA Interview:

IA asked Sgt. B about his involvement in the incident. Sgt. B explained that he received a Mobile Data Computer (MDC) message from an EMS Commander who complained about Ofc. Gilbertson. Sgt. B indicated that he then contacted EMS paramedic RH who was upset. Sgt. B was advised that Ofc. Gilbertson had given three options to a potential victim of family violence, Ms. X; go to jail, call somebody, or go to a sobering center. According to Sgt. B, EMS did not want Ofc. Gilbertson back on scene. Sgt. B advised IA that he then contacted a detective who worked backfill to handle the call. Sgt. B stated he also called Ofc. Gilbertson and stated:

"I told [Ofc. Gilbertson] what's going on, and he said they said I was good. So I left, you know. And I was like, 'Okay.' Well, apparently that's not maybe that's conflicting stories. But something obviously happened because we have a commander reaching out to me. And so I said I have another officer or detective rather handling the call. I said you need to write a report to document this. I don't know where this is going to go... EMS was pretty upset, so I provided an OPO number, I said I'll do a notification, you know, things like that."

Sgt. B was then asked by IA, based on the information that he had received, and if Ofc. Gilbertson handled this call appropriately. Sgt. B responded with the following: *"Well, I've been doing this almost 26 years. A little more empathy. You know, play the cop role. Empathy, sympathy, you know, not just this, this, and this."*

Sgt. B was also asked the following by IA *"When you told him to write the report was that an order or was that a suggestion?"* Sgt. B replied *"That's a direct order. I knew this is going somewhere. I mean we don't run a lot of reports on check welfare per se. But I told him you need to write a report."*

Ofc. Gilbertson's October 30, 2024, IA Interview:

Ofc. Gilbertson was asked about the August 12, 2024, incident. He replied that he responded to what he believed at the time to be a public intoxicated subject based upon the call text and what he was originally told by the first EMS on scene. Ofc. Gilbertson then stated that he made initial contact with Ms. X, who was in the restroom stall sobbing. Ofc. Gilbertson acknowledged giving her the three options; call someone sober to come pick her up, go to the sobering center, or go to jail.

Ofc. Gilbertson was asked by IA what law enforcement objective he tried to accomplish:

"I was called to the location because somebody found her intoxicated in the bathroom and I assumed at the time, you know, they were making a complaint of that. So my objective was to get her somewhere safe and out of there."

Ofc. Gilbertson was then asked if he attempted to address the family violence allegation:

"I kind of got frustrated with, one of the EMS personnel who told me that I was handling the call. And then started - before I got a chance to start talking to her again, he started handling it again. And I was thinking about what he was doing, and I didn't know why he was doing things when she was refusing EMS assistance and I got fixated on what he was doing and was putting off what I was about to do, once I found out what he was doing first."

Ofc. Gilbertson was asked if he believed he did everything appropriately to resolve the call:

"Well, looking back, I mean, on video, I think it's clear that, my frustration, showed. In hindsight, if I could do it over again, I certainly would have done it much differently. I would have communicated better with EMS, one, and I would have taken over the call and either ask them to leave or started asking [Ms. X] the questions that I should have asked her and failed to do so."

III. NOSA issued to Ofc. Gilbertson on January 17, 2025

Ofc. Gilbertson was issued a Notice of Sustained Allegation (NOSA) by his Chain of Command where they placed him on notice that they were recommending to me, Chief Davis, that he should be sustained for the following APD General Orders/Policy violations:

- 110.4.4 Insubordination
- 301.2 (b) and (c) Impartial Attitude and Courtesy
- 301.3 (b) Customer Service and Community Relations
- 401.2 Initial Response and Investigation (c) and (d)
- 900.4.3 (b) (c) and (d) Neglect of Duty
- 900.3.2 Acts Bringing Discredit upon the Department

IV. Conclusion

I concur with the Chain of Command's recommendations to me in the NOSA issued to Ofc. Gilbertson. Ofc. Gilbertson violated each of the Policies/General Orders as he failed to perform his duties and responsibilities in accordance with my expectations of an APD officer. I also concur with the Chain of Command's following specific conclusions:

With respect to GO 110.4.4 Insubordination:

"your Chain of Command believes that you demonstrated the willful disobedience of, or deliberate refusal to obey a lawful order of a supervisor."

With respect to GO 301.2 (b) and (c) Impartial Attitude and Courtesy:

"you did not adhere to APD standards, training, and/or professional expectations in how you handled this call for service. In doing so you violated both subsection (b) and (c) of this GO in your conduct with the alleged victim of family violence and/or the two EMS personnel."

With respect to GO 301.3 (b) Customer Service and Community Relations:

"Rather than [properly investigate an allegation of family violence], you exclaimed that [Ms. X's] state of intoxication, somehow absolved you and/or disabled you from being able to do your lawful duties and responsibilities. You even threatened [Ms. X] again with arrest for failing to provide her last name, as she continued to cry/sob."

"By the actions described above, you failed to extend reasonable assistance to a member of the public when called upon. Your qualifying response to IA with respect to this policy was noteworthy to your Chain of Command. Your inability and/or refusal to take full ownership and/or accountability of your full responsibility in response to some of your failures after months of reflection was seen to be of further concern."

With respect to GO 401.2 Initial Response and Investigation (c) and (d):

"During your response to call #2024-2250213 you failed to complete the following in violation of this GO:

- Make a preliminary determination if a crime has been committed and the information indicates that a crime has occurred, follow the guidelines outlined in this General Order.*
- If the information indicates that no crime occurred, determine what other action may be necessary and/or what resources may be available to the subject.*
- Officers assigned to calls or discovering incidents requiring a report shall be responsible for the preliminary investigation and required paperwork.*

- *Certain incidents (e.g., family violence) require a specific response and investigation as outlined in its respective General Order, Standard Operating Procedure or Operations Manual.*

With respect to GO 900.4.3 (b) (c) and (d) Neglect of Duty:

“In spite of your denial during your IA interview, your Chain of Command believes that you demonstrated an unwillingness and/or inability to perform assigned tasks when you failed to recognize the subject of this call was a potential victim of family violence and/or future family violence. You also violated this GO by failing to take the appropriate investigative steps required in a family violence incident to include but not limited to, asking questions about the purported assault, writing a report, completing an AVS, providing a Victim Assistance Information pamphlet, advising of the right to an EPO, documenting injuries and providing resources to the victim, including but not limited to apprising her of all the resources designed for her future protection.”

“Your Chain of Command was also concerned that you attempted to place partial blame on EMS personnel. EMS took no actions that absolve you of your responsibilities under state law and APD GOs. The Code of Criminal Procedure (CCP) 5.04 and APD GOs both mandate that victims of family violence are entitled to maximum protection from harm, or the threat of harm as permitted by law due to the serious danger and threat to society and its members.”

“Your inability and/or refusal to perform your full responsibilities and duties was apparent on your BWC. Your attempts to place blame on EMS, after months of reflection, during your IA interview, was alarming and disappointing to your Chain of Command. It was an attempt to divert and/or mitigate from your culpability of not meeting the standards and expectations of an APD officer, particularly one with your length of years and experience. EMS personnel fortunately treated the female with dignity and respect as they stepped in to protect this female from future family violence. That was one of your utmost responsibilities in this case, as opposed to your statement to IA that the public intoxication was the primary part of this call.”

With respect to GO 900.3.2 Acts Bringing Discredit upon the Department:

“Your conduct when responding to call #2024-2250213 reflected poorly upon the Austin Police Department in the eyes of the female subject and/or EMS paramedics, amongst others. The manner in which you interacted with both the victim and the EMS Paramedics tends to destroy public confidence in, and respect for, the Austin Police Department. See previous GOs for further details.”

In sum, I took into consideration the above-mentioned disappointing facts and conclusions. In agreeing to this temporary suspension, I also considered Ofc. Gilbertson's acceptance of responsibility of not meeting the standards of an APD officer, including his admissions during the Disciplinary Review Hearing (DRH) that he agreed with the factual conclusions

made by his Chain of Command. I also took into consideration his genuine remorse and contrition in his DRH, his limited disciplinary history in his 13 years with APD, and some of the overt steps in the immediate aftermath of this incident that Ofc. Gilbertson has taken that show his desire to improve moving forward in the APD. However, I stressed to Ofc. Gilbertson at the end of his DRH that he would be placed on a "Last Chance Agreement" and any repeated violation of any of the aforementioned GOs would result in a future indefinite suspension. I also offered him words of encouragement and placed several conditions for him that will hopefully help him attain future success and growth, including avoiding future disciplinary infractions.

By these actions, Ofc. Gilbertson violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

➤ **Austin Police Department Policy 110.4.4: Organizational Structure and Responsibility: Insubordination**

110.4.4 Insubordination

Employees will not be insubordinate. The willful disobedience of, or deliberate refusal to obey any lawful order of a supervisor is insubordination. Defying the authority of any supervisor by obvious disrespect, arrogant or disrespectful conduct, ridicule, or challenge to orders issued is considered insubordination whether done in or out of the supervisor's presence.

➤ **Austin Police Department Policy 301.2(b)(c): Responsibility to the Community: Impartial Attitude and Courtesy**

301.2(b)(c) Impartial Attitude and Courtesy

Employees shall provide equal and fair protection of all rights under local, state, and federal law for all members of the community. Law enforcement will be conducted in an impartial and equitable manner.

In an effort to create an organizational culture that is inclusive and nondiscriminatory, employees shall act professionally, treat all persons fairly and equally, and strive to interact with the community in a positive manner. Employees will perform all duties objectively and without regard to personal feelings, animosities, friendships, financial status, occupation or employment status, sex, disability status, housing status, mental health or ability, citizenship, language, national origin, creed, color, race, religion, age, political beliefs, sexual orientation, gender identity, gender expression, ethnicity, or social or ethnic background. Employees will endeavor to understand and respect cultural, national, racial, religious, physical, mental, and other differences.

- (b) Employees will be tactful in the performance of their duties, control their tempers, exercise patience and discretion, and shall not engage

in argumentative discussions even in the face of extreme provocation.

- (c) Employees will treat all persons with dignity, will be courteous and respectful toward all persons, showing consideration for the welfare of all persons with whom they interact.

➤ **Austin Police Department Policy 301.3(b): Responsibility to the Community: Customer Service and Community Relations**

301.3(b) Customer Service and Community Relations

APD constantly works to establish direct contacts with the community we serve. Without grassroots community support, successful enforcement of many laws may be difficult, if not impossible. Community involvement can be an effective means of eliciting public support, can serve to identify problems in the making, and may foster cooperative efforts in resolving community issues. Input from the community can also help ensure that agency general orders accurately reflect the needs of the community.

- (b) Employees will extend reasonable assistance to the public when called upon. Employees must not neglect community services in the belief that the police function is restricted to crime control.

➤ **Austin Police Department Policy 401.2(c)(d): Preliminary Field Investigations: Initial Response and Investigation**

401.2(c)(d) Initial Response and Investigation

- (c) The primary officer shall make a preliminary determination if a crime has been committed.
 1. If the information indicates that a crime has occurred, follow the guidelines outlined in this General Order.
 2. If the information indicates that no crime occurred, determine what other action may be necessary and/or what resources may be available to the subject.
- (d) Generally, officers assigned to calls or discovering incidents requiring a report shall be responsible for the preliminary investigation and required paperwork.
 1. Certain incidents (e.g., family violence, sexual assault) require a specific response and investigation as outlined in its respective General Order, Standard Operating Procedure (SOP) or Operations (Ops) Manual.

➤ **Austin Police Department Policy 900.4.3(b)(c)(d): General Conduct and Responsibilities: Neglect of Duty**

900.4.3(b)(c)(d) Neglect of Duty

Employees will satisfactorily perform their duties. Examples of unsatisfactory performance include, but are not limited to:

- (b) Unwillingness or inability to perform assigned tasks.
- (c) Failure to take appropriate action on the occasion of a crime, disorder, investigation or other condition deserving police attention.
- (d) Failure to respond to any call or to perform any police duties assigned to them by appropriate authorities.

➤ **Austin Police Department Policy 900.3.2: General Conduct and Responsibilities: Acts Bringing Discredit Upon the Department**

900.3.2 Acts Bringing Discredit Upon the Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

In addition to this agreed temporary suspension, Ofc. Gilbertson agrees to the following terms and conditions:

1. Ofc. Gilbertson shall attend any training specified by his Chain of Command.
2. Ofc. Gilbertson shall be evaluated by Dr. Logan and/or Dr. Duran.
3. If Dr. Logan and/or Dr. Duran recommend(s) a program of counseling, Ofc. Gilbertson must successfully complete that program of counseling.
4. If a program of counseling is recommended, said program will be completed on Ofc. Gilbertson's off-duty time, unless the Chief approves the use of accrued vacation leave.
5. Ofc. Gilbertson shall be responsible for paying all costs of the program of counseling that are not covered by his health insurance plan.
6. If Ofc. Gilbertson fails to successfully complete the training specified by his Chain of Command or any program of counseling, the Chief may, at her sole discretion, indefinitely suspend him without right of appeal to the Civil Service Commission, to an Independent Third- Party Hearing Examiner, or

to District Court, and Ofc. Gilbertson may not file a grievance under Article 20 of the Meet and Confer Agreement.

7. Ofc. Gilbertson agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, he commits the same or a similar act of misconduct for which he is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one-year period begins on the day Ofc. Gilbertson returns to duty after completing his agreed suspension. Should Ofc. Gilbertson commit the same or similar violation outside the one-year period, he will be indefinitely suspended but retains the right to appeal that suspension.
8. Ofc. Gilbertson understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.11.
9. Ofc. Gilbertson agrees that he, and all others claiming under his named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind or nature whatsoever that he now has, or may have in the future, including without limitations, claims arising under any federal, state or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
10. Ofc. Gilbertson acknowledges that he had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with a representative of his choosing prior to signing his acceptance where indicated below.

By signing this Agreed Discipline, Ofc. Gilbertson understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Ofc. Gilbertson waives all right to appeal this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, and to District Court.



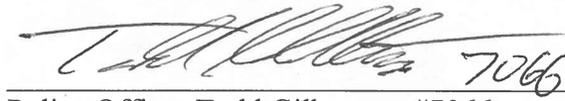
LISA DAVIS, Chief of Police

1/27/25

Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed suspension and I understand that by entering into this disciplinary agreement the Chief forgoes her right to indefinitely suspend me for the conduct described above and that by agreeing to the suspension, I have no right to appeal this disciplinary action, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third Party Hearing Examiner, and to District Court.



Police Officer Todd Gilbertson #7066

1/27/25

Date