



OFFICE OF THE COUNTY SHERIFF

Montgomery County, Maryland

Darren M. Popkin, Sheriff



GENERAL ORDERS/PERSONNEL PROCEDURES

<u>Subject:</u>	<u>Number:</u>	<u>Effective Date:</u>
Disciplinary Process for Sworn Employees	2.03	11/02/20

Policy: A relationship of trust and confidence between the Sheriff's Office and the community is essential to effective law enforcement. It is therefore important to establish a disciplinary process which enables the Sheriff's Office to initiate positive, corrective action for improper conduct while at the same time protecting deputies from unwarranted criticism for properly discharging their duties.

It is the policy of the Sheriff's Office to provide a thorough, fair, and expeditious disposition of complaints regarding the conduct of deputies in the Sheriff's Office.

Further, it is the policy of the Sheriff's Office to invite any individual to bring to the attention of the Sheriff's Office complaints about the conduct of its deputies whenever that person believes a deputy acted improperly. Complaints will be received courteously by employees of the Sheriff's Office. The Sheriff's Office will make every effort to ensure that no adverse consequences occur to any person as a result of having brought what they believe to be a legitimate complaint or information to our attention. All complaints will be administered in accordance with the procedures described herein. These procedures apply to allegations of misconduct against deputies of the Sheriff's Office, both on-duty and off-duty.

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I. Authority in Disciplinary Matters

The Sheriff has authority for disciplinary action involving all Sheriff's Office employees. Discipline for non probationary sworn personnel will be administered within the requirements of the Law Enforcement Officers' Bill of Rights (LEOBR), Maryland Code, Public Safety Article §3-101-§3-113. Discipline for probationary sworn personnel who are accused of brutality will also be administered within the requirements of the LEOBR.

II. Definitions

- A. Administrative Closure: An administrative conclusion used to terminate an internal investigation that cannot proceed to a normal conclusion.
- B. Brutality: The use of excessive or unjustified force.
- C. Complaint: An allegation of misconduct made against an employee of the Sheriff's Office.
- D. Counseling: Supervisory counseling of subordinates is non-disciplinary corrective action. In most cases, the action taken will not be made part of the deputy's personnel record. (An exception is the action taken in at-fault accidents.) Supervisor's Documentation Forms (MCSO90) will be maintained in the supervisor's files for not more than one year.
- E. Exonerated: The incident did occur, but the actions of the involved deputy *were* justified, lawful and proper.
- F. Inquiry: An initial gathering of facts to assist the Chief Deputy in determining whether a complaint should be investigated as a Track I or Track II case.
- G. Letter of Reprimand: This is the least severe punishment which can be given to a deputy. The letter documents the violation for inclusion into the employee's personnel file.
- H. Minor Complaints of Misconduct: Allegations, which could lead to either non-disciplinary corrective counseling or summary punishment.
- I. Not Sustained: The investigation failed to disclose sufficient evidence to prove or disprove the allegation.
- J. Office of Professional Responsibility (OPR): The OPR is the section primarily responsible for tracking complaints, conducting inquiries and internal investigations. The Administrative Division Captain is responsible for managing this process and the Chief Deputy is the Director. The Sheriff is the final authority in all disciplinary matters.
- K. Policy Failure: The incident did occur, and the action of the involved deputy was consistent with Sheriff's Office policy. However, the investigation revealed that there was an omission of policy or the established policy was insufficient or ineffective.
- L. Serious Allegations of Misconduct: Includes, but is not limited to, brutality, complaints which allege any type of discrimination, misappropriation of monies or untruthful statements.
- M. Sheriff: Sheriff of Montgomery County, Maryland.
- N. Summary Punishment: Disciplinary action implemented with the approval of the Sheriff which may be imposed for minor violations when; the facts constituting the offense are not in dispute, the deputy receiving summary punishment waives a hearing and accepts the punishment imposed. Summary punishment may not exceed three days suspension without pay, or a fine of \$150.00.

- O. Sustained: The investigation disclosed sufficient evidence to prove the allegations of misconduct.
- P. Track I: Investigations conducted by the OPR that may result in disciplinary action.
- Q. Track II: Investigations conducted by a Division Captain or their designee that are unlikely to result in disciplinary action.
- R. Unfounded: The investigation of the complaint indicates that the acts complained of did not occur.

III. Initial Filing of a Complaint

- A. *Complaints will be accepted from any individual wishing to inform the Sheriff's Office regarding the conduct of any employee. These complaints will be accepted in person, by email, through the U.S. mail, or by telephone.*
- B. *Complainants will be required to provide a name, mailing address and phone number or email if they wish to receive notifications.*
- C. Complainants are encouraged to use the Citizen Complaint Form, (MCSO104) or (MCSO104A Spanish) to document their complaints alleging misconduct. Use of the Citizen Complaint Form is not a requisite for filing a complaint. The complainant may, as an alternative, prepare a narrative written statement about the event including the times, dates, location and name of the employee, if known. A complainant desiring to complain about an employee of the Sheriff's Office either in person or by telephone will be referred to a representative of the OPR. If a representative of the OPR is unavailable, the complainant will be referred to the highest ranking deputy on duty.
- D. After normal business hours, the complainant will be referred to the highest ranking deputy on duty. The deputy receiving the complaint will promptly notify the Administrative Division Captain of any serious allegations of misconduct. The Administrative Division Captain will notify the Chief Deputy and the Sheriff if the nature of the complaint indicates an ongoing threat, potential liability to the Sheriff's Office, or a situation which may result in a heightened community interest. Complaints will be handled as discreetly as possible. All written complaints will be time stamped and a photocopy will be given to the complainant as a receipt. The original complaint will be forwarded to the Chief Deputy.
- E. *If a complainant does not wish to speak with a deputy, or if a deputy is unavailable, any non-sworn employee may accept the initial complaint.*
- F. *Personnel, receiving an initial complaint from an individual who does not wish to document a complaint in writing or who is uncooperative, will attempt to gain their cooperation, ascertain as much information as possible, document the information on an Incident Report (MCSO9) and submit it to the Chief Deputy.*
- G. *Employees who are accepting a complaint are prohibited from attempting to influence the complainant in any manner.*
- H. *Complainants who wish to email their complaint must be provided the OPR investigator's email address. This email address is also publicly posted on the Sheriff's Office website.*

- I. ***Complainants will be provided the contact information for the OPR investigator as their initial point of contact within the Sheriff's Office.***
- J. Complaint by an Employee of the Sheriff's Office
Any employee desiring to file a complaint against another employee of the Sheriff's Office will utilize an Incident Report (MCSO9) and submit it to the Chief Deputy.
- K. Anonymous Complainant
Anonymous complaints are not excluded from investigation. Anonymous complaints will be assigned to the OPR. Efforts should be made to gain the cooperation of the complainant. Many anonymous complaints, by their very nature, are difficult to substantiate; yet this should not preclude a preliminary inquiry into the matter. The inquiry will be administratively closed ***if*** no substantial evidence can be obtained.
- L. Complaint that Alleges Brutality
(1) A complaint against a deputy that alleges brutality in the execution of the deputy's duties may not be investigated unless the complaint ***is signed and sworn to, under penalty of perjury, by:***
 (a) The aggrieved individual;
 (b) A member of the aggrieved individual's immediate family;
 (c) An individual with firsthand knowledge obtained because the individual:
 (i) Was present at and observed the alleged incident; or
 (ii) ***Has a video recording of the incident that, to the best of the individual's knowledge, is unaltered; or***
 (d) The parent or guardian of the minor child, if the incident involves a minor child.
 (2) Unless a complaint is filed within **366** days of the alleged brutality, an investigation that may lead to disciplinary action for brutality may not be initiated and an action may not be taken.
- M. Nothing precludes the Sheriff's Office from investigating allegations against deputies from whatever source consistent with law when it is determined that such investigation is in the best interests of the Sheriff's Office.
- N. The OPR is directed by the Chief Deputy who reports directly to the Sheriff. The Chief Deputy will notify the Sheriff of all complaints against the Sheriff's Office or its employees. Complaints of a serious nature should be brought immediately to the attention of the Sheriff and those of a minor nature after the initial facts are gathered.
- O. ***Complainants should receive an initial response to their complaint within 72 hours.***

- P. *The complainant, if their contact information has been provided to the Sheriff's Office, should be contacted at least monthly to provide updates on the status of the investigation. This monthly contact must be documented in the investigative file.*
- Q. *The complainant should be notified within 72 hours of the final disposition.*

IV. Assignment of Complaints

- A. Complaints should be investigated at the lowest possible level. The Chief Deputy will use the following guidelines in determining whether an investigation will be assigned to the OPR as a Track I case or to the individual's Division Captain as a Track II case.
- (1) Type of complaint (seriousness and complexity).
 - (2) Source of the complaint.
 - (3) Number of individuals involved (accused and/or witnesses).
 - (4) Whether the accused deputies are assigned to the same unit.
 - (5) Jurisdictional limitations.
 - (6) Underlying indications of graft, corruption or other serious misconduct.
 - (7) Any other related matter that would dictate assignment.
- B. The Chief Deputy may direct the OPR to conduct an initial inquiry into a matter to assist him in determining the proper tracking of the complaint investigation.
- C. Office of Professional Responsibility Log
- An OPR log will be maintained to record all complaints against Sheriff's Office personnel. Access to this log will be limited to personnel in the OPR chain of command.
- D. The responsibility for any traffic or criminal investigation rests with the appropriate county or municipal Department of Police. When possible, the OPR investigators will conduct a concurrent investigation which mandates cooperation between the Sheriff's Office and Department of Police. Interrogations of accused deputies by OPR investigators will be done independently of any other interrogation. OPR investigators will not involve themselves in the Department of Police interrogation of deputies accused of criminal offenses.
- E. Track I Cases
- The Chief Deputy will assign Track I cases to the OPR. The OPR investigator will conduct an investigation and obtain evidence. After completing the investigation, an OPR report will be written which the Chief Deputy will review and forward to the Sheriff. The OPR investigation should be completed within 90 days of the assignment. If the investigation cannot be completed within 90 days, the OPR must request a thirty day (30) extension from the Chief Deputy. Further extensions must be requested in thirty (30) day periods.

F. Track I Reports and Case Findings

All Track I reports must include:

- (1) The allegations.
- (2) A statement of facts arranged in chronological order.
- (3) The findings of the investigation classified as one of the following:
 - (a) Unfounded.
 - (b) Not Sustained.
 - (c) Exonerated.
 - (d) Sustained.
 - (e) Policy Failure.
 - (f) Administrative Closure.

G. All Track I reports, including witness statements, are confidential. Authorization for access to these reports can only be granted by the Sheriff. The Administrative Division Captain is responsible for securing and maintaining these records.

H. Interrogation of Deputies Under Investigation

- (1) Prior to the interrogation of a deputy who is the subject of an OPR investigation, the Internal Investigation Notification Memorandum and Notice of Interrogation Form must be executed. The Internal Investigation Notification Memorandum and Notice of Interrogation Form will provide written notice of the date, time and location of the interrogation as well as the nature of the investigation and the name of the deputy in charge of the investigation.
- (2) The deputy subject to interrogation has the right to be represented by counsel or another responsible representative of the deputy's choice who may be present and available for consultation at all times during the interrogation. The interrogation should be set on a date at least *five (5) business* days from the execution of the Internal Investigation Notification Memorandum and Notice of Interrogation Form to allow the deputy to obtain representation.
- (3) A Deputy Sheriff under investigation may waive, in writing, any or all rights provided under the LEOBR. It is a requirement of the law that any such waiver of those rights be done in writing.
- (4) A complete record must be kept of the deputy's interrogation, including all recess periods. The record may be written, taped, or transcribed. Upon completion of the investigation, and at the request of the deputy under investigation or their counsel or representative, a copy of the record of the interrogation must be available at least 10 days before a hearing.

- (5) Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty. The interrogation must take place at the Sheriff's Office, or at another reasonable and appropriate place. Each session of interrogation must be for a reasonable period and allow for personal necessities and rest periods as are reasonably necessary. The deputy under interrogation may not be threatened with transfer, dismissal or disciplinary action. The deputy under investigation must be informed of the name, rank and command of the deputy in charge of the investigation, the interrogating deputy and each individual present during the interrogation. All questions directed to the deputy under interrogation must be asked by and through one interrogator during any one session of interrogation.
- (6) If the deputy to be interrogated is under arrest, or is likely to be placed under arrest as a result of the interrogation, the deputy must be informed completely of all of their rights before the interrogation begins.

I. **Required Interrogations and Tests**

The Sheriff's Office may order the deputy under investigation to submit to blood alcohol tests, blood, breath or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation. If the Sheriff's Office orders the deputy to submit to a test, examination, or interrogation and the deputy refuses to do so, the Sheriff's Office may commence an action that may lead to a punitive measure as a result of the refusal. If the Sheriff's Office orders the deputy to submit to a test, examination, or interrogation, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the deputy. A written order regarding the aforementioned required tests and examinations will be executed prior to an interrogation.

J. **Polygraph Examinations**

If the Sheriff's Office orders the deputy to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the Sheriff's Office and the deputy agree to the admission of the results.

- K. An investigation will result in no punitive action where the deputy's conduct was exonerated or when there is no substantial evidence of misconduct found.

- L. All internal investigative reports, including witness statements, are confidential. Authorization for access to these reports can only be granted by the Sheriff. The Administrative Division Captain is responsible for maintaining and securing these records.

V. **Summary Punishment**

- A. Summary Punishment may be imposed for minor violations of Sheriff's Office rules and regulations, if the facts which constitute the minor violation are not in dispute, the deputy waives the right to a hearing, and the deputy accepts the punishment imposed by the Sheriff.

- B. The above procedure does not preclude a supervisor from counseling or training a subordinate. Counseling and training can be utilized to correct undesirable behavior while maintaining maximum harmony between a supervisor and subordinate.
- C. To ensure fairness and consistency in disciplinary matters involving the offer of summary punishment, all summary punishment cases will be reviewed by the Sheriff prior to an offer being made to a deputy.

VI. OPR Notification Procedures For Serious Incidents

- A. The Chief Deputy must be notified promptly when a deputy is involved in any of the following circumstances:
 - (1) When a deputy discharges a *firearm*, other than for authorized target practice or the killing of a dangerous or injured animal as authorized by the Sheriff's Office regulations on firearm discharges.
 - (2) *Any time there is a use of force by an employee of the Sheriff's Office resulting in serious injury or death to an individual.*
 - (3) When a deputy is charged with a criminal offense, or anytime there is an allegation of criminal activity on the part of an employee where police investigation is necessary regardless of jurisdiction of occurrence.
 - (4) When a deputy is the operator of a county vehicle involved in *any traffic incident resulting in serious injury or death to an individual.*
 - (5) Any incident where a supervisory deputy feels an immediate administrative investigation is necessary. Any doubt concerning notification should be resolved in favor of making the notification. Once notification is made, the responsibility for the administrative investigation lies with the OPR.
- B. If the notifying deputy is unable to promptly contact the Chief Deputy, the next highest ranking supervisor, whether on or off duty, must be contacted.
- C. The Chief Deputy or their designee must notify the Sheriff of all serious incidents. In addition, the Chief Deputy or their designee must notify the Administrative Division Captain as soon as practical to determine if the situation warrants an immediate response by OPR or follow up at a later time. The original reporting deputy must be informed of this decision.
- D. If the Administrative Division Captain is unavailable, the OPR investigator will be notified by the Chief Deputy or their designee.

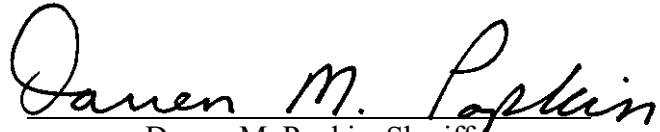
VII. Track II Cases

- A. The Chief Deputy may assign a Division Captain the responsibility for conducting an investigation into a complaint that is unlikely to result in disciplinary action against a deputy. The Division Captain or their designee will contact the complainant in writing to inform them that the Sheriff's Office is in receipt of their complaint and that an investigation will be conducted. An investigative report with all relevant facts will be documented in a memorandum to the Chief Deputy along with a recommendation for an appropriate course of action. The Division Captain will recommend reassignment of the investigation to the OPR if at any point in the investigation the evidence indicates that disciplinary action is likely. If it is determined that disciplinary action is likely, the Chief Deputy will reassign the investigation to the OPR.
- B. The memorandum to the Chief Deputy will include:
- (1) A synopsis of the complaint;
 - (2) The Report of Investigation, which will include a detailed account of all circumstances surrounding the incident and any witness statements;
 - (3) Listing of any contact with the complainant; and
 - (4) A conclusion of fact with recommendations for appropriate action which may include but are not limited to:
 - (a) Verbal counseling.
 - (b) Non-disciplinary corrective counseling (MCSO90).
 - (c) Training.
 - (d) Policy Review.
 - (e) No action necessary.
- C. The Chief Deputy will decide on the proper course of action and will direct the Division Captain to ensure that it is completed.
- D. The assigned Division Captain or their designee will notify the complainant in writing when the investigation has been completed. Copies of all correspondence with the complainant will be forwarded to the Chief Deputy.
- E. The Chief Deputy will forward the memorandum and supporting documents to the OPR Captain for inclusion in the OPR files.
- F. All Track II reports, including witness statements, are confidential. Authorization for access to these reports can only be granted by the Sheriff. The Administrative Division Captain is responsible for maintaining and securing these records.

VIII. Cancellation

This General Orders/Personnel Procedures cancels and replaces General Orders/Personnel Procedure 2.03, Effective Date: *01/16/2014*.

AUTHORITY:

A handwritten signature in black ink that reads "Darren M. Popkin". The signature is written in a cursive style with a large initial 'D'.

Darren M. Popkin, Sheriff

11/02/2020