



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>
Administrative and Suspension Hearing Boards	2.08	11/15/2021

Policy: It is the policy of the Sheriff's Office to provide fair and thorough disciplinary hearings in accordance with Maryland Code, Public Safety Article, § 3-101 through § 3-113, Law Enforcement Officers' Bill of Rights.

- Contents:**
- I. Definitions
 - II. Applicability
 - III. Administrative Hearing Boards
 - IV. Emergency Suspension Hearing Boards
 - V. Cancellation

I. Definitions

- A. Administrative Leave - Unearned paid leave granted to an employee for reasons determined to be in the best interest of the Sheriff's Office.
- B. Emergency Suspension - An action by the Sheriff or his designee to temporarily relieve a deputy of their powers of arrest and use of issued equipment.
- C. Administrative Hearing Board - A board which is authorized by the Sheriff to hold a disciplinary hearing on a complaint against a deputy and consists of not less than three members, appointed by the Sheriff, pursuant to § 3-107, Hearing by Hearing Board.
- D. Summary Punishment - Disciplinary action imposed for minor violations of Sheriff's Office rules and regulations when the facts that constitute the violation are not in dispute, the deputy waives the hearing provided for in § 3-107, Hearing by hearing board, and the deputy accepts the punishment imposed. Summary punishment may not exceed suspension of three (3) days without pay or a fine of \$150.

II. Applicability

- A. This directive does not limit the authority of the Sheriff to regulate the competent and efficient operation and management of the Sheriff's Office by any reasonable means including transfer and reassignment if:

- (1) *That action is not punitive in nature; and*
- (2) *The Sheriff determines that action to be in the best interests of the internal management of the Montgomery County Sheriff's Office.*

B. This directive applies only to disciplinary proceedings against a non-probationary deputy sheriff or a deputy sheriff in probationary status on initial entry into the Montgomery County Sheriff's Office if an allegation of brutality in the execution of the deputy's duties is made.

III. Administrative Hearing Boards

A. Right to a Hearing Board

- (1) If the investigation or interrogation of a deputy results in ***a*** recommendation for:
 - (a) *Demotion;*
 - (b) *Dismissal;*
 - (c) *Transfer;*
 - (d) *Loss of pay;*
 - (e) *Reassignment; or*
 - (f) *Similar action that is considered punitive; then*
- (2) *The deputy is entitled to a hearing on the issues by a hearing board before the Sheriff's Office takes any disciplinary action.*
 - (a) A deputy is not entitled to a hearing board if:
 - (i) *The deputy has been convicted of a felony; or*
 - (ii) *The deputy waives the hearing in order to accept punishment.*

B. Notice of a Hearing Board

The Sheriff's Office will give written notice to the deputy of the right to a hearing board. The notice will state the date, time, place of the hearing and the issues involved.

C. Waiver of *a* Hearing Board

A deputy may waive in writing any or all rights granted by Maryland Code, Public Safety Article, § 3-101 through § 3-113, Law Enforcement Officers' Bill of Rights. When a Deputy chooses to waive the hearing, the waiver will be documented and forwarded to the Sheriff prior to the hearing date. A waiver will result in a predetermined punitive action being taken.

D. Membership of the Hearing Board

- (1) A hearing board will consist of at least three members who:
 - (a) Are appointed by the Sheriff and selected from within the Sheriff's Office; or
 - (b) Are chosen from another law enforcement agency with the approval of the chief of the other agency; and
 - (c) *Have* had no part in the investigation or interrogation of the deputy.
- (2) At least one member of the hearing board will be of the same rank as the deputy against whom the complaint is filed.
- (3) At least ten (10) days prior to a hearing board convening, the accused deputy or their counsel may challenge for cause any law enforcement officer selected to serve on the board. If the Chairperson of the board determines that cause for removal has been established, the challenged law enforcement officer will be removed and another law enforcement officer will be selected to serve on the board in accordance with this directive.

E. General Duties and Responsibilities of the Hearing Board

The hearing board, a quasi-judicial body convened at the direction of the Sheriff, conducts administrative hearings to consider disciplinary charges against non-probationary deputy sheriffs and probationary deputies charged with brutality. The board determines guilt or innocence on each charge. The Sheriff's Office is required to show by a preponderance of the evidence that the accused deputy is guilty of the violations alleged. A preponderance of the evidence means such evidence, when compared with that opposed to it, has force that is more convincing and produces in the fact finders mind a belief that it is more likely true than not true. If the evidence is evenly balanced on an issue, then the finding on that issue must be against the party who has the burden of proving it. The decision will be made upon the information admitted during the hearing. The rules of evidence in an administrative hearing allow relevant hearsay and other evidence to be introduced for probative value. The decision of the board is based on a simple majority vote. The board reports to the Sheriff a finding of fact concerning the charges and, in guilty findings, recommends a punishment for each charge.

F. Chairperson of the Hearing Board - Duties and Authority

- (1) The Sheriff will appoint the hearing board Chairperson. The Chairperson will contact the other board members prior to the hearing, inform them of the name of the accused deputy and the charge(s), and ensure they are familiar with their responsibilities as hearing board members. Additionally, the Chairperson will explicitly instruct the board members that all information obtained through their assignment as a board member be held strictly confidential. The Sheriff or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.
- (2) The Chairperson will preside over the board proceedings and decide any questions of procedure, relevancy, and admissibility of evidence. The Chairperson will rule on objections and all other related matters. The Chairperson will give effect to the rules of privilege recognized by law and will exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

G. General Hearing Board Proceedings

- (1) Pretrial Procedure
 - (a) The defense and prosecution will file:
 - (i) *Requests* for witness subpoenas in writing at least three (3) business days prior to the hearing date;
 - (ii) *Any relevant preliminary motions* in writing at least ten (10) days prior to the hearing date.
- (2) Presentation of Evidence
 - (a) Sheriff's Office presentation.
 - (b) *Cross-examination* by defense.
 - (c) *Examination* by board.
 - (d) *Defense* presentation.
 - (e) *Cross-examination* by Sheriff's Office.
 - (f) *Examination* by board.
 - (g) *Rebuttal* by Sheriff's Office.

- (3) Conclusion
 - (a) *Summation* by Sheriff's Office.
 - (b) *Summation* by defense.
 - (c) *Final rebuttal* by Sheriff's Office.
- (4) Role of the Hearing Board
 - (a) Deliberation leading to findings of fact and recommendation(s) by the board will be done in closed session.
- (5) Degree of Proof

The degree of proof necessary for a hearing board to make a finding of guilt is the "preponderance of the evidence." Preponderance of evidence denotes evidence which is of greater weight or more convincing than that which is offered in opposition to it; that is, evidence which as a whole shows that fact or causation sought to be proved is more probable than not.
- (6) Refusal to Testify

Should a deputy disobey a direct order to testify specifically, directly, and narrowly to the facts, they may be subjected to disciplinary action.

H. Disposition of Administrative Action

- (1) A decision, order, or action taken as a result of a hearing board will be in writing and accompanied by the findings of fact. The findings will consist of a concise statement upon each charge in the case. A finding of not guilty terminates the action.
- (2) If the hearing board makes a finding of guilt, they will:
 - (a) *Reconvene* the hearing;
 - (b) *Consider* the deputy's past job performance and other relevant information as factors before making its recommendation to the Sheriff; and
 - (c) *Receive* any mitigating evidence presented.

- (d) **Recommend** punishment it deems appropriate under the circumstances for each charge, including but not limited to:
 - (i) **Demotion**;
 - (ii) **Dismissal**;
 - (iii) **Transfer**;
 - (iv) **Loss of pay**;
 - (v) **Reassignment**; or
 - (vi) **Other** similar action that is considered punitive.
- (3) A copy of the decision or order, findings of fact, conclusions, and written recommendations for action, will be delivered or mailed promptly to the deputy or their attorney or representative of record and to the Sheriff.
- (4) Within 30 days after receipt of the hearing board's recommendations, the Sheriff must review the findings, conclusions, and recommendations of the hearing board and issue a final order. The recommendation of a penalty by the hearing board is not binding on the Sheriff. The Sheriff will consider the deputy's past job performance as a factor before imposing a penalty. The Sheriff's final order and decision is binding and may be appealed in accordance with § 3-109, Judicial Review.
- (5) The Sheriff may increase the recommended penalty of the hearing board only if the Sheriff personally:
 - (a) **Reviews** the entire record of the proceedings of the hearing board;
 - (b) **Meets** with the deputy and allows the deputy to be heard on the record;
 - (c) **Discloses** and provides in writing to the law enforcement officer, at least ten (10) days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and
 - (d) **States** on the record the substantial evidence relied on to support the increase of the recommended penalty.

- (6) If the misconduct results in dismissal, the Sheriff's final order will include the following information:
 - (a) *A* statement citing the reason for the dismissal;
 - (b) *The* effective date of the dismissal;
 - (c) *The* status of retirement and other employment benefits after dismissal. This is confidential information under Maryland law and is provided to the deputy by the Montgomery County Office of Human Resources.

I. Judicial Review

A decision made under § 3-108, Disposition of administrative action, may be appealed to the Circuit Court for Montgomery County in accordance with §3-109, Judicial review. A party aggrieved by a decision of the Circuit Court may appeal to the Court of Special Appeals.

IV. Emergency Suspension Hearings

A. Emergency Suspension with pay

- (1) The Sheriff may impose an emergency suspension with pay if it appears that the action is in the best interest of the public and the Sheriff's Office. If the Sheriff or designee imposes a suspension, he will promptly notify the deputy in writing of that decision and inform the deputy of the right to a prompt hearing. If the deputy requests a hearing, one will be scheduled promptly. The deputy will be notified in writing of the date and time of the hearing.
- (2) If the deputy is suspended with pay, the Sheriff may:
 - (a) *Suspend* the police powers of the deputy; and
 - (b) *Reassign* the suspended deputy to restricted duties; pending
 - (i) *A* determination by a court with respect to a criminal violation; or
 - (ii) *Final* determination by a hearing board with respect to a disciplinary violation.

B. Emergency Suspension without pay

- (1) If a deputy is charged with a felony, the Sheriff may impose an emergency suspension of police powers without pay.
- (2) A deputy who is suspended without pay under § 3-112. (c)(1), Emergency suspension, is entitled to a prompt hearing.

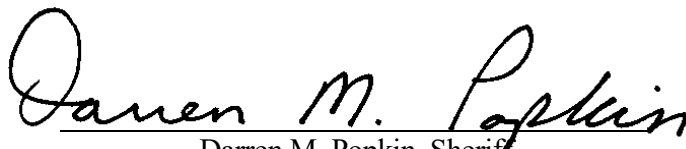
C. Suspension Hearing

- (1) The purpose of a suspension hearing is to receive information as to whether the suspension of a deputy by the Sheriff or designee is reasonable under the circumstances.
 - (a) The Suspension Hearing officer does not make a finding of fact to the Sheriff, but reviews information concerning the reasonableness of the suspension;
 - (b) The Suspension Hearing officer recommends action on the issue of continued suspension.
- (2) The Suspension Hearing Board may recommend that the deputy should be:
 - (a) *Suspended with pay;*
 - (b) *Suspended without pay;*
 - (c) *Returned to full duty; or*
 - (d) *Reassigned to restricted duty and have their police powers suspended.*
- (3) The recommendations of the suspension hearing officer will be put in writing and forwarded to the Sheriff and the deputy within three (3) days of the hearing.
- (4) Upon receipt of the suspension hearing officer's recommendation, the Sheriff will review the recommendation and notify the deputy promptly in writing of their status.

V. **Cancellation**

This General Orders/Personnel Procedures cancels and replaces General Orders/Personnel Procedures 2.08, Effective Date *03/11/08*. Shred replaced directive.

AUTHORITY:



Darren M. Popkin, Sheriff

11/15/2021