

Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the Talbot County Sheriff's Office. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment, or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The Talbot County Sheriff's Office takes seriously all complaints regarding the service provided by the Office and the conduct of its members.

The Office will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local laws; municipal and county rules; and the requirements of any collective bargaining agreement or memorandum of understanding.

It is also the policy of this office to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of office policy, or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate office policy, federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Office.

1010.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Informal - A matter in which the Shift Sergeant is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Criminal Investigation Division, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Criminal Investigation Division, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

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1010.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any office member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1010.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the sheriff's facility and be accessible through the office website. Forms may also be available at other County facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any office member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1010.5 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Office should audit the log and send an audit report to the Sheriff or the authorized designee.

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1010.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1010.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Sheriff or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 - 1. The original complaint form will be directed to the Shift Sergeant of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Commander or the Sheriff, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 - 1. Follow-up contact with the complainant should be made within 24 hours of the Office receiving the complaint.
 - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Shift Sergeant.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Shift Sergeant and the Sheriff are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Administrative Services and the Shift Sergeant for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Shift Sergeant, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:

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1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed.
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1010.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Criminal Investigation Division, the following applies to members covered by the Law Enforcement Officers' Bill of Rights (LEOBR) (Md. Code PS § 3-104):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Talbot County Sheriff's Office or other reasonable and appropriate place.
- (c) No more than one interviewer should ask questions of an accused member. The interviewer shall be a sworn law enforcement officer.
- (d) Prior to any interview, a member should be informed in writing of the nature of the investigation. The member under investigation shall also be informed of the name, rank and command of:
1. The law enforcement officer in charge of the investigation.
 2. The interrogating officer.
 3. Each individual present during an interrogation.
- (e) All interviews should be for a reasonable period and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
1. The member under interrogation may not be threatened with transfer, dismissal or disciplinary action.
- (g) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
1. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related

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investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview may be provided to the member prior to any subsequent interview.
 - (i) A complete record shall be kept of the entire interview of the member, including all recess periods. The record may be written, taped or transcribed.
 1. The interview shall be delayed, if necessary, for no more than 5 business days to permit a deputy to find counsel or other representation. The Sheriff may extend this period for good cause (Md. Code PS § 3-104).
 - (j) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
 - (k) All members shall provide complete and truthful responses to questions posed during interviews.
 - (l) No member should be compelled to submit to a polygraph examination, nor should any refusal to submit to such examination be mentioned in any investigation (Md. Code PS § 3-104).
 - (m) If the member is under arrest, or is likely to be placed under arrest as a result of the interrogation, the member shall be completely informed of all of his/her rights before the interrogation begins.

1010.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

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Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

1010.6.4 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve office members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1010.6.5 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation because charges must generally be filed within one year (Md. Code PS § 3-106).

1010.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1010.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1010.8 EMERGENCY SUSPENSION

For members covered by the LEOBR, when a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Office, the Sheriff or the authorized designee may suspend the accused

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member with pay. A member charged with a felony may be suspended without pay (Md. Code PS § 3-112).

Any member suspended:

- (a) May be required to relinquish any office badge, identification, assigned weapons and any other office equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The member may be required to remain available for contact at all times during such shift, and will report as ordered.

A suspended member shall be provided a prompt hearing (Md. Code PS § 3-112).

1010.9 ADMINISTRATIVE LEAVE

For employees not covered by the LEOBR, when a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Office, the Sheriff or the authorized designee may temporarily assign an accused employee to administrative leave/emergency suspension. Any employee placed on administrative leave:

- (a) May be required to relinquish any office badge, identification, assigned weapons and any other office equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift and will report as ordered.

1010.10 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Sheriff shall be notified as soon as practicable when a member is accused of criminal conduct. The Sheriff may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Sheriff may release information concerning the arrest or detention of any member, including a deputy, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

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1010.11 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Sheriff or the authorized designee through the chain of command. Each level of command should review the report and include his/her comments in writing before forwarding the report. The Sheriff or the authorized designee may accept or modify any classification or recommendation for disciplinary action.

1010.11.1 COMMANDER RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Commander of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Commander may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Sheriff or the authorized designee, the Commander may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Sheriff or the authorized designee, the Commander shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1010.11.2 SHERIFF OR AUTHORIZED DESIGNEE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Sheriff or the authorized designee shall review the recommendation and all accompanying materials. The Sheriff or the authorized designee may modify any recommendation and/or may return the file to the Commander for further investigation or action.

Once the Sheriff or the authorized designee is satisfied that no further investigation or action is required by staff, the Sheriff or the authorized designee shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Sheriff or the authorized designee shall provide the member with a written notice.

Before any discipline may be imposed, the Sheriff or the authorized designee shall ensure notice is given to a member covered by the LEOBR of the member's right to a hearing by a hearing board, the time and place of the hearing, the issues involved, and the member's right to choose an alternate method of forming a hearing board (Md. Code PS § 3-107).

1010.11.3 HEARING BY HEARING BOARD

If the Sheriff or the authorized designee recommends demotion, dismissal, transfer, loss of pay, reassignment, or similar punitive action against a member covered by the LEOBR, a hearing before the hearing board will be held before the action is taken. The hearing board shall be convened and conducted as provided in Md. Code PS § 3-107 and § 3-108 or as otherwise provided in the applicable collective bargaining agreement.

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At least 10 days before the hearing, the deputy shall be notified of the charges against him/her. The deputy also shall be provided with the name of each witness and a copy of the investigatory file, as well as any exculpatory information that relates to the deputy and the charges specified. The deputy and the deputy's representative must execute a confidentiality agreement and pay reasonable costs associated with reproducing the materials (Md. Code PS § 3-104).

The hearing board shall issue a written decision including findings of fact and may also make a written recommendation of a penalty if the hearing board makes a finding of guilt (Md. Code PS § 3-108).

A copy of the hearing board's decision, findings of fact, conclusions and any discipline recommendation shall be sent to the Sheriff and to the member or attorney or representative of record for the member.

1010.11.4 FINAL ORDER OF SHERIFF

Within 30 days after receipt, the Sheriff shall review the findings, conclusions, and recommendations of the hearing board, consider the member's past job performance, and issue a final order (Md. Code PS § 3-108; Md. Code CS § 11-1009).

1010.11.5 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Sheriff or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

1010.11.6 NOTICE REQUIREMENTS

The Sheriff or the authorized designee shall provide any notifications required by the uniform citizen complaint process developed by the Maryland Police Training and Standards Commission (MPTSC) (Md. Code PS § 3-207).

1010.12 PRE-DISCIPLINE MEETING

Employees not covered by the LEOBR will be given a pre-discipline meeting with the Sheriff or the authorized designee.

For members covered by the LEOBR, a pre-discipline hearing will be held if the Sheriff intends to increase the discipline recommended by the hearing board. The Sheriff may increase the hearing recommended discipline only after reviewing the entire hearing board record and providing in writing, at least 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 discipline based. The meeting shall be recorded and the Sheriff shall state on the record the evidence relied upon to support the increase of the recommended penalty. (Md. Code PS § 3-108).

The pre-discipline process is intended to provide the accused member with an opportunity to present a written or oral response to the Sheriff after a hearing board recommendation and prior to imposition of discipline. The member shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.

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- (b) Although the member may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

1010.13 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

Notice that a licensed member separated shall be sent to the Maryland Police Training and Standards Commission (MPTSC) within 30 days of member's change in employment status (COMAR 12.04.01.02).

1010.14 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees not covered by the LEOBR have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by an employment agreement, or other rules.

In the event of punitive action against a member covered by LEOBR, the appeal process shall be as provided in Md. Code PS § 3-109.

1010.15 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their name through a liberty interest hearing, which shall be limited to a single appearance before the Sheriff or the authorized designee.

Any probationary period may be extended at the discretion of the Sheriff in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

1010.16 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.