

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 (Md. Code PS § 3-515). 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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1010.5.1 COMPLAINTS ALLEGING DEPUTY MISCONDUCT

A complaint that alleges a pattern, practice, or conduct by a deputy that includes the deprivation of constitutional rights, a violation of criminal law, or a violation of office standards or policy should include (Md. Code PS § 3-103):

- (a) The name of the deputy.
- (b) A description of the alleged facts leading to the complaint.
- (c) Contact information of the person making the complaint.
- (d) Any other information required by law.

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.

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- (e) Promptly contacting the Administrative Services and the Shift Sergeant for direction regarding the supervisor's role 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:
 - 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 employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, the employee shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Talbot County Sheriff's Office or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, the employee should be informed in writing of the nature of the investigation.
- (e) All interviews should be for a reasonable period, and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (g) Any employee 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. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee 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 an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview may be provided to the employee prior to any subsequent interview.
 - (i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
 - (j) All employees shall provide complete and truthful responses to questions posed during interviews.
 - (k) No employee 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 § 3-107).

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.

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:

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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.

A complaint of deputy misconduct (as defined in Md. Code PS § 3-101) made by a member of the public is subject to immediate review and completion within a sufficient amount of time so that any disposition by the appropriate administrative charging committee can be accomplished within the obligated statutory timeframe (Md. Code PS § 3-113).

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.

1010.6.7 NOTICE RELATED TO DEPUTY MISCONDUCT

The crime victim liaison should serve as the office's contact for the public in complaints related to deputy misconduct covered by Md. Code PS § 3-101 et seq. and should (Md. Code PS § 3-108):

- (a) Explain to a complainant the various processes involved and any decisions made, including status updates through each stage.
- (b) Provide a complainant with an opportunity to review a deputy's statement before completion of the office's investigation, with any redactions of protected information that may be required by law.
- (c) Provide any other support required by law.

The Office should create and maintain a database that enables a complainant to enter their case number to follow the status of the case throughout each stage, and the crime victim liaison should make sure that a complainant is provided information with how to access this database (Md. Code PS § 3-108).

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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 ADMINISTRATIVE LEAVE

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. 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.

1010.8.1 EMERGENCY SUSPENSION

For complaints against deputies covered by Md. Code PS § 3-101 et seq., administrative leave may only be imposed as provided by Md. Code PS § 3-107, which addresses when pay and law enforcement authority may be suspended and which limits suspensions to considerations of the public's best interest and a period of 30 days if the suspension is without pay.

1010.9 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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1010.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

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

1010.10.1 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, 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, 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.

1010.10.2 SHERIFF RESPONSIBILITIES

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

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

- (a) Access to all the materials considered by the Sheriff in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Sheriff within five days of receiving the notice.
 - 1. Upon a showing of good cause by the member, the Sheriff may grant a reasonable extension of time for the member to respond.
 - 2. If the member elects to respond orally, the presentation shall be recorded by the Office. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed the member's response, or if the member has elected to waive any such response, the Sheriff shall consider all information received in regard to the recommended discipline. The Sheriff shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Sheriff has issued a written decision, the discipline shall become effective. Discipline for deputies shall be in compliance with the uniform state disciplinary matrix adopted by the Maryland Police Training and Standards Commission (MPTSC) (Md. Code PS § 3-105).

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1010.10.3 HEARING BY TRIAL BOARD

If a deputy refuses the Sheriff's offer of discipline following an administrative charging committee's charge, the matter should be referred to a trial board for a hearing as provided by Md. Code PS § 3-106 and any related regulations. The Sheriff or the authorized designee should establish a trial board process consistent with state law that will govern these proceedings (Md. Code PS § 3-106). At least 30 days before any trial board proceeding begins, the deputy should be (Md. Code PS § 3-105):

- (a) Provided with a copy of the investigatory record.
- (b) Notified of the charges against the deputy.
- (c) Notified of the discipline being recommended.

Once the decision from the trial board is final, the Sheriff should proceed to conclude the matter in accordance with its recommendations.

1010.10.4 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.

1010.10.5 NOTICE REQUIREMENTS

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

For complaints related to deputy misconduct covered by Md. Code PS § 3-101 et seq., the crime victim liaison should provide a case summary to the complainant within 30 days after the final disposition of the complaint, with any redactions of protected information that may be required by law (Md. Code PS § 3-108).

1010.10.6 ADMINISTRATIVE CHARGING COMMITTEE

For complaints alleging a pattern, practice, or conduct by a deputy that includes the deprivation of constitutional rights, a violation of criminal law, or a violation of office standards or policy involving a member of the public, before the determination or imposition of any discipline, the Sheriff or the authorized designee should forward the investigatory files to the appropriate Administrative Charging Committee, with any redactions of protected information that may be required by law (Md. Code PS § 3-101; Md. Code PS § 3-104). All such submissions to the Administrative Charging Committee may include certain written recommendations from the Sheriff and should be made within the timeframe established by law (COMAR 12.04.09.06).

If the Administrative Charging Committee issues an administrative charge against a deputy, within 15 days thereafter, the Sheriff should offer that deputy discipline that is consistent with the uniform state disciplinary matrix, but in no case less than the discipline recommended by the Administrative Charging Committee (Md. Code PS § 3-105).

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1010.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

Employees not covered by Md. Code PS § 3-101 et seq. will be given a pre-discipline meeting with the Sheriff.

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Sheriff after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation be conducted or may offer any additional information or mitigating factors for the Sheriff to consider.
- (d) In the event that the Sheriff elects to conduct further investigation, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Sheriff on the limited issues of information raised in any subsequent materials.

1010.12 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 MPTSC within 30 days of member's change in employment status (COMAR 12.04.01.02).

1010.13 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees 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 deputy under Md. Code PS § 3-101 et seq., the appeal process shall be as provided in Md. Code PS § 3-109.

1010.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees or deputies under Md. Code PS § 3-101 et seq. 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

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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.

1010.15 RETENTION OF PERSONNEL INVESTIGATION FILES

A record relating to an Administrative or Criminal Investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, may not be:

- (1) Expunged; or
- (2) Destroyed by a law enforcement agency.