



# DISCIPLINARY PROCESS POLICE EMPLOYEES

## Directive 5 - 107

Date of Revision: September 2016 Amends/Cancel: 5-107 April 2015

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### I. PURPOSE

The purpose of this Directive is to establish a written disciplinary process for law enforcement employees.

### II. POLICY

The Department of General Services, Maryland Capitol Police (MCP) will utilize a continuum of progressive supervision and discipline which provides a graduated range of responses to performance or conduct-related problems. Discipline will be administered in a just and fair manner and in keeping with rights of the Police Officers under the Law Enforcement Officers Bill of Rights. .

### III. DEFINITIONS

- A. Brutality is considered to include any situation wherein a law enforcement officer, while acting in his official capacity, resorts to the use of force which is unnecessary in its origin and application; or if force is deemed necessary, is excessive in its application.
- B. Complaint is an allegation of misconduct, inappropriate performance, or violations of any law, Departmental policy, procedure, or directive that is made against any member of the Department.
- C. Counseling is a written or verbal communication between a subordinate and a supervisor that involves performance-related issues. Counseling is a non-disciplinary corrective action.
- D. Hearing means a proceeding during an investigation conducted by a hearing board to take testimony or receive other evidence.
- E. Hearing Board means a board that is authorized by the Chief of Police to hold a hearing on a complaint against a law enforcement officer.
- F. Preponderance of the Evidence is defined in the Maryland Civil Pattern Jury Instructions as follows: to prove by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in the factfinder's mind a belief that it is more likely true than not true. If the evidence is evenly balanced on an issue, then a fact finder's finding on that issue must be against the party who has the burden of proving it.
- G. Emergency Suspension can be imposed by the Chief of Police or his designee when it is determined to be in the best interest of the public, the officer or the Department. The suspension will be with pay unless the officer has been charged with a felony.

- H. Letter of Reprimand is the lowest form of punishment issued by the Department. A letter of reprimand documents that a violation has taken place and is placed in the officer's personnel file.
- I. Exonerated is a disposition used when investigations determine that the incident did occur, but the actions of the accused were justified, lawful and proper.
- J. Not Sustained is a disposition used when an investigation fails to disclose sufficient evidence to prove or disprove an allegation.
- K. Sustained is a disposition used when the investigation disclosed sufficient evidence to establish the culpability of the accused.
- L. Unfounded is a disposition used when the investigation indicates that the alleged acts did not occur.
- M. Summary Punishment can be imposed by the Chief of Police or his designee if the facts of the case are not in dispute and the accused officer waives his right to a hearing. Summary punishment cannot exceed three days suspension without pay or a fine of \$150.
- N. Final Order is the decision of the Chief of Police, after reviewing the hearing board's findings, conclusions, and recommendations. If the hearing has been waived, the decision is rendered after the case is reviewed.

#### **IV. PROCEDURES**

##### **A. ASSESSING DISCIPLINE:**

1. When assessing discipline, commanders will not focus on a single factor, but rather should consider all relevant factors that may raise or lower the original violation category including:
  - a. type of incident;
  - b. injury severity;
  - c. amount of damage;
  - d. intent; and
  - e. employee record and performance level.
2. Recommendations for disciplinary action may be based on:
  - a. mitigating and/or aggravating factors;
  - b. employee motive;
  - c. degree of culpability;
  - d. truthfulness;
  - e. disciplinary record;
  - f. admission of error/mistake by employee; and
  - g. other factors arising from the case.

## B. DESCRIPTION OF CATEGORIES OF VIOLATIONS

1. Misconduct is classified into broad categories of violations based on the degree of severity.
2. Category "A" defines the lowest level of misconduct; Category "E" the highest.
3. Repetition of similar misconduct or violations of more serious offenses will lead to higher penalty categories.

## C. CATEGORY "A" VIOLATIONS

1. Description: very minor misconduct.
2. Repeated Violations: same or similar sustained misconduct within 12 consecutive months enhances next violation to Category "B."
3. Multiple Violations: combination of any three sustained Category "A" violations within 12 months enhances the third violation to Category "B."
4. Disposition: formal counseling.
5. Note: includes preventable departmental collisions with a total loss or damage to property or vehicles less than or equal to \$1,000.

## D. CATEGORY "B" VIOLATIONS

1. Description: minor misconduct.
2. Repeated Violations: same or similar sustained misconduct within 36 months enhances next violation to Category "C."
3. Multiple Violations: combination of any three sustained Category "B" violations within 36 consecutive months enhances the third violation to Category "C."
4. Disposition: written reprimand and/or \$75 fine or one day loss of leave or suspension.
5. Note: includes preventable departmental collisions with a total loss or damage to property or vehicles greater than \$1,000; may be an enhanced violation from Category "A."

## E. CATEGORY "C" VIOLATIONS

1. Description: misconduct.
2. Repeated Violations: same or similar sustained misconduct within 60 months enhances next violation to Category "D."
3. Multiple Violations: combination of any three sustained Category "C" violations within 60 consecutive months enhances the third violation to Category "D."
4. Disposition: loss of leave or suspension for one to three days; and/or transfer or reassignment; and/or fine of \$100 to \$150.
5. Note: may be an enhanced violation from Category "B."

## F. CATEGORY "D" VIOLATIONS

1. Description: serious misconduct.
2. Repeated Violations: N/A
3. Multiple Violations: combination of any three sustained Category "D" violations within 60 consecutive months enhances the third violation to Category "E."
4. Disposition: loss of leave and/or suspension for four to 15 days; and/or transfer or reassignment; and/or ineligible for promotion for 18 months; and/or fine of \$200 to \$250.
5. Note: may be an enhanced violation from Category "C."

## G. CATEGORY "E" VIOLATIONS

1. Description: very serious misconduct.
2. Repeated Violations: N/A
3. Multiple Violations: N/A
4. Disposition: more than 15 days loss of leave and/or suspension; and/or transfer or reassignment; and/or demotion; and/or ineligible for promotion for 24 months; and/or fine of \$500; and/or termination of employment.
5. Note: may be an enhanced violation from Category "D."

## H. DISCIPLINARY MATRIX (APPENDIX A)

1. The disciplinary matrix ensures that similar violations receive similar penalties.
2. The matrix includes but is not limited to all possible charges which may arise out of violations of any DGS-MCP rules, regulations or orders.
3. Violation of any other provisions of any other rule or regulation not referenced in the matrix will fall into a category of a similar offense unless extenuating circumstances exist where strict adherence would render an injustice to the MCP and/or the employee.
4. Commanders will consult with the Operations Commander if an offense does not appear to fall into a similarly listed category; if exception is noted, variation from the matrix is only permitted when authorized by the Operations Commander.

## I. PERSONNEL COUNSELING

1. Personnel Counseling is non-disciplinary and used for very minor violations. A supervisor may counsel a subordinate when the member's performance indicates the need for remedial action, such as that designed to prevent a recurrence of the problem.
2. Personnel Counseling is appropriate for Category "A" violations.

3. At the discretion of the supervisor, the counseling may be documented by completion of a Personnel Counseling Form (Form 165).
4. If a counseling form is used, the supervisor will sign it and request that the subordinate sign it. If the subordinate refuses to sign the form, the supervisor will write "REFUSED" in the space reserved for the officer's signature.
5. Supervisors should:
  - a. conduct counseling at the time of the violation, or as soon as possible after the occurrence of the inappropriate behavior or at the conclusion of the investigation;
  - b. focus counseling on the violation, pointing out areas for improvement and recommending a course of action, including training, to help the officer improve; and
  - c. encourage the officer to offer suggestions to improve the behavior and performance.
6. The counseling itself is remedial in nature and the placing of the counseling form in the file is part of an internal administrative record keeping function. Counseling sessions do not amount to either interrogation or investigation. The Maryland Court of Special Appeals has ruled that even though an officer has been counseled by a supervisor and a counseling form placed in the officer's personnel file, the Chief of Police may still investigate the matter and ultimately punish the officer for the action/inaction that led to the initial counseling without violating the principles of double jeopardy or the LEOBR.

#### J. ALTERNATIVE DISCIPLINARY PROCESS (ADP)

1. ADP is a form of discipline utilized for minor violations of agency policy. However, departmental collisions and damage or loss of MCP equipment are not eligible as these incidents require an administrative investigation.
2. The penalty offered under ADP cannot exceed the penalty limits for Summary Punishment.
3. ADP may be offered for violations consistent with Category "B" or "C" offenses.
4. Commanders may offer ADP when:
  - a. the alleged violations are serious enough to compel formal disciplinary action;
  - b. an administrative investigation is not conducted;
  - c. the commander has conferred with the Operations Commander to discuss the case, the feasibility of offering ADP and the recommended disciplinary action.
  - d. facts which constitute a minor violations are not in dispute; and
  - e. The police officer must agree that the minor misconduct occurred and want to resolve the issue by accepting the disciplinary action recommended by the commander.
5. It is the officer's option to accept ADP; if he does not accept ADP, an investigation will be

conducted to determine if misconduct has occurred.

6. Procedures:

- a. When an agreement is reached with the Operations Commander regarding the use of ADP and the recommended discipline, the officer's commander will:
  - i. forward the original Form 176 to the Criminal Investigations Section (CIS) Supervisor, noting the agreed upon disciplinary recommendation; and
  - ii. meet with the officer to discuss the allegation and recommended discipline.
  - iii. ensure the officer understands that acceptance of the recommended discipline only applies under ADP;
  - iv. advise the officer that statements made by the officer in the meeting with the commander may not be used in any disciplinary investigation or proceedings against the trooper;
  - v. advise the officer that additional investigations and disciplinary actions may result if other allegations or information comes to light; and
  - vi. that acceptance of ADP will not excuse the officer from being interviewed at a later time to provide information pertaining to other troopers or additional allegations.
- b. If the officer accepts ADP, he will sign the Form 181 which will be returned to the Operations Commander for processing.
- c. If the officer does not accept the recommended discipline:
  - (1) the officer will be ordered, in writing, not to discuss the case with anyone other than his counsel, commander or the investigator;
  - (2) The Operations Commander will be notified of the refusal to accept ADP; and
  - (3) the alleged violation will be investigated.

6. Documentation:

- a. The original and one copy of the Form 181 and the Form 176 along with the commander's endorsement will be forwarded to the CIS Supervisor.
- b. The CIS Supervisor will forward one copy of the Form 181 to the Human Resources Division and request a personnel order.

K. SUMMARY PUNISHMENT

1. Summary Punishment is a form of disciplinary action which can be offered by commander for minor violations of agency policy.

2. Summary punishment cannot exceed three days suspension without pay or a fine of \$150.
3. Summary Punishment may be offered for violations consistent with Category “B” or “C” offenses.
4. Commanders may offer summary punishment when:
  - a. The facts which constitute a minor violations are not in dispute;
  - b. The officer accepts the punishment recommended by his commander; and
  - c. The officer waives the right to a formal hearing provided for by LEOBR.
5. The authority to impose summary punishment charges a Detachment Commander with the responsibility of exercising his authority in a fair and judicious manner. The Commander must ensure that the case investigator promptly provides the Commander with sufficient information to make an appropriate disposition of the incident. The investigation should reveal:
  - a. whether an offense was committed.
  - b. whether the employee was involved in the offense.
  - c. the disciplinary record of the employee
  - d. recommendations as to sustained or non-sustained findings.
6. Procedures
  - a. Commanders will:
    - (1) prepare a Form 181, Notification of Charges, with a concise statement of facts;
    - (2) refer to the Disposition Matrix when assigning a punishment;
    - (3) meet with the officer to determine whether the facts of the case are in dispute;
    - (4) if the facts are not in dispute, allow up to five working days for the officer to accept the punishment; and
    - (5) ensure that the officer accepting Summary Punishment signs the second page of MCP Form 181, Waiver of Law Enforcement Officers’ Bill of Rights and Acceptance of Punishment.
  - b. If the facts of the case are in dispute, Summary Punishment will not be offered and the case will be processed in accordance with the procedure for Hearing Boards as outlined in Directive 5-108.
  - c. Documentation
    - (1) The original and one copy of the Form 181 and the Form 176 along with the commander’s endorsement will be forwarded to the Operations Commander.

- (2) The Operations Commander will forward one copy of the Form 181 to the Human Resources Division and request a personnel order.

#### L. CASES EXCEEDING SUMMARY PUNISHMENT

1. In all sustained cases where the potential offense carries a category “D” or “E” penalty in the disciplinary matrix, the case will be screened by the Deputy Chief.
2. The employee’s commander will contact the Operations Commander to schedule a screening of the case.
3. Once the screening process is completed, the commander will prepare the MCP Form 181(s) however, the commander will not sign the Form 181(s) until the case has been reviewed by the Deputy Chief,
4. The Deputy Chief may then forward the case file to Attorney General assigned to the Department of General Services for legal sufficiency.

#### M. DISCIPLINARY PROCEDURES FOR PROBATIONARY OFFICERS

1. A probationary officer’s commander will attempt to correct inappropriate behavior through supervision and training.
2. Probationary officers are not entitled to LEOBR provisions unless there is an allegation of brutality or excessive force.
3. If disciplinary action is taken, commanders will:
  - a. document the behavior on a Form 186, Probationary Officer Record of Disciplinary Action;
  - b. select a penalty with concurrence of the Operations Commander;
  - c. ensure that the case file is reviewed by the Chief of Police or his designee if the penalty exceeds a suspension of fifteen days;
  - d. present the completed Form 186 to the officer and have him sign the form; and
  - e. forward the Form 186 and the completed case file to the CIS Supervisor for filing.

#### M. ADVERSE MATERIAL

The Department will not insert adverse material into the personnel file of a police officer unless the officer has an opportunity to review, sign, and receive a copy of, and comment in writing on the adverse material

#### N. EXPUNGEMENT

1. An officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:

- a. The Department has exonerated the officer of all charges in the complaint; or determined that the charges were unsustainable or unfounded, or an administrative hearing board acquits, dismisses, or makes a finding of not guilty; and
  - b. Three years have passed since the findings by the Department or hearing board.
2. If the requirements for expungement have been met, the Chief of Police or his designee will notify the officer, in writing, the date that the expungement was completed.
3. If the conditions for expungement have not been met, the Chief of Police or his designee will notify the officer, in writing, why the expungement cannot be granted.
4. Notification to the officer of the decision concerning expungement will be made within thirty days of receiving the officer's request for expungement.