



# ADMINISTRATIVE COMPLAINTS AGAINST POLICE EMPLOYEES

## Directive 5 - 105

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### I. PURPOSE

To establish standard and consistent procedures for handling administrative complaints against police employees.

### II. POLICY

The Department of General Services Maryland Capitol Police (MCP) will accept and investigate complaints made against members in a manner that is fair and impartial. The MCP will investigate all complaints against officers, including complaints that are received anonymously, in a timely manner according to established procedure and laws.

### 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, if proven factual, which would constitute misconduct; differences of opinion between an officer and a citizen over the issuance of a traffic citation and/or criminal arrest are not complaints unless the allegation involves misconduct such as improper demeanor, use of force, etc.

### IV. PROCEDURES

#### A. COMPLAINTS

1. A complaint may be received by any employee at any time, however, the employee first acquiring knowledge of the complaint will immediately notify a supervisor, who will take the initial complaint.
2. It is imperative that complainants are met with respect, courtesy, and understanding; a cynical or negative attitude only aggravates the situation and does nothing to further the core values or mission of the MCP.
3. The employee receiving the complaint will:
  - a. record complaints on a Form 176, Complaint Against Personnel;

- b. make every effort to identify the person making the complainant;
  - c. Anyone involved in the alleged incident;
  - d. Any reported witnesses that may have information concerning the incident;
  - e. Immediately forward the Form 176, with an attached routing slip, through their commander, to the commander of the employee against whom the complaint is made.
4. If the employee who is the subject of the complaint is not assigned to the detachment receiving the complaint the:
    - a. complaint will be accepted and forwarded as required; and
    - b. complainant will not be directed or referred to the employee's work assignment in order for the complaint to be filed.
  5. Employees desiring to file a complaint against another employee will complete a Form 176, sign the Form 176, and forward it to the involved employee's commander.
  6. Employees receiving a complaint will not discuss the nature of the complaint with the involved employee or other unauthorized persons.
  7. Complaints received by the Chief's office will be forwarded to the appropriate detachment.
  8. All complaints, including those received anonymously will be recorded on a complaint form. This will be done regardless of the duty status of the police officer at the time of the incident that the officer is/was allegedly involved.

## B. NOTIFICATIONS

The following complaints must be reported to the Chief of Police or his designee immediately:

1. All cases wherein a member is arrested or criminally charged;
2. All cases involving domestic violence or child abuse;
3. All cases involving allegations of violation of criminal statutes;
4. All cases that relates to the integrity of the member, regardless of whether or not criminal charges are filed;
5. All cases where an arrestee or other person is treated and admitted to a medical facility because of injuries sustained during police contact;

6. All cases involving significant community interest, civil unrest, or which receive media coverage that depicts or otherwise indicates police misconduct;
7. All cases where a police officer has, or is alleged to have been involved in a shooting incident/discharge of firearms, except during practice or qualification sessions;
8. Refusal to submit to drug or alcohol testing when ordered to do so.

### C. COMPLAINTS OF BRUTALITY

1. A complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, 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 was present and observed the alleged incident; or
  - d. The parent or guardian of the minor child, if the alleged incident involves a minor child.
2. Unless the complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action for brutality may not be initiated and an action may not be taken.
3. The Maryland Court of Special Appeals has ruled that the Law Enforcement Officers Bill of Rights, pertaining to brutality complaints are designed to "protect the law enforcement officers from being subjected to the harassment of frivolous complaints received from outside the police agency." The Court ruled that the law enforcement agency may initiate an investigation of its own volition and that if the investigation leads to charges being made against a police officer, their adjudication may proceed.
4. The Maryland Court of Appeals has ruled that if "a qualified complainant files a sworn brutality complaint within the 90-day period, the police agency has a duty to proceed with an investigation. If that same complainant files a sworn complaint more than 90 days after the incident of alleged brutality, there is no duty to investigate. But if the police agency decides on its own to proceed with the investigation, and with the placing of charges if the investigation so indicates, the [LEOBR] does not prevent it from doing so." The Chief of Police reserves the right to order an investigation concerning the conduct of any officer(s) involved in a situation if the Chief of Police deems it appropriate to do so.
5. Members of MCP will not dismiss or discourage a complainant from making an allegation of brutality simply because the alleged conduct giving rise to the complaint exceeded the 90 day time limit. The complaint will be accepted and processed as outlined in this directive. The Chief of

Police or his designee will then determine whether to investigation into misconduct will be initiated.

#### D. INITIAL RESPONSIBILITIES OF THE EMPLOYEE'S COMMANDER

##### 1. Commanders will:

- a. review the Form 176 to determine the seriousness of the complaint;
- b. advise the complainant that the complaint has been received and will be reviewed;
- c. ensure that a copy of the Form 176 is immediately faxed or emailed to the Criminal Investigations Section (CIS) Supervisor and the Operations Commander;
- d. contact the CIS Supervisor to obtain a tracking number; and to consult on the appropriate assignment of the investigation;

#### E. DISCRETIONARY RESPONSIBILITIES OF THE EMPLOYEE'S COMMANDER:

1. Commanders have the authority and discretion to resolve minor complaints or violations when formal disciplinary action is unnecessary.
2. A complaint is considered a minor violation when it involves:
  - a. errors in judgment; or
  - b. incidents that can be resolved to the employee's commander's satisfaction.
3. Cases resolved under this paragraph require the employee's commander to:
  - a. notify the Operations Commander, by endorsement, how the case was resolved;
  - b. contact the complainant by letter advising him of the final disposition of the case; and
  - c. forward the Form 176 with a copy of the endorsement and a copy of the case disposition letter (letter of notification to the complainant) to the CIS Supervisor.

#### F. INVESTIGATION PROCESS FOR COMPLAINTS AGAINST POLICE OFFICERS

##### 1. An internal investigation is complete when:

- a. the complainant and witnesses have been interviewed;
- b. employees have been questioned;
- c. all physical evidence has been examined;
- d. all leads have been explored; and
- e. the case has been accurately reported.

2. For the complainant/witness interview, the investigator will, when feasible:
  - a. conduct all interviews in-person and obtain all pertinent identifiers from the person interviewed;
  - b. audibly record all statements;
  - c. preserve all statements as part of the investigative case file;
  - d. determine every relevant fact known to the complainant and/or witnesses; and
  - e. determine the motivation of the complainant and/or witnesses, such as his relationship with the complainant or officer.
3. The investigator will, when feasible:
  - a. pursue all leads developed through complainant and witness interviews;
  - b. handle all physical evidence in accordance with established procedures;
  - c. obtain all pertinent records (e.g., MVA records, telephone bills, court documents, MCP records) that could be used to:
    - (1) assist the investigation; and
    - (2) corroborate or refute statements;
  - d. develop leads;
  - e. if photographs are useful for evidentiary purposes (e.g., identification, to document injury), photograph the complainant, trooper and the scene of the incident;
  - f. when photographs are used for identification purposes, follow the MCP's established photo lineup guidelines;
  - g. obtain sketches which may supplement photographs, where appropriate;
  - h. when the investigation involves a firearm being discharged by an officer, determine:
    - (1) if the weapon is an approved weapon;
    - (2) if it was issued by the MCP;
    - (3) if it is a primary or secondary weapon; and
    - (4) if the ammunition is MCP approved;
  - i. document the condition of the firearm, including a complete description of its:
    - (1) make, model and caliber;
    - (2) serial number; and
    - (3) the number of rounds of ammunition in the weapon, in the trooper's possession and in each individual magazine.
4. Statements from the Accused Police Officer
  - a. As a general rule, the interrogation of the officer occurs after the complainant and all witnesses have been interviewed.
  - b. The investigator determines the sequence of interviews.

## G. WRITTEN REPORTS

1. Generally, a recorded interview/interrogation is preferred; however, officers may still be required to submit reports detailing the facts concerning their involvement in an incident.
2. If the report is likely to contain information that may be used as evidence against an officer in a disciplinary hearing, the report is considered an interrogation and the supervisor ordering the report will:
  - a. provide the officer with a completed copy of Form 178, Notification of Complaint - Waiver of Rights;
  - b. provide the officer with a Form 178A, ordering him to submit the written report;
  - c. allow up to 10 days for the officer to consult with counsel or other representative of his choice prior to submitting the report; and
  - d. before ordering a report from an officer where criminal charges may result, the supervisor will consult with the investigator of the criminal complaint.

## H. INTERROGATION OF ACCUSED OFFICER

1. Interrogations of officers will be in conformance with the Law Enforcement Officers' Bill of Rights (LEOBR).
2. Probationary officers are not entitled to LEOBR provisions unless the allegation involves brutality in the performance of the officer's duties.
3. Before every interrogation, including the submission of a detailed report, the investigator conducting the interrogation will complete Form 178, Notification of Complaint - Waiver of Rights.
4. The Form 178 advises the officer that the investigation and interrogation must be conducted in conformance with LEOBR and that he may retain or waive any or all of the rights that he is afforded under LEOBR.
5. The Form 178 should clearly:
  - a. state that the officer is the subject of an investigation, and
  - b. briefly describe the nature of the investigation.
6. The officer subject to the interrogation will be allowed to read or have read to him the Form 178 prior to the interrogation.
7. The investigator must be certain the trooper is provided with the opportunity to waive or retain his LEOBR rights before any statement can be taken.
8. If the officer waives his LEOBR rights, he will indicate by signing the Form 178 in the space provided.
9. The officer will note those rights he wishes to retain in the space provided.
10. The officer subject to the interrogation will sign the Form 178 and receive a copy.
11. The original Form 178 will be placed in the case file.

12. The investigator will provide the officer with a Form 178A ordering him to submit to the interrogation.
13. The officer has the right to be represented by counsel or any other representative of his choice who will be present and available for consultation at all times during the interrogation, unless the trooper waives this right.
14. All questions directed to the officer during the interrogation will be asked by and through one interrogator during any single interrogating session.
15. The interrogation will take place at:
  - a. the officer's duty assignment;
  - b. the detachment in the area where the incident occurred; or
  - c. any other reasonable and appropriate place designated by the investigator, unless the officer waives this right.
15. The interrogator will audibly record the interrogation and include the date and time the interrogation begins, all interruptions, and the time the questioning concludes.
16. Upon completion of an investigation, and no less than 10 days prior to any hearing, the officer or his representative may request to review the record of the interrogation.

#### I. COMPELLED TESTS

1. Police officers may be compelled to submit to blood tests, breath tests and urinalysis tests for controlled dangerous substances.
2. Police officers may be compelled to submit to other forensic testing (e.g. providing handwriting samples or hair samples) as may be required to conduct a thorough investigation.
3. Police officers may be compelled to disclose financial information to the extent that the information is necessary to investigate a possible conflict of interest with respect to the performance of the officer's official duties or the disclosure is required by federal or State law.

#### J. POLYGRAPH EXAMINATIONS OF POLICE OFFICERS

1. Polygraph examinations of police officers will be conducted in accordance with MD. CODE ANN., PUB. SAFETY § 3-104.
2. Police officers may voluntarily submit or be ordered to submit to polygraph examinations.
3. The results of a polygraph examination may not be used as evidence in any administrative hearing when the officer has been ordered to submit to an examination by the MCP unless the MCP and the officer agree to the admission of the results at the administrative hearing per MD. CODE ANN., PUB. SAFETY § 3-104.
4. The police officer's representative need not be present during the actual administration of a polygraph examination if:
  - a. the questions to be asked are reviewed with the officer or his representative prior to administering the examination;

- b. the representative is allowed to observe the administering of the polygraph examination; and
  - c. a copy of the final report is made available to the officer or his representative within 10 days.
5. A post-polygraph interrogation will require the issuance of a new Form 178, briefly detailing the nature of the investigation, and a Form 178A directing the officer when and where to appear for the interrogation.

#### K. FAILURE TO COMPLY

Before ordering a police officer to submit detailed reports; or submit to an interrogation, interview, blood, breath, or urine tests, and/or polygraph examination; the officer must first be advised that:

1. information supplied through an officer's answers will not be used against him in subsequent criminal proceedings.
2. the following actions are separate violations of the rules of conduct, constitute grounds for disciplinary action and may cause the officer's termination:
  - a. refusal to cooperate in an investigation;
  - b. refusal to submit to a blood alcohol test, or a blood, breath, or urine test for use of controlled dangerous substances;
  - c. refusal to submit to a polygraph examination, an interrogation or an interview; and
  - d. refusal to submit a detailed report.

#### L. INVESTIGATIVE REPORT FORMAT

The completed investigation case file will be organized as follows:

1. Complaint Against Personnel Report, Form 176.
2. Report of Investigation (follow the detailed report format to ensure the uniformity of internal investigative reports).
3. Appendices:
  - a. Statement of complainant, if different from that of the victim.
  - b. Statement of victim, if different from that of complainant.
  - c. Statement of witnesses.
  - d. Notification of Complaint, Form 178, if applicable.
  - e. Order to Submit to Interrogation, Form 178A, if applicable.
  - f. Detailed report of the accused officer or transcript of interrogation, if applicable.
  - g. Other statements or detailed reports.
  - h. Additional exhibits (e.g., photographs, diagrams, charts).



## M. COMPLETION OF THE INVESTIGATION

1. The investigator will recommend for each violation, based upon a preponderance of evidence, a finding of:
  - a. NON-SUSTAINED if the investigation fails to disclose sufficient information to clearly prove the allegation;
  - b. SUSTAINED if the investigation disclosed sufficient information to substantiate the allegation; or
  - c. UNFOUNDED if the investigation revealed that the reported incident did not occur.
2. The officer's commander, upon receipt of the completed investigation, will prepare an endorsement.
  - a. The endorsement will include whether the commander agrees with the investigator's findings.
  - b. If the commander disagrees with the findings, he will state the factual basis for not accepting the investigator's conclusions.
  - c. An officer's commander who chooses to change a sustained finding to a non-sustained or unfounded finding must, in the endorsement, indicate that they have the concurrence of the Operations Commander.

## N. TIME LIMITS

Except in cases of criminal activity or excessive force, administrative charges must be brought against a police officer within one year after the act that gives rise to the charges comes to the attention of the MCP. Therefore, administrative investigations will be completed within 30 calendar days unless an extension is approved by the operations commander.

## O. REPORT TRACKING FOR INVESTIGATIONS

1. All investigative reports will be routed by Form 145, Routing Slip.
2. A copy of the routing slip will be maintained by each commander who forwards the report to ensure accountability during the routing process.
3. Commanders will create a master file for routing slips of investigative files.

## P. UNFOUNDED/NON-SUSTAINED/ADP CASES

1. The officer's commander will obtain the concurrence of the operations commander to offer ADP.
2. Route the original case file when the case has been disposed of under ADP or is unfounded/non-sustained to the Commander, Special Services Division.
3. The case file will include the officer's commander's endorsement and a copy of the letter of case disposition to the complainant.

4. When the complainant is an MCP employee, the involved officer's commander will notify the employee of the disposition via a Form 17 and a copy of the Form 17 will be sent to SSD for inclusion in the case file.

#### Q. SUSTAINED CASES INVOLVING SUMMARY PUNISHMENT

1. Summary Punishment, found in Directive 5-105, may be offered to police officers when a Category A, B or C violation has occurred.
2. The officer's commander will obtain the concurrence of the operations commander to offer summary punishment.
3. The case file will include the officer's commander's endorsement and a copy of the letter of case disposition to the complainant.
4. When the complainant is an MCP employee, the involved officer's commander will notify the employee of the disposition via a Form 17 and a copy of the Form 17 will be sent to CIS Supervisor for inclusion in the case file.

#### R. CASES FOR HEARING BOARD PROSECUTION

1. In all sustained cases where the potential offense carries a Category "D" or "E" penalty in the Disciplinary Matrix the case will be reviewed by the Chief of Police or his designee.
2. The accused officer's commander will contact the Chief of Police or his designee to schedule a screening of the case.
3. Once screening is completed, the commander will prepare the Form 181; however, the commander will not sign the Form 181 until the case has been reviewed by the DGS, Office of Legal Counsel (OLC) for legal sufficiency.
4. The OLC will return the case file with their endorsement for legal sufficiency to the Chief of Police or his designee.
  - a. If OLC determines that a case is not legally sufficient and cannot be prosecuted, the officer's commander will notify the accused officer that the case will not be presented for prosecution.
  - b. Cases which will not be prosecuted will be routed by the commander with an endorsement and a copy of the complaint disposition letter to the CIS Supervisor.