

Maryland-National Capital Park Police
Prince George's County Division

DIVISION DIRECTIVE

TITLE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS/INTERNAL AFFAIRS PROCEDURES			PROCEDURE NUMBER PG1500.0
SECTION Disciplinary Procedures	DISTRIBUTION A	EFFECTIVE DATE 08/01/04	REVIEW DATE 08/01/06
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RELATED DIRECTIVES	REFERENCES CALEA 26	AUTHORITY Commander Larry M. Brownlee, Sr.-Division Chief	

NOTE: This directive contains direct quotes from the Maryland Code, Public Safety Article §3-101 - 113, regarding the Law Enforcement Officers' Bill of Rights. Officers are cautioned that, while every effort will be made to keep this information current, the latest version of the law should be checked to determine the current language.

I. POLICY

It is the policy of this Division to thoroughly and expeditiously investigate all complaints concerning police practices, thereby instilling public confidence in the Division. All such investigations, at the discretion of the Chief, Park Police Division, shall be assigned to an Assistant Chief, Director of Area Operations for investigation by appropriate supervisory personnel in the case of minor complaints of misconduct, or a supervisory officer designated as the investigator in the case of serious allegations of misconduct, either of whom shall report all findings directly to the Chief, Park Police Division. These procedures apply to allegations of misconduct occurring both on-duty and off-duty, when the off-duty conduct would bring discredit to the Division.

II. DEFINITIONS

- A. **Administratively Closed:** A disposition used when the complainant has withdrawn the complaint, the complainant could not be contacted, respondent officer is no longer employed by the Division or when the complainant misunderstood the law or procedure.
- B. **Assistant Chief(s):** Director of Area Operations, holding the rank of Captain from Field Operations, Support Operations, or Investigate Operations.
- C. **Brutality:** Brutality is the use of excessive or unjustified physical force by an officer in the exercise of official duties.

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- D. **Chief of Police:** Director of Parks and Recreation or the officer designated by the Director of Parks and Recreation.
- E. **Complaint:** An allegation of misconduct made against an employee(s) of the Division from any source, provided that such complaint is made within thirty (30) days of the occurrence or notification of the incident.
- F. **Complainant:** An aggrieved person, a member of the aggrieved person's immediate family if the aggrieved is a minor child, any person with first hand knowledge obtained as a result of the presence at and observation of the alleged incident.
- G. **Counseling:** The non-punitive, non-disciplinary criticism, guidance, training, or other action taken to assist a subordinate in correcting a performance deficiency.
- H. **Disciplinary Action:** Punishment imposed by the Chief of Police that exceeds a \$150.00 fine or three days suspension.
- I. **Chief, Park Police Division:** The senior ranking officer assigned to the Park Police Division.
- J. **Emergency Suspension:** A non-punitive suspension with pay imposed upon a determination that the action is in the best interest of the public and the Division, or a suspension without pay imposed by the Chief, Park Police Division when an officer has been charged with the commission of a felony.
- K. **Exonerated:** The allegation in fact did occur, but the actions of the agency employee were legal, justified, proper, and in conformance with the agency policy and procedure.
- L. **Final Order:** The decision of the Chief of Police, after review of the hearing board's findings, conclusions and recommendations, or in cases where the hearing board is waived, after a review of the investigative file.
- M. **Letter of Reprimand:** This is the least severe punishment that can be given to an employee. The letter documents the violation for inclusion into the employee's personnel file.
- N. **Minor Allegations of Misconduct:** Minor complaints of misconduct include those allegations, which when sustained, would be disciplined through the imposition of summary punishment.
- O. **Non-Punitive Transfer:** A non-punitive reassignment, where the Chief determines that action to be in the best interests of the internal management of the law enforcement agency. This is a non-disciplinary personnel action.

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- P. **Non-Sustained:** The investigation determined that the actions of the respondent were justified, lawful or proper and there was no basis for the allegation(s), or the investigation disclosed insufficient evidence to prove allegations of improper conduct.
- Q. **Respondent:** The officer accused of misconduct and under investigation as a result of a complaint.
- R. **Serious Allegations of Misconduct:** Serious complaints of misconduct include those allegations, which when sustained, would be disciplined through the imposition of punishment more severe than summary punishment. Serious complaints include, among other acts, brutality, racial prejudice, misappropriation of monies, or untruthful statements.
- S. **Summary Punishment:** Disciplinary action imposed by the highest ranking officer of a unit or section, or officer acting in that capacity, when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days suspension without pay, or a fine of \$150.00.
- T. **Sustained:** The investigation disclosed sufficient evidence to clearly prove allegations of improper conduct.
- U. **Unfounded:** The investigation of the complaint indicates that the alleged acts did not occur or failed to involve officers of this command.
- V. **Unreported Misconduct:** The investigation revealed the occurrence of sustained acts of misconduct not alleged in the complaint.

III. AUTHORITY IN DISCIPLINARY MEASURES

- A. The Chief, Park Police Division has authority for disciplinary action involving police officers and police officer candidates in complaints of brutality within the guidelines of the Law Enforcement Officers' Bill of Rights.
- B. The Chief of Police, Director of Parks has authority for disciplinary action involving police candidates (except complaints alleging brutality) and civilian employees.
- C. Assistant Chief (s), Director of Area Operations, has the authority to issue summary punishment not to exceed three (3) days suspension or a fine in the amount of one hundred fifty (150) dollars for minor acts of misconduct.

IV. RECEIVING COMPLAINTS

- A. All complaints should be documented on the "Complaint Concerning Police Practices" (Appendix A) form and forwarded to the Chief, Park Police Division.

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1. A citizen desiring to complain about an officer either in person or by telephone shall be referred to the on duty Operations Duty Officer (ODO). This person shall attempt to resolve the matter. In the event that the matter cannot be resolved, the citizen shall be advised of the proper procedures to file a complaint. Regardless, this supervisor shall prepare a written memorandum containing a synopsis of the allegations and forward this memorandum directly to the Chief, Park Police Division.
2. Complaints should be documented in written form by the complainant and forwarded to Chief, Park Police Division.
3. If the complainant refuses to document the complaint, and the allegation, if factual, would constitute misconduct, the receiving officer will document the complaint utilizing the "Complaint Concerning Police Practices" form and forward it to Chief, Park Police Division.
4. "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: the aggrieved individual, a member of the aggrieved individual's immediate family, an individual with first hand knowledge obtained because the individual was present at and observed the alleged incident, or by the parent or guardian in the case of a minor child, if the alleged incident involves a minor child. Unless a complaint is filed within 90 days after the alleged brutality, an investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken." (Public Safety Article §3-104(c)).

At the option of the Division, any allegation of excessive force may be investigated regardless of whether or not the time limitations as imposed have expired. (Baltimore City Police Dept. vs. Andrew, 318 Md.3 (1989))

- B. An employee may file a complaint against an officer of the Division. The complaint will document the identical information prescribed above for a citizen's complaint, and be submitted directly to the Chief, Park Police Division.
- C. Anonymous complaints are not excluded from investigation. Efforts should be made to gain the cooperation of the complainant. Many anonymous complaints, by their very nature, are difficult to substantiate, yet this shall not preclude a preliminary inquiry into the matter, and where possible, a preliminary inquiry into the complaint shall be made. The person receiving an anonymous call will document the complaint on the "Complaint Concerning Police Practices" form and forward it directly to the Chief, Park Police Division.
- D. The Chief, Park Police Division may investigate allegations against officers from whatever source consistent with law when it is determined that such investigation is

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in the best interest of the Division. (Maryland State Police vs. Resh, 65 Md. App.167 (1985))

- E. Division employees shall not attempt to influence, harass, intimidate or otherwise interfere with the lawful actions of any participant, including but not limited to a complainant, witness, or board member, in an internal investigation or administrative hearing board.

V. EMERGENCY SUSPENSION

- A. The authority to suspend employees in emergency situations is delegated by the Chief of Police to supervisors at the rank of sergeant, when the acts are of such gravity and nature that such suspension is in the best interest of the public or the Maryland-National Capital Park Police.
 - 1. The supervisory officer conducting the suspension shall prepare and complete an "Emergency Suspension Notice" (Appendix B) specifically setting forth reasons for the suspension. This notice shall be given to the officer at the time of the emergency suspension, if circumstances allow.
 - 2. The Chief, Park Police Division and the respondents Assistant Chief, Director of Area Operations shall be notified immediately and a copy of the "Emergency Suspension Notice" will be forwarded immediately to the Chief, Park Police Division for review and action.
 - 3. The Chief, Park Police Division shall conduct a hearing if requested by the suspended officer (Public Safety Article §3-112). The hearing will take place within three (3) days after receiving the request. Upon review, the Chief, Park Police Division may impose one of the following actions:
 - a. Continue the suspension.
 - b. Return to full duty.
 - c. Assign to temporary duties.
 - 4. The Chief, Park Police Division, exclusive of return to full duty, shall review any such action every twenty (20) days for the purpose of continuing or terminating the action. Such action will be in writing and forwarded to the affected officer within two (2) working days.
 - 5. Emergency suspensions shall be with pay, unless the respondent has been charged with a felony, and does not prohibit the subsequent filing of a "Complaint Concerning Police Practices".
 - 6. Personnel initiating an emergency suspension shall take custodial possession of a suspended officer's service weapon, police badge, police credentials, and vehicle keys (See Emergency Suspension Check List, Appendix C).

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7. While on emergency suspension, pending an internal investigation, the employee will contact their supervisor daily at the beginning of their assigned tour of duty; additionally, the employee must provide the Internal Affairs Section with information on how they may be contacted during normal business hours. Officers in an emergency suspension status must disclose trips that would prevent them from responding to their worksite within ninety (90) minutes.
8. If the employee will be farther than 40 miles outside of the Bi-County area the employee will also provide their location and/or destination. Trips of more than one day beyond this limit must be approved by the Internal Affairs Section.

VI. ADMINISTRATIVE PROCEDURES

- A. A record of all complaints made against the Division and its employees shall be maintained. A confidential complaint log shall be kept by the Chief, Park Police Division for this purpose.
- B. The Chief, Park Police Division shall determine whether an investigation will be conducted by an Assistant Chief, Supervisor or Investigator.

In addition, the following principles will serve as guidelines for the Chief, Park Police Division when determining investigative responsibility:

1. Discipline is a command responsibility.
 2. Complaints should be investigated at the lowest possible level.
- C. Investigations Assigned to an Investigator:
 1. One or more investigators shall be responsible for investigating all complaints regarding serious allegations of misconduct.
 2. Once assigned to or assisting with any internal investigation, the investigator shall report directly to the Chief, Park Police Division.
 3. Upon completion of the investigation the report and findings will be forwarded directly to the Chief, Park Police Division.
 - D. Investigations Assigned to Assistant Chief (s), Director of Area Operations:
 1. Assistant Chief (s), Director of Area Operations assigned minor complaints by the Chief, Park Police Division may reassign a command staff officer or supervisor within the command to conduct the investigation.

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2. Upon completion of the investigation the report and recommendation will be forwarded directly to the Chief, Park Police Division.

E. Investigations in General:

1. All personnel assigned to investigate complaints of police practices shall:
 - a. Confer with the Office of General Counsel when necessary.
 - b. In cases where the officer is under arrest or is likely to be placed under arrest as a result of the interrogation, establish and maintain liaison with the State's Attorney's Office for guidance.
 - c. Prepare a letter for the signature of the Chief, Park Police Division that provides the complainant with a written verification that their complaint has been received for processing (see letter, Appendix D).
 - d. Provide the Chief, Park Police Division with status reports of the progress of the investigation.
 - e. Complete the investigation within sixty (60) calendar days, unless extension of time is granted by the Chief, Park Police Division; and after sixty (60) days provide status reports every seven (7) days.
 - f. Maintain the complete file in a secure area and manner at all times.
 - g. Forward the completed investigative file to the Chief, Park Police Division who shall forward the folder after review to the Office of General Counsel for review of legal sufficiency.
2. All completed investigative files shall contain a "Report of Investigation" (Appendix E) that shall include:
 - a. The allegation(s).
 - b. A statement of facts arranged in chronological order.
 - c. Finding(s) drawn by the investigator regarding each allegation.

F. Interrogation of Officers Under Investigation:

1. "Investigation and Interrogation Notice" Form:

In order to ensure due process, the "Investigation and Interrogation Notice" (Appendix F) form shall be initiated prior to any interrogation of an officer under investigation.

"The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be: notified of the name of each witness and of each charge and specification against the law enforcement officer; and

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provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to: execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer and pay a reasonable charge for the cost of reproducing the material." (Public Safety Article §3-104(d)(n))

2. Representative at Interrogation:

"On the request, the law enforcement officer under interrogation has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation. The law enforcement officer may waive their right. The interrogation shall be suspended for a period not exceeding 10 days until representation is obtained. Within that 10-day period, the chief for good cause shown may extend the period for obtaining representation. (Public Safety Article §3-104(j)) Probationary officers are entitled to representation only in the case of an allegation of "brutality."

3. Record of Interrogation:

"A complete record shall be kept of the entire interrogation, including all recess periods, of the law enforcement officer. The record may be written, taped, or transcribed. On completion of the investigation, and on request of the law enforcement officer under investigation or the law enforcement officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing." (Public Safety Article §3-104(k))-[Appendix G]

4. Interrogation Rights & Waiver:

"If the law enforcement officer under investigation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall be informed completely of all of the law enforcement officer's rights before the interrogation begins." (Public Safety Article §3-104(e))

5. Time, Place, and Manner of Interrogations:

a. "The interrogation shall take place: at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer; or at another reasonable and appropriate place. The law enforcement officer under investigation may waive their right." (Public Safety Article §3-104(g))

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- b. "Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty." (Public Safety Article §3-104(f))
- c. "All questions directed to the law enforcement officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation. Each session of interrogation shall: be for a reasonable period; and allow for personal necessities and rest periods as reasonably necessary." (Public Safety Article §3-104(h))
- d. " The law enforcement officer under investigation may not be threatened with transfer, dismissal or disciplinary action." (Public Safety Article §3-104(i))
- e. " The law enforcement officer under investigation shall be informed of the name, rank and command of: the law enforcement officer in charge of the investigation, the interrogating officer; each individual present during an interrogation." (Public Safety Article §3-104(d))

6. Required Interrogations and Tests:

Officers may be required to submit to certain tests pursuant to an investigation as stated in Public Safety Article §3-104 (l):

- a. " The law enforcement agency may order the law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation. If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation and the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal. If the law enforcement agency orders the law enforcement officer to submit to test, examination, or interrogation, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the law enforcement officer." " If the law enforcement agency orders the law enforcement officer to submit to a polygraph examination, the results of a polygraph examination may not be used as evidence in an administrative hearing unless the law enforcement agency and the law enforcement officer agree to the admission of the results." (Public Safety Article §3-104(l)(m))
- b. The investigator shall utilize the "Drug Screen Notice" form when the officer has been ordered to submit to a urine test for controlled dangerous substance based upon a reasonable suspicion of drug abuse (See Appendixes H, I, J)

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- c. An officer may be required to be photographed, finger printed, and or participate in a line-up.
 - d. An officer may be required to submit a financial disclosure statement for any investigation involving allegations of conflict of interest or where required by law. (Public Safety Article §3-103(c))
7. During the investigation, any officer or employee of the Division may be ordered by the investigator to submit a statement and or answer all questions that specifically relate to the subject matter of the investigation regardless of the relative rank of the persons involved.

VII. COMPLETED INTERNAL INVESTIGATIONS

- A. The Division recognizes five possible findings to any internal investigation:
- 1. Unfounded
 - 2. Exonerated
 - 3. Non-sustained
 - 4. Sustained
 - 5. Administratively closed

Incidents of "unreported misconduct" shall be listed in the findings with a closure category.

- B. In all cases where the recommendation of finding is unfounded, administratively closed, exonerated or non-sustained, the report will be forwarded to the Chief, Park Police Division for approval. In these cases, the Chief, Park Police Division shall forward to the respondent notice of the findings. If it has been determined that a policy failure has occurred, the Chief, Park Police Division will direct appropriate staff to review and modify policy as necessary.
- C. In all cases where the recommendation of finding is sustained, the report will be forwarded to the Chief, Park Police Division. If the Chief, Park Police Division agrees with the finding, one of the following options shall be exercised:
- 1. Non-punitive sanctions, such as performance counseling or remedial training may be imposed.
 - 2. Summary punishment may be imposed for minor violations of rules or regulations when; the facts of the case are not in dispute, the officer waives the hearing and the officer accepts the punishment imposed by the highest ranking officer of the unit to which the respondent is assigned.
 - a. See Section IX, below, for a more complete explanation of summary punishment.

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3. Disciplinary Action.
 - a. The Chief of Police shall execute the "Disciplinary Action Notice" (Appendix K) to the respondent specifying the charges on the allegations and notifying the respondent of the intent to take disciplinary action.
 - b. The Assistant Chief, Director of Area Operations will present the respondent with the "Disciplinary Action Notice" containing a waiver to a hearing.
 - c. The respondent may, in writing, waive his or her right to a hearing board. If this occurs, the Chief, upon review of the investigative file, will issue a final order.
 - d. Should the respondent exercise the right to a hearing, the investigatory file will be forwarded to the Office of the General Counsel (Legal) whose responsibility shall be to prepare a list of witnesses. The Chief, Park Police Division shall appoint no less than three (3) members to the hearing board consistent with the Law Enforcement Officers' Bill of Rights (Public Safety Article §3-107) and the Collective Bargaining Agreement between the Commission and Fraternal Order of Police.
 - e. Within five (5) days of the notification of the Hearing Board composition, the respondent may challenge for cause any member of the Board. Challenge of the Board Chairperson shall be made to the Chief, Park Police Division. Challenge of other Board members shall be made to the Board Chairperson.
 - f. Any challenge for cause offered by the respondent will be considered. If it is determined that cause for removal has been established, the Chief, Park Police Division shall remove the challenged Board member and within two (2) days appoint another member.

- D. Completed internal investigation reports are confidential and considered "personnel or employment matters" and shall be kept secured in the office of the Chief, Park Police Division. Authorization for access can only be granted by the Chief, Park Police Division.

VIII. SUMMARY PUNISHMENT

A. Statutory Provisions:

Summary punishment may be imposed for minor violations of Division rules and directives when: (i) "The facts which constitute the minor violation are not in dispute; (ii) the officer waives the hearing provided by this subtitle; and (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached." (Public Safety Article §3-111)

The "Disciplinary Action Notice" form (Appendix K) shall be utilized when disciplinary measures are to be imposed on the law enforcement officer under

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investigation. The respondent must sign the appendix checking the appropriate block indicating one of the choices and return the appendix within seventy-two (72) hours of receipt.

B. Other Considerations:

The above procedure does not preclude supervisory personnel from counseling a subordinate. Use of the counseling process can correct undesirable behavior while maintaining maximum harmony between a supervisor and subordinate.

C. Issuance:

Summary punishment may be issued at the unit or section level by the respondents Operations Duty Officer/Manager with the approval of the appropriate Assistant Chief.

IX. DISCIPLINARY RECOMMENDATION GUIDE (Appendix L)

The disciplinary recommendation guide reflects the Division's philosophy that when disciplinary action is necessary, it is administered in a consistent manner. Supervisory personnel are encouraged to utilize progressive disciplinary or administrative measures such as remedial training or performance counseling prior to seeking disciplinary action provided that the use of progressive discipline fits the individual desired results. The Division believes that any officer facing a disciplinary action should know what the consequences will be when committing an infraction. Further, utilization of the guide will serve as a deterrent.

X. PROCESS FOR CIVILIAN EMPLOYEES AND PARK POLICE CANDIDATES

The disciplinary process pertaining to civilian employees, who are not members of a bargaining unit, is enumerated in the applicable chapter of the current Merit System Rules and Regulations of the Maryland-National Capital Park and Planning Commission, disciplinary action may be appealed to the Merit System Board. The disciplinary process pertaining to those civilian employees who are members of a collective bargaining unit, is governed by the provisions of the applicable contractual agreements. Park Police Candidates are not entitled to rights as afforded in this directive or the Law Enforcement Officers' Bill of Rights. Park Police Officers who are in their initial entry probationary status are not entitled to rights (except for complaints of brutality) as afforded in this directive or the Law Enforcement Officers' Bill of Rights. Park Police Candidates and Officers are, however, covered by whatever measures are contained in the collective bargaining agreement and are entitled to union representation. Complaints of alleged brutality filed against a Park Police Officer will be investigated pursuant to the Law Enforcement Officers' Bill of Rights.

XI. REPORTING

The Chief, Park Police Division shall forward a monthly report to the Chief of Police,

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Director of Parks and Recreations, detailing any and all actions taken as a result of this directive.

XII. REVISION

The procedural process as outlined in this directive may be amended from time to time based upon changes in state law and or the needs of either Division or the Chief of Police, Director of Parks and Recreation.

XIII. APPENDIXES DIRECTORY

- A - Complaint Form
- B - Emergency Suspension Notice
- C - Suspension Checklist
- D - Letter to Complainant
- E - Report of Investigation Guidelines and Form
- F - Investigation and Interrogation Notice
- G - Statement Format (written and transcribed)
- H - Medical Examination Notice
- I - Medical Release
- J - Drug Screen Notice
- K - Disciplinary Action Notice
- L - Disciplinary Recommendation Guide
- M - Board Procedure (Summary Appeal)
- N - Board Procedure - Disciplinary Action
- O - Witness Summons
- P - Confidentiality Agreement
- Q - Counseling/Disciplinary Action Short Form Procedure
- R - Delegation of Authority
- S - Administrative Hearing Board Manual
- T through Z – Reserved

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