

Complaint Investigations

1202.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for investigating complaints against department members.

1202.2 POLICY

Investigations initiated under this policy shall be under the authority of the Deputy Chief of Police, and conducted in accordance with the LEOBR found in the Annotated Code of Maryland. Criminal and administrative investigations will be conducted when a member is accused of violating criminal law or using force resulting in serious or life-threatening injury, or death.

1202.3 FORMS

- Form 24 Complaint Against Personnel
- Form 26 Notification of Investigation
- Form 27 Notification of Interrogation
- Form 27A Order to Submit to Interrogation
- Form 28 Explanation of Police Officer's Rights
- Form 30 Reprimand and Disciplinary Action Report

1202.4 ADMINISTRATIVE 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 as expeditiously as possible within 60 days, but within one year from the date of discovery by an individual authorized to initiate an investigation because charges must generally be filed within one year (MD Code PS § 3-106.) This does not apply to charges that relate to criminal activity or excessive force.

Extensions to investigations exceeding 60 days must be made by the investigator to the Deputy Chief for approval.

1202.4.1 DEPUTY CHIEF OF POLICE

Resolves those personnel complaints that can be resolved immediately. If not, decides whether an investigation will be conducted by the Internal Affairs Unit or at the supervisory level and supervises all investigations. Assigns a supervisor or investigator to conduct the investigation.

Ensures that the procedural rights of the accused member are followed.

Ensures follow-up contact with the complainant is made within 72 hours after receiving the complaint. Informs the complainant of the investigator's name and the complaint number after assignment.

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1202.4.2 INTERNAL AFFAIRS UNIT

The Internal Affairs Unit consists of officers who have received specialized training in the investigation of allegations and complaints of misconduct against members of the Department. Members of the Internal Affairs unit will ensure that all allegations are thoroughly investigated, without partiality or prejudice, to ensure the Department's mission is achieved and its values are upheld to maintain the public's trust.

The Internal Affairs Unit will be notified immediately when:

- (a) A member shoots an individual or has been shot.
- (b) A member is charged with a criminal offense.
- (c) An allegation of criminal activity is directed at a member warranting a police investigation, regardless of jurisdiction of occurrence.
- (d) A members weapon is discharged other than at the range or the killing of a dangerous or injured animal.
- (e) A member is found driving an EPD vehicle while under the influence of alcohol, while under the influence of alcohol per se, while impaired by alcohol, or while impaired by a drug, a combination of drugs, a combination of one or more drugs and alcohol, or while impaired by a controlled dangerous substance.
- (f) A member has been served with an ex parte protective order or is the respondent in a non-ex parte protective order (protective order.)
- (g) Any member commits any act of serious misconduct warranting an immediate investigation.

The Internal Affairs Unit will conduct any investigation or allegation requested by the Chief or Deputy Chief of Police. Generally, the Internal Affairs Unit will conduct administrative investigations concerning the following:

- (a) When a member has shot someone or has been shot. IAU will determine if the member complied with Easton Police policy.
- (b) Criminal violations committed by a member resulting in policy violations.
- (c) Sexual Harassment.
- (d) Discrimination.
- (e) Excessive use of force or brutality.

1202.4.3 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 Deputy Chief of Police may direct another supervisor to investigate any complaint.

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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 Deputy Chief, 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 Deputy Chief of Police, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
- (d) 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 his/her commander.
- (e) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, his/her Commander and Deputy Chief of Police are notified via the chain of command as soon as practicable.
- (f) Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
- (g) When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.

1202.4.4 INVESTIGATION PROCEDURES

An internal investigation is complete when:

- (a) The complainant and witnesses have been interviewed.
- (b) Members have been questioned.
- (c) All physical evidence has been examined.
- (d) All leads have been explored.
- (e) The case has been accurately reported.

Assigned investigators will:

- (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 (MVA records, telephone bills, court documents, EPD reports) that could be used to:
 - 1. Assist the investigation.

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2. Corroborate or refute statements.
- (d) Develop leads.
 - (e) Photograph the complainant, employee and the scene of the incident if photographs are useful for evidentiary purposes (identification, to document injury, etc.)
 - (f) Sketches may supplement photographs, where appropriate.
 - (g) Treat firearms in accordance with established procedures.

1202.4.5 COMPLAINANT AND WITNESS INTERVIEWS

The investigator shall, when feasible:

- (a) Conduct all complainant/witness interviews in person and obtain all pertinent identifiers from the person interviewed.
- (b) Take formal taped and written statements from the complainant and witness(s).
- (c) Preserve all statements as evidence according to guidelines for preserving evidence.
- (d) Determine every relevant fact known to the complainant and/or witness(s.)
- (e) Determine the motivation of the complainant and/or witness(s,) such as his relationship with the complainant or member.

1202.4.6 STATEMENT/INTERROGATION OF ACCUSED MEMBER

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

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Easton Police Department or other reasonable and appropriate place.
- (c) Before every interrogation, including the submission of a detailed report that was ordered as a result of an internal investigation, the member will be allowed to read, or have read to him, the Form 27, Notification of Interrogation, and the Form 28, Explanation of Police Officer's Rights.
- (d) The member will be served with a Form 27A, Order to Submit to Interrogation, ordering the member when and where to appear for the interrogation.
- (e) The interrogating officer must be certain the member is given the opportunity to waive his LEOBR rights before any statement can be taken.
 1. If the member waives their LEOBR rights the interrogating officer may continue with the interrogation.
 2. If the member does not waive their LEOBR rights, the interrogation will stop and be rescheduled to afford the member an opportunity to seek legal counsel.

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- (f) No weapons shall be permitted in the interrogation room for the duration of the interrogation.
- (g) No more than one interviewer should ask questions of an accused member. The interviewer shall be a sworn law enforcement officer.
- (h) Prior to any interview, a member should be informed in writing of the nature of the investigation. The member under investigation shall also be informed of the name, rank and command of:
 - 1. The law enforcement officer in charge of the investigation.
 - 2. The interrogating officer.
 - 3. Each individual present during an interrogation.
- (i) All interviews should be for a reasonable period and the member's personal needs should be accommodated.
- (j) No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
 - 1. The member under interrogation may not be threatened with transfer, dismissal or disciplinary action.
- (k) Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 - 1. A member should be given an order to answer questions to an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a Garrity advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g. discussion of processes, timing, implications.)
 - 2. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (l) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview may be provided to the member prior to any subsequent interview.
- (m) A complete record shall be kept of the entire interview of the member, including all recess periods. The record may be written, taped or transcribed.
 - 1. The interview shall be delayed, if necessary, for no more than 5 business days to permit an officer to find counsel or other representation. The Chief of Police may extend this period for good cause (Md. Code PS § 3-104.)

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- (n) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (o) All members shall provide complete and truthful responses to questions posed during interviews.
- (p) If the member is under arrest, or is likely to be placed under arrest as a result of the interrogation, the member shall be completely informed of all of his/her rights before the interrogation begins.
- (q) Probationary officers are not entitled to LEOBR protections, unless the allegation involves brutality or excessive force complaints.

1202.4.7 COMPELLED TESTS

Members may be compelled to submit to blood tests, breath tests and urinalysis tests for controlled dangerous substances and alcohol.

Members may be compelled to submit to other forensic tests, such as providing handwriting samples, hair samples, etc., as may be required to conduct a thorough investigation.

Polygraph Examinations:

- (a) Shall be conducted in accordance LEOBR (Md. Code PS § 3-104m.)
- (b) Members may voluntarily submit, or be ordered to submit to polygraph examinations.
- (c) Results of polygraph examinations are not admissible in administrative hearings, unless the officer and the agency agree to the submission of the results at the administrative hearing.
- (d) The member's representative need not be present during the actual administration of a polygraph examination if:
 - 1. The questions to be asked are reviewed with the member, or his representative, prior to administering the examination;
 - 2. The representative is allowed to observe the administering of the polygraph examination, and;
 - 3. A copy of the final report is made available to the member or his representative within ten days.

Before ordering the member to submit detailed reports; or submit to an interrogation, blood, breath, urine tests, polygraph or forensic tests; the member must first be advised of the following:

- (a) Information supplied through a member's answer will not be used against him in related criminal proceedings.
- (b) The following actions are separate violations of the rules of conduct and constitute grounds for disciplinary action, which may cause the member's dismissal:
 - 1. Refusal to cooperate in an investigation.

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2. Refusal to submit to a blood alcohol test, or a blood, breath, or urine test for use of controlled dangerous substances.
3. Refusal to submit to a polygraph examination, an interrogation, or submit a detailed report.

1202.4.8 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 documents or equipment.

1202.4.9 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.

All completed investigation files will be bound in a binder. Each report will include an index listing the appropriate appendices.

The first section will start with Roman Numeral "I" and will run sequentially. This section will contain the complaint, Form 24, executive summary and investigative report.

The appendices will begin with Tab "A" and run sequentially through "Z". If additional tabs are needed, these will begin with "AA" and run sequentially.

1202.4.10 DISPOSITIONS

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

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

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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.

1202.4.11 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation will provide the complainant with an update on the status of the investigation, every 30 days.

1202.5 CRIMINAL INVESTIGATIONS

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

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police 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 Chief of Police may release information concerning the arrest or detention of any member, including an officer that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1202.6 SWORN MEMBERS ARRESTED AND CHARGED

Upon notification, the arrested member's commander will notify the Deputy Chief.

An IAU representative and the member's commander will respond to the location where the member is being detained. If a question arises regarding the impracticality of response, the arrested member's commander will decide after conferring with the IAU.

At the detention site, the commander will:

- (a) Gather information for a confidential summary to be forwarded, through channels, to the Deputy Chief. This summary shall include location, date, and time of trial, if known.
- (b) Be available to meet with the officer, or if present, the officer's family, to determine if there are any needs the commander may address.

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- (c) Obtain copies of any reports.
- (d) Prepare a Form 24 and forward copies to the Deputy Chief.

1202.7 REQUESTS FOR NON-AGENCY INVESTIGATIONS

The Easton Police Department may conduct an internal investigation for an allied police department only when authorized by the Chief of Police. The request must be made in writing and must be submitted by the Chief of Police or the Chief Executive of the requesting municipality and/or political sub-division directly to the Chief of Police.

The Chief of Police will review all requests and decide whether the Easton Police Department will conduct the investigation. All decisions by the Chief of Police as to whether the Easton Police Department will conduct an internal investigation for an allied police department will be made in writing to the individual making the request. When the Chief of Police declines a request, the matter is closed and no further action is necessary.

When the Non-Agency Investigation is complete, the original investigative report, including any tape recordings and appendices will be forwarded thru the Chief of Police to the requestor. A complete copy of the investigative report, including any tape recordings and appendices, will be maintained by the Deputy Chief for five years.

1202.8 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

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

1202.8.1 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 Deputy Chief of Police, 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 Deputy Chief of Police 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.

1202.8.2 DEPUTY CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Deputy Chief of Police shall review the recommendation and all accompanying materials. The Deputy Chief of Police may modify any recommendation and/or may return the file to the Commander for further investigation or action.

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Once the Deputy Chief of Police is satisfied that no further investigation or action is required by staff, the investigation shall be forwarded to the Chief of Police.

1202.8.3 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Commander for further investigation or action.

Once the Chief of Police is satisfied that no further investigation is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed.

1202.8.4 NOTICE OF FINAL DISPOSITION OF THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint within 72 hours of disposition (Md. Code PS § 3-207.)

Notice to the complaining party shall include any discipline imposed as a result of the complaint in accordance with established confidentiality policies and applicable law (Md. Code PS § 3-207.)