

Lincoln County Sheriff's Office
Standard Operating Policies Manual

Rules and Regulations

1-10 COMPLAINTS AGAINST SHERIFF'S OFFICE PERSONNEL

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Approved by: Sheriff Todd B. Brackett

I. POLICY:

The image of Lincoln County Sheriff's Office is largely dependent upon the personal integrity, honesty, and ability of each of its staff members. To some degree, our public image is also determined by our professional response to allegations of misconduct that may involve any Sheriff's Office employee. The Office of Sheriff must competently and professionally investigate all allegations of misconduct by employees and complaints bearing on the Sheriff's Office's response to community needs.

Given that this is a statutorily mandated policy; deputies must abide by policy as it applies to all standards of the Maine Criminal Justice Academy Board of Trustees.

II. PURPOSE:

To describe procedures for making complaints against Sheriff's Office personnel, investigating complaints, and to list and define the dispositions of complaints.

III. RULES AND REGULATIONS:

- A. Citizens are encouraged to bring forward legitimate grievances regarding misconduct by our employees. Sheriff's Office employees shall receive complaints courteously and shall handle them efficiently. All employees are required to explain to any citizen(s) who may inquire about complaint procedures.
- B. The Sheriff's Office recognizes that its employees are often subject to intense issues in the discharge of their duties. Employees must remain neutral under circumstances that are likely to generate tension, excitement and emotion. In such situations, words, actions and events frequently result in misunderstanding and confusion. It is advantageous to all employees to follow proper procedures for the investigation of the any allegation(s) and the circumstances underlying the complaint. Thus allowing resolution in light of the complicated pressures of their everyday duties.
- C. A copy of "How to Make a Complaint" will be posted in the public area of the Sheriff's Office, provided to media representatives, and may be given to any citizen requesting information on how to make a complaint against the agency or an employee. A copy of "How to make a Complaint," is found in Appendix #1 to this order.
- D. Responsibility for Handling Complaints:
 1. As a rule, complaints regarding law enforcement operations will be handled through the chain of command. Complaints involving how law enforcement service is provided, a failure to provide service or improper attitudes or behavior, will normally be investigated and handled by a supervisor. The Sheriff may seek an investigator from another agency to undertake any investigation.
 2. The determination whether or not an Internal Affairs (IA) Investigation is officially opened will

determined by the Sheriff. The Sheriff may consider, but is not limited to the following issues in determining if an incident warrants an official IA investigation.

- a. Situations when a supervisor insists.
 - b. Situations when citizens insist.
 - c. Repeated patterns of performance deficiencies.
 - d. Alleged criminal conduct.
 - e. Serious complaints.
3. The Sheriff or his designee will be notified of all complaints by any supervisors receiving a complaint on any employee of this agency. In the event the Sheriff's designee is notified, whom ever receives the complaint shall notify the Sheriff as soon as practical.

E. Receipt of complaints:

1. Complaints, regardless of nature, can be lodged in person, by mail, electronically or by phone at any time. As part of the follow-up investigative activity, citizens making complaints by mail, electronically, or phone will normally be interviewed and a written, signed complaint prepared. Anonymous complaints will also be followed up to the extent possible.
2. Every effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. Any employee who interferes with, discourages or delays the making of such complaints may be subject to disciplinary action.
3. A citizen with a complaint will be referred to a supervisor who will assist the citizen in recording pertinent information. The supervisor will, if appropriate, conduct a preliminary investigation.
4. If the supervisor or other investigators determine that the complainant is apparently under the influence of an intoxicant, apparently suffering from a mental disorder, or displays any other trait or condition bearing on the complainant's credibility, they shall note such conditions. Any visible marks or injuries relative to the allegation shall be noted and photographed.
 - a. Prisoners or arrestees may also make complaints, although circumstances may require a Sheriff's Office representative to meet the complainant at a jail or prison for an interview. If appropriate, the investigator will have photographs taken of the prisoner's injuries.
5. Any agency member receiving a citizen complaint through the U.S. mail shall place the correspondence in a sealed envelope and forward it to a supervisor. Complaints received electronically shall be immediately forwarded to a supervisor. The Supervisor will determine the investigative responsibility.
6. Complaints received on the telephone by employees will be courteously and promptly referred to a supervisor. The employee shall record the name and telephone number of the complainant and state that the supervisor shall call back as soon as practicable.
7. Complaints will not normally be accepted more than thirty days after the alleged incident, with the following exceptions:
 - a. When the act complained of is a criminal violation, in which case the criminal statutes of limitations will prevail.
 - b. When there is good cause for not making the complaint earlier.

8. The above procedure may also be used when any employee desires to enter a complaint against any other employee within the Sheriff's Office.

F. Disposition of Complaints: The Sheriff or his designee shall:

1. Notify the complainant, in writing, as soon as practicable, that the Sheriff's Office is in receipt of the complaint and what action, if any, is being taken. Any investigation should be completed within thirty (30) days unless circumstances prohibit it, and the complainant will be advised of the outcome. Any investigation exceeding thirty (30) days, shall prompt the Sheriff or his designee to communicate in writing to the complainant the circumstances for the delay.
2. Maintain a secure record of all complaints against the agency and its employees, and protect confidentiality in accordance with Maine law and applicable collective bargaining agreements. (for County employees – 30-A M.R.S.A.) Complaint files will be maintained separately from general personnel files.
3. Take appropriate disciplinary action, if warranted, following the investigation.

G. Disposition of Serious Complaint:

1. Serious complaints may allege violations of law and/or gross negligence in violating or failing to enforce the rights of citizens. Examples include: alleged brutality, gross excesses of legal authority, any allegations involving supervisory personnel, or allegations involving multiple employees.
2. In such cases, the Sheriff or designee shall:
 - a. Directly investigate such allegations, except for violations of law or civil rights where the Sheriff may turn the investigation over to the appropriate outside agency.
 - b. Ensure that the investigation is conducted in accordance with any collective bargaining agreement. As well as any contemporary legal and professional personnel administration procedural standards.
 - c. Maintain close liaison with the Office of the District Attorney or the Office of the Attorney General in investigating alleged criminal conduct. Where liability is at issue, the Sheriff shall similarly maintain contact with the County's legal representative.

IV. PROCEDURES – Investigative

Two types of investigations may take place; administrative or criminal. Different rules govern interviews of employees in each case. In all cases involving alleged criminal conduct by a sworn employee, the Sheriff shall contact the Office of Attorney General or the Office of the District Attorney. The Attorney General or the District Attorney may assist the Sheriff in determining which technique is to be used by the agency for the investigative process.

- A. Interview for Administrative Purposes: The Sheriff or another interviewer may advise the employee under investigation:

1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. Information obtained may be used in disciplinary action up to and including dismissal.
2. All questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
3. No answers given nor any information obtained by reason of such statements may be admissible against the employee in any criminal proceeding.
4. An advisement of rights is outlined in Appendix #2 of this policy. This form shall be used in all cases where Garrity is a concern.
5. Further, as the interview does not serve criminal prosecution, the employee has no Constitutional right to counsel.

a. The governing case is Garrity v. New Jersey, 385 U.S. 483, 87 S. Ct. 616 (1967).

B. Interviews for Criminal Investigative Purposes: The Sheriff or his designee shall:

1. Ensure Miranda rights are given in any custodial interview situation.
2. Advise the employee that if the employee asserts the right not to answer questions, no adverse administrative action will be taken based upon the refusal.

C. All criminal or administrative investigations shall be conducted without unreasonable delay. An employee shall be advised of the final outcome of the administrative investigation in writing within thirty (30) days of the interview. If for any reason the investigation cannot be conducted within thirty (30) days, the employee being investigated shall be given an explanation of the delay and be advised of the outcome within ten (10) days of the completion of the investigation.

V. INVESTIGATIVE TOOLS AND RESOURCES:

In addition to interviews of the employee and witnesses, the Sheriff may require other activities in support of a criminal investigation or internal investigation, including:

- A. Medical and Laboratory Examination: If the Sheriff has reasonable grounds or belief that an employee may be under the influence of any substance that may be related, then the Sheriff or his designee may require an employee to submit to an alcohol or drug test while on duty pursuant to 26 M.R.S.A. § 681 et.seq. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.
1. If the employee is believed to be under the influence of alcohol, a certified intoxilyzer operator will administer the test.
 2. If the employee has a reading of .01 or higher, or there is other competent evidence of impaired abilities to perform duties, the employee may be relieved of duty.
 3. If the employee is believed to be under the influence of drugs, they may be compelled to submit to a blood, urine or other test. The test shall be administered under medical supervision where hygienic safeguards are met. The sample will be handled using the same safeguards as evidence in a criminal process.

4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee may be relieved of duty.
 5. If an employee refuses to submit to a test, (alcohol or drugs) the Sheriff or his designee shall immediately relieve the employee of duty for failure to cooperate in an administrative investigation.
- B. Photograph and Lineup Identification Procedures: Photographs of agency employees may be maintained for the purpose of identification of an employee.
- C. Financial Disclosure Statements: Employees may be compelled to make financial disclosure statements when it is directly and narrowly related to allegations of misconduct involving any unlawful financial gain.
- D. Polygraph: The use of polygraph examinations in internal investigations is authorized and shall be in accordance with performing agency's policy, contractual agreements, as well as State and Federal law.

Any employee who refuses to submit and complete with any portion of the investigative process outlined herein after being ordered by the Sheriff or his designee may be disciplined for failure to cooperate in an administrative investigation.

VI. ADJUDICATION OF COMPLAINTS:

- A. The Sheriff or his designee will classify completed internal affairs investigations as:
1. Unfounded: No truth to allegations.
 2. Exonerated: Conduct adheres to proper and appropriate procedures and techniques.
 3. Not sustained: Unable to verify the truth of the matters under investigation.
 4. Sustained: Allegations true.
- B. Completed investigations will be maintained in internal affairs files. The final written decision of sustained complaints will be filed in the individual employee's agency personnel file with a copy in the internal affairs files.
- C. All disciplinary records will be permanently retained.
- D. Disciplinary action taken will be in accordance with the current collective bargaining agreement and/or County policy.

VII. DUE PROCESS:

- A. Public employees have a constitutional property interest in continued employment sufficient to require due process in any administrative proceedings that might result in discipline up to and including dismissal. (Probationary employees do not enjoy a property interest in their job).
- B. The Lincoln County Sheriff's Office will adhere to the due process of law in any disciplinary proceeding.

- C. A hearing may be held in accordance with current County policy or any applicable collective bargaining agreement whenever appropriate.

APPENDIX # 1

HOW TO MAKE A COMPLAINT

1. If you wish to make a complaint about the actions of an employee or about any aspect of our law enforcement operation, please:
 - a. Come to the agency and tell any employee that you want to make a complaint; or
 - b. Call the agency or the town/city/county manager's office and tell the person answering the phone that you want to make a complaint; or
 - c. Write your complaint and mail it to the Chief Law Enforcement Officer.
 - d. Write your suggested resolutions.
2. A supervisory employee will assist you in filling out a report of complaint against law enforcement personnel form. This form asks you to identify yourself and then to give specific details about your complaint.
3. Your complaint will then be investigated. You may be contacted and asked additional questions about your complaint.
4. If the investigation of your complaint is going to take a long time, you will receive a letter telling you approximately when you may expect a reply.
5. When your complaint has been investigated, the Chief Law Enforcement Officer will review the investigation and will write you a letter explaining what has been found out about the matter.

APPENDIX #1-A
REPORT OF COMPLAINT AGAINST LAW ENFORCEMENT PERSONNEL
CONFIDENTIAL

Name of Complainant: _____

At What Address and Telephone Number Can You Be Contacted:

Home: _____

Business: _____

Date and Time of Incident: _____

Location of Incident: _____

Name(s) of Employees Against Whom Complaint is Being Filed or
Other Identifying Marks (Car Number, Badge Number, Etc.)

Name: _____ Rank: _____ Vehicle: _____

Name: _____ Rank: _____ Vehicle: _____

Name(s), Address(s), Telephone Number(s) or Other Identifying

Information Concerning Witness(s): _____

Statement of Allegation: _____

APPENDIX #2

**LINCOLN COUNTY SHERIFF'S OFFICE
GARRITY WARNING**

The purpose of this meeting is to obtain your response to questions which arise from suspected misconduct relating to your job. Before you are asked any questions regarding this suspected misconduct, you should review this document, which is intended to advise you of both your rights and your responsibilities as an employee of the Lincoln County Sheriff's Office in the context of this meeting. Any questions shall be specifically directed and narrowly related to the performance of your official duties or fitness for office.

You are advised that this meeting is purely an administrative inquiry related to your employment. You have all the rights and privileges provided for under the United States and Maine Constitutions, including the right to remain silent and the right to be represented by legal counsel.

However, it is important that you understand you have a duty as an employee of the Lincoln County Sheriff's Office to cooperate with an investigation by your employer, and to answer relevant and material questions which relate to your official duties. **Your failure to cooperate with this investigation, and your refusal to answer questions which relate to your job, may cause you to be subjected to discipline, including possible dismissal.**

Therefore, while you have the right to remain silent, asserting that right in this context may subject you to discipline, up to and including dismissal from employment. **Any information or evidence you furnish in response to questions asked of you during this meeting, or any information or evidence which is gained by reason of your answers, may not be used against you in criminal proceedings, according to the ruling in *Garrity vs. New Jersey*, 385 U.S. 493 (1967); however, any information or evidence you furnish in this meeting may be used against you administratively.**

I certify that I have read and understand the above statement, and have received a copy of this warning.

Employee: _____

Witness: _____

Dated: _____