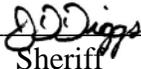


YORK-POQUOSON SHERIFF'S OFFICE	RULES AND REGULATIONS
SUBJECT: Complaints/Internal Affairs	NUMBER: RR 1-9
EFFECTIVE DATE: December 7, 2018	REVIEW DATE: December 3, 2018
AMENDS/SUPERSEDES: RR 1-9, September 21, 2017	APPROVED: _____  Sheriff
VLEPSC: ADM.18.01, ADM.18.02, ADM.18.03, ADM.18.04, ADM.18.05, ADM.18.06	

1 **INDEX WORDS**

- 2
- 3 Board of Inquiry
- 4 Financial disclosure statements
- 5 Complaints
- 6 Internal affairs investigations
- 7 Lineups, photographs of employees
- 8 Criminal misconduct
- 9 Due process
- 10 Medical and laboratory examinations

11

12 **POLICY**

13

14 The Sheriff's Office image and reputation depend on the personal integrity and discipline of all

15 employees. To a large degree, the public image of the agency is determined by a professional

16 response to allegations of misconduct against its employees. The Sheriff must competently and

17 impartially investigate all allegations of misfeasance, malfeasance, nonfeasance by employees

18 and complaints bearing on the agency's response to community needs. The Sheriff recognizes

19 that personnel are often subject to intense pressures in the discharge of their duties. Deputy

20 Sheriffs must remain neutral under circumstances that are likely to generate tension, excitement,

21 and emotion. In these situations, actions and events frequently result in misunderstanding and

22 confusion. It is to the advantage of all employees to have a procedure for the investigation of

23 allegations and underlying circumstances, so that complaints can be resolved in a manner where

24 objectivity, fairness, and justice are assured by intensive and impartial investigation and review.

25

26 **PURPOSE**

27

28 The purpose of this directive is to describe procedures for making complaints against Sheriff's

29 Office personnel, for investigating both minor and serious complaints, and to list and define the

30 dispositions of complaints.

31

32 **PROCEDURES – GENERAL**

- 33
- 34 • All Sheriff's Office personnel shall receive and acknowledge receipt of this policy.
- 35 ○ Receipt of this policy shall be evidenced by the policy sign off in Power DMS.
- 36
- 37 • Receipt of complaints

- 38 ○ The Sheriff encourages citizens to bring forward legitimate grievances regarding
39 misconduct by employees.
- 40 ○ Sheriff's Office employees shall receive all complaints courteously and shall handle
41 them efficiently.
- 42 ○ All employees are obligated to explain complaint procedures to inquiring citizens, if
43 requested.
- 44
- 45 ● How to make a complaint
- 46 ○ A copy of "How to Make A Complaint" will be posted in the public area of the
47 Sheriff's Office lobby, displayed on the Sheriff's Office web page under the "Make a
48 Commendation/Complaint" tab, provided to media representatives when requested,
49 and will be given to any citizen requesting information on how to make a complaint.
- 50 ○ A copy of "[How to Make a Complaint](#)" along with the complaint form is found in the
51 Forms folder in Power DMS
- 52
- 53 ● Responsibility for handling and investigating complaints or misconduct
- 54 ○ All complaints against the agency or employees shall be investigated, recorded, and
55 adjudicated.
- 56 ○ Complaints will be entered in the Sheriff's Office Records Management System in
57 the Internal Affairs, Complaints module, which is maintained by the Chief Deputy.
- 58 ○ As a general rule, complaints regarding operations will be handled through the chain
59 of command, beginning with:
- 60 ▪ The supervisor, who will investigate complaints involving how law-enforcement
61 service was provided or if improper attitudes or behavior were displayed, or a
62 failure of a deputy to provide proper service.
- 63
- 64 ○ In the most serious complaints, the Chief Deputy shall:
- 65 ▪ Initiate an internal affairs investigation to review the complaint or alleged
66 misconduct.
- 67
- 68 ○ Complaints alleging improper conduct, brutality, or misconduct involving several
69 personnel or supervisory personnel may be investigated by an outside agency upon
70 request of the Sheriff.
- 71
- 72 ● Complaint-handling procedures
- 73 ○ Complaints may be made in person, by mail, or by telephone. However, all
74 individuals making complaints shall be advised that all formal complaints must be
75 reduced to writing and signed using the form found in the appendix to this directive.
- 76 ○ Anonymous complaints shall be investigated to the extent possible.
- 77 ○ In case of an anonymous complaint, the individual receiving the anonymous
78 complaint shall complete the appropriate form to the extent possible.
- 79 ○ Every effort shall be made to facilitate the convenient, courteous, and prompt receipt
80 and processing of citizen complaints.
- 81 ○ Any Sheriff's Office employee, who interferes with, discourages, or delays the
82 making of complaints shall be subject to disciplinary action.

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- Normally, a citizen with a complaint shall be referred to the individual's supervisor, division commander, or the Chief Deputy.
 - The supervisor shall normally conduct a preliminary investigation for less-serious violations. The preliminary investigation consists of:
 - Questioning the deputy,
 - The complainant(s),
 - Witness(s),
 - Securing evidence.
 - Upon completion of the preliminary investigation, the following documents shall be prepared and forwarded through the chain of command to the Chief Deputy:
 - A report of the alleged violation;
 - Any documents and evidence pertinent to the investigation;
 - Recommendations for further investigation, or
 - Other disposition.
 - The most serious allegations shall result in a formal internal affairs investigation initiated by the Chief Deputy in lieu of the supervisor.
 - If the individual taking a complaint believes that the complainant is apparently under the influence of an intoxicant, drug, or apparently suffers from a mental disorder, or displays any other trait or condition bearing on his or her credibility, that individual shall note the condition on the reverse side of the complaint form.
 - Any visible marks or injuries relative to the allegation shall be noted and photographed.
 - Prisoners or arrestees may also make complaints, although circumstances may require a deputy/investigator to meet the complainant at a jail or prison for an interview.
 - If applicable, the deputy/investigator will have photographs taken of prisoners' injuries.
 - An employee who receives a citizen's complaint through the U.S. Mail shall place the correspondence and envelope in a sealed envelope and forward it to the Chief Deputy, who shall determine investigative responsibility.
 - Complaints received over the telephone by employees shall be courteously and promptly referred to the individual's supervisor or division commander. If neither is available, the employee shall refer the complainant to the Chief Deputy. If neither of the above is available, the employee shall record the name and telephone number of the complainant and state that one of the above will call back as soon as possible.
 - The above procedures may also be used when Sheriff's Office employees desire to enter a complaint against any other employee governed by this order.
- Disposition of complaints generally
 - The Sheriff's Office will:
 - Notify the complainant as soon as practical:
 - ❖ That the Sheriff's Office acknowledges receipt of the complaint,
 - ❖ That the complaint is under investigation,
 - ❖ That the investigation will be completed within thirty days,
 - ❖ That the complainant will be advised of the outcome,

- 129 ❖ That if the investigation exceeds thirty days, the Sheriff's Office will contact
130 the complainant explaining the circumstances of the delay.
131 ❖ Maintain complaint files separate from personnel files.
132 ❖ Complete a review of the investigation file.
133 ❖ If required, take appropriate disciplinary action following the investigation.
134
- 135 • Disposition of serious complaints
 - 136 ○ Allegations of misconduct that might result in discharge, suspension, or demotion, or
137 criminal charges are serious complaints and require a formal internal affairs
138 investigation.
 - 139 ○ The Chief Deputy shall manage and be responsible for the complaint/internal affairs
140 function and have direct access to the Sheriff.
 - 141 ○ Internal affairs investigations examine alleged corruption, excessive force, gross
142 excesses of legal authority, wanton misconduct, allegations involving supervisory or
143 multiple personnel, violations of civil rights, violations of criminal law or other
144 serious violations.
 - 145 ○ In these cases, the Chief Deputy will:
 - 146 ▪ Record, register, control or cause to be recorded, registered, or controlled all
147 investigations of this category.
 - 148 ▪ Conduct the internal affairs investigation or, assign an internal affairs investigator,
149 and supervise or direct the investigation of alleged misconduct, either as an
150 administrative or criminal matter, or both.
 - 151 ▪ Order the confidential maintenance and security of the investigation and
152 associated records.
 - 153 ▪ Maintain close liaison with the Commonwealth's Attorney in investigating alleged
154 criminal conduct.
 - 155 ▪ Where civil liability is at issue, the Chief Deputy shall similarly maintain contact
156 with the county attorney.

157

158 **PROCEDURES: Criminal/Internal Affairs Investigations**

159

- 160 • Two types of investigations may take place: administrative or criminal.
 - 161 ○ Different rules govern interviews of employees in each case.
 - 162 ○ Before any interview, the employee under investigation shall receive a confidential
163 written notice of the complaint.
 - 164 ▪ This notice will include a copy of the original complaint (written statement of the
165 allegations) and the deputy's rights and responsibilities relative to the
166 investigation.
 - 167
 - 168 ○ Administrative and criminal investigations may be conducted simultaneously,
169 however an investigator assigned to the administrative investigation may not
170 collaborate or share information with the criminal investigator.
 - 171
- 172 • Deputies who are the subject of an Internal Affairs Investigation shall:
 - 173 ○ Answer all questions asked during an administrative investigation truthfully,

- 174 ▪ Deputies who are subject of a Criminal Internal Affairs Instigation may invoke
175 their constitutional right to remain silent.
176
- 177 ○ Make themselves reasonable available during the investigation,
178 ○ Cooperate fully with the investigation.
179
- 180 • Interview for administrative purposes
- 181 ○ If the Sheriff or officer in authority wishes to compel an employee to answer
182 questions directly related to his or her official duties and the Sheriff or officer in
183 authority is willing to forego the use of any answers in a criminal prosecution, the
184 Sheriff/officer in authority or another interviewer shall advise the employee that:
- 185 ▪ The purpose of the interview is to obtain information to determine whether
186 disciplinary action is warranted.
- 187 ▪ The answers obtained may be used in disciplinary proceedings resulting in
188 reprimand, demotion, suspension, or termination.
- 189 ▪ All questions specifically related to employment must be fully and truthfully
190 answered.
- 191 ▪ Refusal to answer may result in disciplinary action, including immediate
192 termination.
- 193 ▪ Neither any answers given nor any information obtained due to such statements
194 are admissible against the employee in any criminal proceeding, nor may any of
195 this information be given to the criminal investigator.
196
- 197 ○ The following statement shall be read to the employee prior to the interview:
- 198 ▪ "I advise you that you are being questioned as part of an official investigation of
199 the York-Poquoson Sheriff's Office.
- 200 ▪ You will be asked questions specifically directed and narrowly related to the
201 performance of your official duties or fitness for office.
- 202 ▪ You are entitled to all the rights and privileges guaranteed by the laws and the
203 Constitution of Virginia and the Constitution of the United States, including the
204 right not to be compelled to incriminate yourself. However, I further wish to
205 advise you that if you refuse to testify or to answer questions relating to the
206 performance of your official duties or your fitness for duty, you will be subject to
207 departmental charges that could result in your termination from the York-
208 Poquoson Sheriff's Office.
- 209 ▪ If you do answer, neither your statements, nor any information or evidence, which
210 is gained because of such statements, can be used against you in any subsequent
211 criminal proceeding. However, these statements may be used against you in
212 relation to subsequent departmental charges."
213
- 214 ○ In an interview for administrative purpose, no Miranda rights are required.
- 215 ○ Further, the foregoing rules are inconsistent with Miranda in that employees'
216 statements cannot be used as evidence.
- 217 ○ The interviewing internal affairs investigator(s) shall use the [Administrative](#)
218 [Proceedings Rights Form](#) found in the Forms folder in Power DMS.
219

- 220 • Interviews for criminal investigative purposes
- 221 ○ If the Sheriff or officer in authority believes that criminal prosecutions are possible
- 222 and wishes to use statements against the employee in a criminal proceeding, or at
- 223 least wishes to maintain the option of their use, he or another interviewer shall:
- 224 ▪ Give the employee Miranda rights, if situational requirements dictate.
- 225 ▪ Advise the employee that if he asserts his right not to answer questions, no
- 226 adverse administrative action will be taken based upon the refusal.
- 227 ▪ If the employee decides to answer questions at this point, the responses may be
- 228 used in both criminal and disciplinary proceedings.
- 229

230 **INVESTIGATIVE TOOLS AND RESOURCES**

- 231
- 232 • In addition to interviews of the employee and witnesses, the Sheriff may require other
- 233 activities in support of a complaint investigation or internal investigation, including:
- 234 ○ Medical and laboratory examination
- 235 ▪ The Sheriff or officer in authority may, based on his observation, require a
- 236 Sheriff's Office employee to submit to a test for alcohol or drug use while on-
- 237 duty.
- 238 ▪ The results may be used in a disciplinary hearing.
- 239 ▪ Refusal to submit to the examination will be grounds for disciplinary action and
- 240 may result in the employee's termination.
- 241
- 242 ○ Tests for the presence of alcohol or drug will be performed under the guidelines of
- 243 [GO 2-35, Alcohol/Drug Testing](#).
- 244 ▪ If the employee has an alcohol reading of .02 or higher, or there is other
- 245 competent evidence of impaired abilities to perform duties, the deputy shall be
- 246 relieved of duty by the Sheriff or officer in authority.
- 247 ▪ If the employee is believed to be under the influence of self-administered drugs,
- 248 he may be compelled to submit to a blood or urine test.
- 249 ▪ The test shall be administered under medical supervision where hygienic
- 250 safeguards are met.
- 251 ▪ If the test shows positive results, or there is other competent evidence of impaired
- 252 abilities to perform duties, the employee shall be relieved of duty as soon as
- 253 possible by the Sheriff or other officer in authority.
- 254 ▪ If an employee refuses to submit to a test, (alcohol or drugs) then the Sheriff or
- 255 other officer in authority shall immediately relieve the employee from duty for
- 256 failure to cooperate in an administrative investigation.
- 257
- 258 ○ The on-duty supervisor may direct an employee to submit to a breath, blood, or urine
- 259 test when a level of inebriation or drug usage is suspected as interfering with the
- 260 performance of duty.
- 261 ○ Property assigned to the employee but belonging to the Sheriff's Office is subject to
- 262 inspection where the supervisor has a reasonable suspicion that evidence of work-
- 263 related misconduct may be found therein.
- 264 ○ Sheriff's Office property includes:
- 265 ▪ Files,

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- Storage lockers,
 - Desks,
 - Vehicles,
 - Electronic devices such as computers, computer data storage devices, computer tablets and cellular telephones issued by the Sheriff's Office.
- Photograph and lineup identification procedures
 - Deputies may be required to stand in a lineup for viewing by citizens for the purpose of identifying an employee accused of misconduct.
 - Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in termination.
 - If deputies are facing criminal prosecution, normal line-up procedures shall be followed.
 - Employees' photographs may be maintained for the purpose of citizen identification stemming from accusations of misconduct.
 - Employee photographs for identification purposes may be required by the Sheriff and shall be used for job-related needs.
 - Photographs or videotape pictures of employees, with or without their consent, may be taken for the purpose of internal investigations as related to the employee's job when the employee is suspected of misconduct.
 - Financial disclosure statements
 - Deputy Sheriffs shall not be required to disclose any item of his/her property, income, debts, or personal or domestic expenditures, unless allowed under [Title 9.1, Code of Virginia](#), Law-Enforcement Officers' Procedural Guarantees.
 - Polygraph
 - All personnel shall be required to submit to a polygraph when ordered to do so by the Sheriff or by another superior officer with the authorization of the Sheriff.
 - The Sheriff or his designee may order employees to take a polygraph when charged with any offense.
 - The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
 - Any polygraph examination given under the provisions of this order shall be administered by a private contractor licensed to administer polygraph examinations in the Commonwealth of Virginia or must be a licensed examiner from another law-enforcement agency.
 - York-Poquoson Sheriff's Office employees shall not administer an examination to any other employee of this agency.
 - Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges during the polygraph examination shall be grounds for disciplinary action and may result in termination.
 - In order to comply with state (Section [9.1-500](#), Code of Virginia. "Law Enforcement Officers' Procedural Guarantees" and federal (privilege against self-incrimination) law, the following information must be provided to the employee asked to submit to examination:

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- The nature of the investigation,
 - The name and rank of the investigating officer and of any person present during the questioning.
 - That his or her answers will not be used in a criminal prosecution.
 - That he or she may refuse to take the polygraph or answer any questions; however, this refusal shall be grounds for disciplinary action that may include termination from employment.
 - That answers given during the polygraph examination do not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.
- A [Polygraph Examination Acknowledgement of Rights Form](#) must be initialed and signed in the spaces indicated and can be found in the Forms folder in Power DMS.
 - Refusal to do so shall be grounds for disciplinary action that may include termination from employment.
 - Any person who refuses to submit to a polygraph examination or refuses to answer any questions pertaining to the charges in such an examination as outlined above may be terminated from employment.

ADJUDICATION OF COMPLAINTS

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- Adjudication categories
 - The Sheriff will review and adjudicate recommendations by the Chief Deputy and determine if they are:
 - Unfounded - no truth to allegations.
 - Exonerated – found blameless from allegations, due to adherence to proper and appropriate procedures and techniques.
 - Not sustained - unable to verify the truth of the matters under investigation.
 - Sustained - allegations are found true.
 - Following the adjudication of complaints against Sheriff’s Office personnel the employee shall:
 - Be notified either verbally or in writing of the adjudication determination.
 - Records
 - Completed investigation records classified as unfounded, exonerated, or not sustained will be maintained within internal affairs files at the Sheriff’s Office.
 - A copy of the summary of sustained complaints shall be filed in the individual employee's personnel file and all original documents related to the complaint will be maintained in the internal affairs files.
 - The Chief Deputy shall maintain a record of all complaints in the Sheriff’s Office Records Management System, Internal Affairs Complaint module.
 - The complaint and internal investigative files shall be kept in a secure area and shall be maintained using retention and disposition schedules as approved by the Library of Virginia, Records Management Division.
 - The Sheriff shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.

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- Disciplinary action
 - Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim.
 - It shall be commensurate with the circumstances surrounding the incident and in consideration of the employee's service record and prior sustained complaints.
 - After a complaint has been sustained, the substantiated charge shall be returned to the employee's immediate supervisor for recommendation of disciplinary action and shall proceed back up through the employee's chain of command.
 - Disciplinary action will then follow in accordance with [RR 1-7, Employee/Appointee Discipline](#).

DUE PROCESS

- The Fourteenth Amendment to the Constitution provides that a citizen may not be deprived of "life, liberty, or property, without due process of law."
- Public employees have a limited property interest in continued employment sufficient to require due process in any administrative proceedings that might result in suspension or termination.
 - The Sheriff seeks to observe due process of law in the philosophy of the 14th Amendment in any disciplinary proceeding. Nevertheless, the foregoing rules circumscribe when legal counsel may or may not be used during interviews of employees suspected of administrative or criminal misconduct.
 - Despite an employee's limited property interest in his job, as described page 1-9.6, lines 250 through 254, the simple fact that an employee has held a job for years does not entitle him or her to keep it.
 - The Sheriff recognizes that an employee may disagree or feel grieved with a termination or suspension and shall afford each employee a hearing as specified in the appeals section of [RR 1-7, Employee/Appointee Discipline](#).

BOARD OF INQUIRY

- The Sheriff may request the Chief Deputy to convene a Board of Inquiry to review facts or information to resolve an allegation of misconduct, or at his discretion, at any time that a fact-finding board is needed.
 - The Board of Inquiry shall:
 - Ascertain training and policy needs, and
 - Determine if Sheriff's Office policy was violated.
 - See [GO 2-6, Use of Force](#), for composition of a Board of Inquiry.