



Policy 322

Subject

MEMBER-INVOLVED SEXUAL MISCONDUCT

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By Order of the Police Commissioner

POLICY

It is the policy of the Baltimore Police Department (BPD) to fully investigate all reported Sexual Offense and Sexual Misconduct cases in an unbiased, nondiscriminatory manner, regardless of the identity of the victim or suspect. BPD recognizes that reports of any Sexual Offenses or Sexual Misconduct involving a BPD member require great sensitivity and care to ensure a thorough, constitutional, and evidence-based investigation. BPD's response to member-involved Sexual Offenses and Sexual Misconduct reflects a trauma-informed, victim-centered, offender-focused investigative approach.

Sexual Misconduct by BPD members will not be tolerated. An abuse of authority is grounds for disciplinary action, up to and including termination and possible criminal charges. BPD is committed to and focused on identifying and eliminating Sexual Misconduct by BPD members. This is accomplished through a thorough, serious and consistent response to allegations of Sexual Misconduct, holding BPD members accountable, and preventing abuses of power.

Cases in which a BPD member is accused of Sexual Offenses or Sexual Misconduct contain a unique power dynamic because a police officer, who is charged with serving and protecting the community, is abusing their position of authority by victimizing a member of the public or another BPD member. This violation of trust is particularly egregious and may have pervasive and lasting effects on the agency, the community, and police legitimacy as a whole. Those who abuse power in this way may target vulnerable populations, including the impoverished or individuals experiencing homelessness, LGBTQ individuals, sex workers, or drug- or alcohol-impaired victims.

Retaliation against individuals who oppose or report known, suspected, or alleged Sexual Misconduct, or who cooperate in a misconduct investigation, can likewise undermine agency legitimacy and community trust. Retaliation is strictly prohibited and any such retaliation may constitute a criminal offense (e.g., witness tampering or obstruction of justice).

Procedures for any case alleging a criminal Sexual Offense are outlined in Policy 708, *Rape and Sexual Assault*, and the Sex Offense Unit Standard Operating Procedures and procedures for all administrative misconduct investigations are outlined in the Public Integrity Bureau (PIB) Investigations Manual. Procedures for Equal Employment Opportunity related violations (including violations of the American with Disabilities Act of 1990; Title 7 and Title 9 of the Civil Rights Act of 1964; Title 20 of the State Government Article, Annotated Code of Maryland; and Article 4 of the Baltimore City Code) are outlined in Policy 1701, *Equal Employment Opportunity and Diversity*.

DEFINITIONS

Rape — Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Sexual Assault/Sexual Offense — Act or contact of a sexual nature without consent that does not rise to the level of Rape (e.g. intentionally touching a person's genital, anal, or other intimate areas for sexual gratification or abuse of either party).

Sexual Contact — An intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.

Sexual Misconduct — Any behavior by a BPD member that takes advantage of their position in law enforcement to (1) misuse authority and power (including force) in order to commit a sexual act, (2) initiate Sexual Contact with another person who is in law enforcement custody, or (3) participate in any Sexual Contact with another person while on duty with or without that person's consent. It also includes any communication or behavior by a member that would reasonably be construed as obscene, indicating sexual interest, inappropriate, or conduct unbecoming a sworn member and violates general principles of acceptable conduct common to law enforcement. (See Policy 301, *Code of Ethics*, and Policy 305, *Department Values, Vision, and Mission*.)

GENERAL

1. Sexual Misconduct by law enforcement, some of which may constitute a criminal act, may be directed at colleagues, citizens, residents, detainees, arrestees, youths, and crime victims or witnesses. Forms of Sexual Misconduct may include, but are not limited to, the following:
 - 1.1. Any sexual criminal act (e.g., Sexual Assault, Rape, Solicitation of sex workers, sex trafficking);
 - 1.2. Sexual extortion (e.g., taking or refraining from law enforcement action, such as asking for or requiring sexual favors in exchange for not ticketing or arresting a civilian, or requiring sexual favors from a subordinate for changes in shifts, assignments, or positive performance evaluations);
 - 1.3. Inappropriate physical contact of a sexual nature (e.g., inappropriate or unnecessary searches, frisks or pat-downs) with any other person, such as suspects, victims, witnesses, or another BPD member;
 - 1.4. Officer-initiated Sexual Contact while on duty or engaging in civilian-initiated Sexual Contact while on duty;
 - 1.5. Off-duty sexual behavior on workplace premises, including BPD owned or leased vehicles;
 - 1.6. Voyeuristic actions that are sexually motivated (e.g., looking in windows of residences for sexually motivated reasons, taking photographs for sexual gratification, searching the individual's home for nude or partially clothed photographs);

- 1.7. Unnecessary contacts/actions taken by officers for personally and/or sexually motivated reasons (e.g., unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver for non-professional reasons, unnecessarily asking an individual to remove clothing or expose themselves, unnecessary assignment to keep another officer in close proximity); and
- 1.8. Inappropriate and unauthorized use of department resources (including electronic devices and other equipment) and/or information systems for reasons other than legitimate law enforcement purposes (e.g., looking up personal details about victims, witnesses, or contacts contained in law enforcement records). See Policy 1303, *Departmental Email Usage*, Policy 1305, *Use of Departmental Personal Computer Systems*, and Policy 1306, *BPDnet and Internet Usage Policy*.

NOTE: It is important to keep in mind that the above-described conduct may involve perpetrators who (1) are the same gender as their victims, and/or (2) lack a sexual or romantic interest in the victims.

2. Allegations of Sexual Misconduct by a BPD member will generally be investigated as follows:
 - 2.1. BPD's Sex Offense Unit (SOU) will conduct the criminal investigation (for those allegations of criminal behavior).
 - 2.2. BPD's Public Integrity Bureau (PIB) will conduct the administrative investigation.
 - 2.3. The Police Commissioner, or designee, has the discretion to refer an investigation, whether criminal and/or administrative, to an outside agency to avoid any potential conflicts of interest or the appearance of such. See the PIB Investigations Manual for further guidance on referrals to outside agencies.

REQUIRED ACTIONS

All Members

3. All complaints of BPD member Sexual Misconduct shall be accepted and investigated fully (see Policy 306, *Complaint Intake and Classification Process*).
4. All members must possess a comprehensive understanding of how to address a reported victim of a Sexual Offense and/or Sexual Misconduct in a trauma-informed, victim-centered manner (see Policy 708, *Rape and Sexual Assault* and Appendix A, *Sexual Assault Victim Resources*).
5. All BPD members have an affirmative duty to report any known, suspected, or alleged act of Sexual Misconduct perpetrated by a BPD member of which they are aware (see Policy 302, *Rules and Regulations*, Policy 1729, *Anti-Retaliation*).
 - 5.1. This duty refers to any instance where a BPD member is the perpetrator, suspect, accused, or respondent, regardless of who the victim is. (See section 5.3. below for guidance when the victim is a BPD member.)

- 5.2. Be advised that victims of Sexual Offenses may choose to have forensic evidence collected but not to engage in a criminal investigation (known as Jane or John Doe Reporting). In such instances where a BPD member learns of a Jane or John Doe report alleging a Sexual Offense perpetrated by a BPD member, the first member is still required to report the misconduct internally. In such an instance, the case would be investigated administratively by PIB as an anonymous complaint.
- 5.3. In cases where a BPD member is the victim of Sexual Misconduct by another BPD member, the victim member is not required, but is encouraged, to report the misconduct committed against them. They do remain obligated to report such acts committed against other individuals.
- 5.4. In cases where a BPD member is the victim of Sexual Misconduct by a person who is not a BPD member, other BPD members are not obligated to report it.

NOTE: Where a BPD member is the victim of Sexual Misconduct, the victim is encouraged to seek support with BPD's Officer Safety and Wellness Unit and/or with other victim support resources. See Policy 1703, *Employee Assistance Program* and Policy 708, *Rape and Sexual Assault*.

- 5.5. Failure to comply with reporting obligations under this policy or any other pertinent BPD policies (e.g., Policy 1701, *Equal Employment Opportunity and Diversity*) may subject a member to disciplinary action, unless the member is the victim. All employees with knowledge of Sexual Offense(s) or Sexual Misconduct who fail to report it will be held accountable.
6. Members must report any complaint of Sexual Misconduct received or any knowledge of BPD member Sexual Misconduct immediately to a permanent-rank supervisor and/or directly to PIB. The permanent-rank supervisor must ensure that PIB and/or SOU is immediately notified by phone.
7. PIB must notify SOU upon receiving any complaint alleging criminal Sexual Misconduct. Likewise, SOU must notify PIB upon receiving any complaint alleging Sexual Misconduct.
8. The PIB Investigation Section and/or SOU investigator must ensure that the Equal Opportunity and Diversity Section (EODS), housed within PIB, is alerted of all complaints alleging violations of Policy 1701, *Equal Employment Opportunity and Diversity*. This will allow EODS to ensure that employment law violations are considered and addressed.
9. Similarly, EODS will immediately notify PIB and/or SOU Command upon receiving any complaint alleging Sexual Misconduct by a BPD member.

Investigative Responsibilities for Allegations of Sexual Misconduct by BPD Member

General

10. All investigators of criminal and administrative investigations involving any allegations of Sexual Misconduct are expected to conduct their investigation in a trauma-informed, victim-centered manner (see Policy 708, *Rape and Sexual Assault*).

11. All PIB investigators and SOU investigators must maintain regular contact with victims, per requirements outlined in Policy 708, *Rape and Sexual Assault*, the PIB Investigations Manual and the Sex Offense Unit Standard Operating Procedures.
12. PIB must track as a separate category of complaints all allegations that BPD members engaged in Sexual Misconduct.

Non-Criminal Misconduct

Public Integrity Bureau (PIB)

13. Following PIB's receipt of a report of non-criminal Sexual Misconduct, the PIB investigator must follow the procedures outlined in the PIB Investigations Manual.
 - 13.1. PIB investigators must protect the confidentiality of the victim's information to the maximum extent possible by law.
 - 13.2. PIB investigator must employ an interview approach consistent with trauma-informed principles, which are outlined in Policy 708, *Rape and Sexual Assault*. It is preferable to conduct victim interviews in a soft interview room. Additionally, where possible, an SOU detective with experience conducting trauma-informed interviews should lead or participate in victim interviews. Interviews must be conducted at a time and place convenient for the victim (consistent with the PIB Investigations Manual) and in a manner that protects victim confidentiality.
 - 13.3. During initial complainant contact, the PIB investigator must advise the complainant about the possibility of intimidation, retaliation, coercion and/or influence and advise them on how to report such actions (e.g., immediate notification of the Department, preservation of evidence). The investigator must ask the complainant about any such actions in their subsequent contacts with the complainant.
 - 13.4. PIB investigators must provide the victim with Form 310, Sexual Assault Victim Resources.
 - 13.5. The accused member will be notified of the allegations in accordance with procedures in the PIB Investigations Manual.

NOTE: If at any point during an administrative investigation, the PIB investigator discovers criminal conduct of any kind, including Sexual Misconduct, domestic violence, child abuse, human trafficking, or stalking, they must contact their supervisor immediately, who will ensure that SOU is promptly notified.

14. If a respondent employee resigns during the investigation, the investigation must still be completed and decisions regarding the findings and recommended administrative discipline shall be documented in the employee's personnel and internal affairs files.
15. All findings of allegations related to violations Policy 1701, *Equal Employment Opportunity and Diversity* must be forwarded to EODS.

Criminal Misconduct*General Authority*

16. PIB has the ultimate authority over a criminal investigation within BPD's jurisdiction involving a BPD member. Nevertheless, for cases involving criminal Sexual Misconduct, PIB will generally refer the criminal matter to the Sex Offense Unit, due to the specialized nature of the investigation.
 - 16.1. When PIB refers a criminal Sexual Misconduct investigation to SOU, SOU will serve as the lead investigative unit and the PIB investigator will work in tandem with them to provide consultation.
 - 16.2. If either the Deputy Commissioner of Operations or the Deputy Commissioner of PIB determines the process outlined in 16 and 16.1 needs to be altered for a particular investigation, including if an investigation should be conducted by an outside agency, they shall negotiate an investigative process for that investigation. If the Deputy Commissioners are unable to reach an agreement, then the matter will be referred to the Police Commissioner for final determination.

Sex Offense Unit

17. SOU shall adhere to the protocols in Policy 708, *Rape and Sexual Assault*, and the Sex Offense Unit Standard Operating Procedures.
18. All criminal cases require an administrative investigation. SOU shall immediately notify PIB of any criminal allegation made against a member of BPD.
19. The SOU investigator must complete a recusal form, to ensure no conflict exists, prior to being permanently assigned to an investigation of a BPD member accused or suspected of criminal Sexual Misconduct. If a conflict exists, the investigation shall be reassigned to an investigator who does not have a conflict.
20. SOU shall ensure that PIB is regularly updated as to the status of the investigation.
21. SOU will conduct interviews in accordance with the SOU Standard Operating Procedures, and the PIB investigator may observe any interviews conducted by the SOU in the criminal investigation.
 - 21.1. Interviews that SOU conducts should be video and audio recorded, and the PIB investigator may review the recording. The victim will be informed that the interview is being recorded and that the recording can be shared with PIB.
 - 21.2. An interview should not be delayed due to the unavailability of the PIB investigator. Nevertheless, the PIB investigator must be consulted prior to any interview of a BPD accused member.
22. SOU shall provide the victim with information about support and advocacy, per Policy 708, *Rape and Sexual Assault*.

23. The SOU investigator shall maintain regular contact with the victim, per requirements of Policy 708, *Rape and Sexual Assault*, and the SOU Standard Operating Procedure. Keep in mind that Sexual Misconduct where the victim is a BPD member may raise increased concerns about retaliation from other BPD members or from the Department itself. In the event that a victim reports retaliation to the SOU investigator, the investigator must report it to PIB.

Public Integrity Bureau

24. Following PIB's receipt of a report of criminal Sexual Misconduct, PIB shall consult SOU regarding the status of the investigation. PIB investigators must follow the procedures outlined in the PIB Investigations Manual.
- 24.1. Per the PIB Investigations Manual, the PIB investigator must caution the complainant about the possibility of intimidation, retaliation, coercion and/or influence and advise them on how to report such actions (e.g., immediate notification of the Department, preservation of evidence). The investigator must ask about any such actions in their subsequent contacts with the complainant.
25. PIB shall conduct a comprehensive administrative investigation into the Sexual Misconduct allegations for violations of this policy. See PIB Investigations Manual. In order to protect the suspect's rights under *Garrity v. New Jersey*, 385 U.S. 493 (1967) and to ensure the criminal investigation is not compromised, the PIB investigator shall not compel a respondent member to make a statement until the criminal portion of the case has been resolved (either through declination or adjudication). In the event that criminal conduct is discovered *after* the compelled statement is made, it is the responsibility of the PIB investigator to identify all *Garrity* material and ensure that material is not provided to the criminal investigators by any means.
26. If a respondent employee resigns during the investigation, the PIB investigation must still be completed and decisions regarding the findings and recommended administrative discipline shall be documented in the employee's personnel and internal affairs files.
27. All findings of allegations related to violations Policy 1701, *Equal Employment Opportunity and Diversity* must be forwarded to EODS.

Commander Responsibilities

28. The investigator's command must notify the Police Commissioner if any signs emerge of retaliation or harassment directed against a complainant or an employee who reported Sexual Misconduct, including abuse of the complaint procedure and violations of confidentiality guidelines.
29. Each Commander overseeing an investigation into criminal and/or administrative Sexual Misconduct must track the complaint through its conclusion.
30. Each Commander overseeing an investigation into criminal and/or administrative Sexual Misconduct must review the findings of each investigation.

Sexual Misconduct Incident Reviews

31. BPD shall conduct a Sexual Misconduct incident review at the conclusion of every investigation of a Sexual Misconduct complaint against a BPD officer or employee concerning conduct against a non-BPD employee. Such review shall ordinarily occur within one month following the conclusion of the investigation of the allegation. The review team shall include upper-level management officials, with input from line supervisors and investigators. The review team shall:
 - 31.1. Consider whether the report or investigation indicates a need to change BPD policies or practices to better prevent, detect, or respond to Sexual Misconduct;
 - 31.2. Consider where the incident occurred and the staffing and supervision in that area to assess whether physical or other conditions in that area may enable abuse; and
 - 31.3. Prepare a report of its findings, including any recommendations for improvement. This report shall be provided to BPD leadership.
32. The Department shall document its reasons for implementing or not implementing the recommendations of the Sexual Misconduct incident review team.

APPENDIX

- A. Form 310, Sexual Assault Victim Resources

ASSOCIATED POLICIES

Policy 301, *Code of Ethics*
Policy 302, *Rules and Regulations*
Policy 305, *Department Values, Vision and Mission*
Policy 306, *Complaint Intake and Classification Process*
Policy 319, *Duty to Intervene*
Policy 708, *Rape and Sexual Assault*
Policy 1303, *Departmental Email Usage*
Policy 1305, *Use of Departmental Personal Computer Systems*
Policy 1306, *BPDnet and Internet Usage Policy*
Policy 1701, *Equal Employment Opportunity and Diversity*
Policy 1703, *Employee Assistance Program*
Policy 1729, *Anti-Retaliation*

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Form 310, Sexual Assault Victim Resources

FORM 310
March 2022 Edition


YOU ARE NOT ALONE!

TurnAround, Inc.
Baltimore City Advocates
443-279-0379
24/7 Helpline

Maryland Coalition Against Sexual Assault
www.mcasa.org
301-328-7023

Mercy Medical Center
301 Saint Paul Place
(corner of Calvert and Pleasant Streets)

Download Mercy Medical Center's bMOREsafe App
(if safe to do so)



Sexual Assault Legal Institute [SALI]
301-565-2277
877-496-7254 (toll free)

Rape, Abuse and Incest National Network [RAINN]
www.rainn.org
1-800-656-4673
24/7 Hotline

The Baltimore Police Department is dedicated to providing a trauma-informed response to victims of rape and sexual assault.


Complete the sexual assault victims survey:
www.baltimorepolice.org/SASurvey

This survey is entirely optional and anonymous unless you choose to provide your contact information. The answers you provide will help ensure quality services.

Officer Name:
Officer Sequence:
Date:
Complaint #:
Detective Name:

BALTIMORE POLICE DEPARTMENT

SEXUAL ASSAULT VICTIM RESOURCES


Baltimore Police Department
Sex Offense Unit:
410-396-2076

If you or someone you know has been a victim of sexual assault:

- CONTACT A FRIEND OR OTHER SUPPORT PERSON
- SEEK MEDICAL CARE
- CALL THE POLICE
- REACH OUT TO ADVOCATES

Support

You may feel confused and not sure what to do. Call someone you trust who will offer you emotional support and help you understand your options.

Medical Care

Seek medical care as soon as possible. Mercy Medical Center provides Sexual Assault Forensic Exams (S.A.F.E.) up to 14 days after the incident.

Conducted by specially trained nurses, the free exam provides treatment for any injuries, testing for pregnancy and sexually transmitted infections (STIs) and medication to prevent pregnancy and STIs, as well as evidence collection.

Your exam can remain anonymous, meaning you do not have to contact the police to receive a S.A.F.E., and will be stored for twenty years. If at any time you wish to involve the police, an investigation will begin.

If possible, try not to wash, brush teeth, change clothes, gargle or clean anything from which evidence might be collected before getting a S.A.F.E.

Even if 14 days have passed since the incident, it can still be helpful to seek medical attention.

Report

Call 9-1-1 and make a report to the police. An officer will meet you at your location and ask for basic facts about the incident while prioritizing your safety, privacy and well-being.

You may experience difficulty in remembering all of the details of the incident. This is normal and the Baltimore Police Department will work with you, when you are ready, to thoroughly investigate the incident.

Advocates

Trained professionals, who can provide confidential advice, information, and these services:

- A 24-hour helpline
- Assistance with reporting to police or other authorities
- Support at the emergency room and/or S.A.F.E. exam
- Crisis intervention
- Safety planning
- Accompaniment to court and interviews
- Access to legal services
- Help finding shelter or transportation
- Information about the criminal justice process
- Support for secondary victims, such as family or partners