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## Personnel Complaints

### 1020.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Kitsap County Sheriff's Office. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

### 1020.2 POLICY

The Kitsap County Sheriff's Office takes seriously all complaints regarding the service provided by the Office and the conduct of its members.

The Office will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any memorandum of understanding or collective bargaining agreements.

It is also the policy of this office to ensure that the community can report misconduct without concern for reprisal or retaliation.

### 1020.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of office policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate office policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Office and shall be addressed in accordance with the Service Requests and Procedure Queries Policy.

#### 1020.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

**Informal** - A matter in which the Shift Sergeant is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Office of Professional Standards, depending on the seriousness and complexity of the investigation.

**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or

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the Office of Professional Standards, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

### **1020.3.2 SOURCES OF COMPLAINTS**

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any office member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

### **1020.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

#### **1020.4.1 COMPLAINT FORMS**

Personnel complaint forms will be maintained in a clearly visible location in the public area of the sheriff's facility and be accessible through the office website. Forms may also be available at other County facilities.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

#### **1020.4.2 ACCEPTANCE**

All complaints will be courteously accepted by any office member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

### **1020.5 DOCUMENTATION**

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. This may be an electronic database or paper log maintained by the Office of Professional Standards.

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At least annually, the Sheriff should ensure the preparation of an analysis report on personnel complaints. The report may be prepared by the Office of Professional Standards and should be submitted to the Sheriff. The report should not contain the names of members, suspects, or case numbers, and should include:

- (a) The identification of any trends in the complaints against the office.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

### **1020.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

#### **1020.6.1 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 Sheriff or the authorized designee may direct that another supervisor or OPS investigate any complaint.

A supervisor witnessing activity of a subordinate that amounts to a sustained complaint may, subject to chain of command review, take corrective action up to and including a written reprimand. A supervisor shall review the subordinate's supervisory file before taking corrective action to ensure that formal discipline may not be warranted. A supervisor should consult with the Division Chief when practicable before making this determination.

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 or entered into the OPS database.
  - 1. The original complaint form will be directed to the supervisor of the accused member, 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 Division Lieutenant or Chief 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.
  - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.

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2. 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 the Division Lieutenant who will then forward it to OPS for retention.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Office of Professional Standards, the Division Lieutenant, the Division Chief and the Undersheriff are notified as soon as practicable.
- (e) Promptly contacting the Division Lieutenant, Division Chief, the Office of Professional Standards and the Undersheriff for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment of discrimination.
- (f) Forwarding unresolved personnel complaints to the Division Lieutenant who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Investigating a complaint as follows:
  1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (h) Ensuring that the procedural rights of the accused member are followed.
- (i) Ensuring interviews of the complainant are generally conducted during reasonable hours.

### 1020.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Office of Professional Standards, the following applies to employees:

- (a) Provisions of the employees respective Collective Bargaining Agreement (CBA) regarding administrative investigations should be reviewed by the supervisor prior to the interview.
- (b) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (c) Unless waived by the employee, interviews of an accused employee shall be at the Kitsap County Sheriff's Office or other reasonable and appropriate place.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee 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.

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- (g) A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a Garrity advisement and after the investigator has consulted with the prosecuting agency.
- (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview.
- (i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview in accordance with their respective CBA.
- (j) All employees shall provide complete and truthful responses to questions posed during interviews.
- (k) No employee may be compelled to submit to a polygraph or other truth verification examination, nor shall any refusal to submit to such examination be mentioned in any investigation.
- (l) An employee may provide relevant evidence and/or witnesses to be included in the investigation.
- (m) An employee covered by civil service shall be provided a written statement of all accusations with a duplicate statement filed with the civil service commission when the employee is removed, suspended, demoted, or discharged. (RCW 41.12.090; RCW 41.14.120).

### 1020.6.3 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.

**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.

**Exhibits** - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

### 1020.6.4 DISPOSITIONS

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

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

**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.

### 1020.6.5 COMPLETION OF 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 within 90 days from the date of discovery by an individual authorized to initiate an investigation.

### 1020.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

### 1020.7 ADMINISTRATIVE SEARCHES

Members forfeit any expectation of privacy with regard to assigned lockers, storage spaces and other areas, including desks, offices and vehicles, and these 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 document or equipment.

### 1020.8 ADMINISTRATIVE ASSIGNMENT

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Sheriff or the authorized designee may temporarily assign an accused employee to administrative assignment. Any employee placed on administrative assignment:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift or administrative assignment, generally a normal business-hours shift, during the investigation. The employee may

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be required to remain available for contact at all times during such shift, and will report as ordered.

### **1020.9 CRIMINAL INVESTIGATION**

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

The Sheriff shall be notified as soon as practicable when a member is accused of criminal conduct. The Sheriff 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.

No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

The Kitsap County Sheriff's Office may release information concerning the arrest or detention of any member, including a deputy, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

### **1020.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the employee's Division Chief through the chain of command.

#### **1020.10.1 DIVISION CHIEF RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Division Chief of the involved member shall review the entire investigative file, the member's personnel files and any other relevant materials.

Prior to making a final decision, the Division Chief may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

Once the Division Chief is satisfied that no further investigation or action is required by staff, the Division Chief shall determine the disposition of each allegation and the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Division Chief shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Division Chief in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Division Chief, in accordance with the employee's respective CBA.
  - 1. Upon a showing of good cause by the member, the Division Chief may grant a reasonable extension of time for the member to respond.

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2. If the member elects to respond orally, the presentation should be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Division Chief shall consider all information received in regard to the recommended discipline. The Division Chief shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Division Chief has issued a written decision, the discipline shall become effective.

### **1020.10.2 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT**

The Sheriff, the authorized designee, or the assigned investigator shall make every reasonable effort to notify the complainant of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

### **1020.11 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Division Chief after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Division Chief to consider.
- (d) In the event that the Division Chief elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Division Chief on the limited issues of information raised in any subsequent materials.

### **1020.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline (RCW 43.101.135).



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### **1020.13 POST-DISCIPLINE APPEAL RIGHTS**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement, memorandum of understanding and/or civil service rules.

In the event of punitive action against an employee covered by civil service, the appeal process shall be in compliance with RCW 41.12.090 and RCW 41.14.120.

### **1020.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Sheriff or the authorized designee.

Any probationary period may be extended at the discretion of the Sheriff in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

### **1020.15 RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

### **1020.16 NOTIFICATION TO CRIMINAL JUSTICE TRAINING COMMISSION (CJTC) CERTIFICATION BOARD**

Upon separation of a peace officer for any reason, the Office shall, within 15 days of the separation, notify the CJTC on a personnel action report form provided by the commission. When a resignation or retirement is accepted in lieu of termination, the reasons and rationale shall be included in the information provided to the CJTC, including the findings from any internal or external investigations into alleged misconduct (RCW 43.101.135).

The CJTC shall be notified within 15 days of an initial disciplinary decision made by the Office for alleged behavior or conduct by a deputy that is noncriminal and may result in revocation of certification (RCW 43.101.135).

The CJTC shall also be notified regarding any decision to discipline a deputy for failure to intervene or for failure to report an incident of excessive force or any wrongdoing by another peace officer for determination of suspension or revocation of certification (RCW 10.93.190).

The Office shall provide timely updates on an internal investigation reported to the CJTC and provide a summary of findings to the CJTC within 15 days of concluding the investigation (WAC 139-06-020).

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The Office shall, upon request of the CJTC, provide such additional documentation or information as the commission deems necessary to determine whether the separation or event provides grounds for suspension or revocation of the peace officer's certification (RCW 43.101.135).

### **1020.17 ANNUAL REVIEW AND ANALYSIS**

The Office of Professional Standards supervisor shall prepare an annual review and analysis report on internal investigations. The report should not contain any identifying information about any specific complaint, citizen, or deputy and should address:

- (a) Policy and procedure issues identified during the review process, if any.
- (b) Training issues identified during the review process, if any.
- (c) Personnel issues identified during the review process, if any.

The report shall be submitted to and reviewed and approved by the Sheriff.