



*Office Of The Sheriff*  
**Allegany County**  
**Maryland**

GENERAL ORDER NO: **1-900.00**

TO: All Patrol and Judicial Personnel

RE: **DEPARTMENTAL DISCIPLINARY PROCEDURES**

**PURPOSE:** To establish a systems approach for the development of effective discipline. The system will employ positive disciplines, (commendations, recognition, for exemplary behavior and work performance), as well as negative disciplines ranging from counseling, forfeiture of money/vacation, to job termination. The goal of the discipline system will be to encourage exemplary behavior through recognition, and to correct such actions as poor work habits, low performance, and misconduct, through progressive negative discipline.

EFFECTIVE DATE: 2004

REVISION DATE: 3/1/2016

**1-901.00      Definitions**

- .01      Administratively Closed: Disposition of a misconduct charge when the investigation is completed and non-punitive actions are taken such as training.
- .02      Counseling: A low level of negative disciplinary action in which poor work habits, low performance and misconduct are discussed between a supervisor and subordinate, means for correction of the behavior, departmental expectations as given in rules and regulations, and the consequences if the misconduct continues.
- .03      Discipline: The training in and compliance with departmental policies aimed at promoting self control, esprit, character, order, and efficiency in departmental operations.
  - A.      Positive Discipline: Rewarding excellence in job performance and behavior. Rewards may include, but not be limited to:
    - 1.      Granting training which has been requested.

2. Administrative time off.
3. Recognition through commendations and rewards.
4. Favorable evaluations that may lead to merit based pay incentives, as set forth by County Policy.

B. Negative Discipline: Actions ranging from counseling sessions to fines and suspensions with the most severe step being termination of employment. Negative discipline will, whenever possible, be progressive in nature; i.e., progressively more severe in degree if misconduct continues.

.04 Employee Counseling Form: Form of negative discipline consisting of written documentation on employee actions constituting misconduct, and actions to be taken in poor work performance correction. Counseling forms are filed in the employee 's disciplinary record.

.05 Emergency Suspension: Situation in which an employee is relieved of duty immediately because of factors which threaten the safety of the employee, co-workers, or the public; i.e., employee under the influence of drugs or alcohol.

.06 Exonerated: The facts in a complaint of misconduct did occur, but the action of the employee was justified, lawful and proper.

.07 Final Judgment: The final judgment of the Sheriff regarding the level of punishment administered after a hearing board 's findings, conclusions, and recommendations, or in the case where a hearing board was waived or summary punishment accepted, review of the investigative file.

A. A final judgment may also come from the Sheriff without a hearing board being convened in cases where no investigation or interrogation occurs in accordance with Maryland Appellate Court decisions, specifically Leibe vs. Police Department of Annapolis, Maryland.

.08 Law Enforcement Officers ' Bill of Rights (LEOBR): Annotated Code of Maryland, Public Safety Article, Title 3, Subtitle 1, granting law enforcement personnel procedural rights during the investigation of alleged misconduct. Departmental investigations and any subsequent disciplinary actions will be in accordance with the LEOBR. The LEOBR is incorporated into this order by way of reference.

.09 Misconduct: For purposes of this Order, misconduct is defined as a violation of a departmental rule and regulation, or a violation of law.

- .10 Not Sustained: The failure to disclose sufficient evidence to prove or disprove an allegation.
- .11 Policy Failure: The facts as alleged did occur and the actions of the employee were consistent with departmental policy; however, the investigation reveals a need for a revision, change, or correction in departmental policy.
- .12 Summary Punishment: Punishment imposed by the Sheriff when facts constituting the offense are not in dispute and the accused employee agrees to the punishment. Summary punishment may not exceed three days suspension without pay, or a fine of \$150.
- .13 Sustained: The investigation has gathered sufficient evidence to establish a *prima facie*, (on the face of it), case with respect to the allegation of misconduct.
- .14 Unfounded: The investigation indicates the allegation is false, or there is no credible evidence to support the charge.

**1-902.00      Emergency Suspension Procedures**

- .01 An Emergency Suspension may be ordered only by a supervisor or administrator superior in rank to the employee being placed on emergency suspension. If the employee in question is the senior member on duty, it will be the responsibility of the next senior member to immediately notify the employee's immediate supervisor or higher authority of the situation. The authority initiating a suspension will document all information, observations, and witnesses if applicable, leading to the emergency situation.
- .02 An Emergency Suspension is justified when an employee, for whatever reason, is in a state that, if allowed to perform assigned work responsibilities, would jeopardize himself, co-workers, or the public.
- .03 Emergency suspensions will be reported to the Sheriff, or his designate immediately.
- .04 Suspension Without Pay: The Sheriff may suspend personnel without pay if they have been charged with a felony, (Public Safety Article, 3-112(C)).
  - A. The employee shall immediately surrender his/her badge, department issued firearm Sheriff's Office ID card, assigned vehicle and all issued Allegany County Sheriff's Office equipment to the Sheriff.

.05 Suspension With Pay: Personnel suspended from regular duties with pay will be instructed by the Sheriff as to any administrative assignments during the length of the suspension.

A. The employee shall immediately surrender his/her badge, department issued firearm, Sheriff's Office ID card, and assigned vehicle to the Sheriff.

.06 Any employee suspended from duty will be notified of a date, time and location for a Suspension Review, to determine whether the suspension will be continued or terminated. The Suspension Review will be held no later than three (3) days following the suspension from duty exclusive of weekends and holidays.

**1-903.00 Positive Disciplinary Action**

.01 A function of discipline is to train and guide personnel into behavior and job performance consistent with departmental goals and expectations. Personnel must be recognized for exemplary performance through tangible means; i.e., time off, training, and commendations. Small achievements should also be recognized by supervisors on the shift level by verbal signs of appreciation and written documentation in evaluation files. Recognizing excellence in job performance encourages positive attitudes, and demonstrates to the employee that supervisors and administrators are aware and observant of good work, and are not cognizant of only negative behavior.

**1-904.00 Progressive Discipline**

.01 Progressive Discipline involves using the minimum amount of punishment possible commensurate with the violation, then progressively increasing the severity of the penalty if the poor work performance and/or undesirable behavior continues. The steps in progressive discipline are:

A. Oral reprimand

B. Written counseling form

C. Suspension, loss of vacation time, or fines

D. Termination of employment

.02 Supervisors must ensure that employees are fully aware of regulations affecting their work environment. Departmental rules will be concise and give forewarning that failure to adhere to rules may result in disciplinary action. Supervisors should review rules and regulations periodically with employees. Departmental rules will relate to the orderly operation of the Department. Employees will be furnished a copy of the rules in the form of a manual.

.03 Role of the First Line Supervisor in Discipline

- A. The First Line Supervisor plays a critical role in the discipline system. The supervisor is in a position to observe the quality and quantity of work performance along with behavior. The supervisor normally will be the first in the chain of command to observe misconduct, and is often in the best position to initiate corrective action and to recommend appropriate sanctions based on the employee 's personality changes, character, and past performance. The supervisor has a responsibility to initiate commendations and recognitions for exemplary work, as well as negative discipline for misconduct or below average work performance.
- B. The supervisor should make recommendations for corrective actions commensurate with the employee 's behavior, to the Shift Lieutenant.

.04 Steps in Progressive Discipline

- A. Oral Reprimands: Oral reprimands should be given in a private setting. The supervisor should present the facts as known, and review how the behavior has violated departmental policy. The employee should be allowed to speak in their defense. If the supervisor is not persuaded by the employee 's account, he should advise the employee of his/her decision and consequences of continued misconduct or poor work performance. The meeting should be documented and placed in the employee 's evaluation file.
- B. Written Reprimand (Counseling Form): Counseling Forms are the next level of progressive discipline. Counseling forms document misconduct or below average work performance by the employee, corrective action by the supervisor, and are placed in the employee 's disciplinary file. Such documentation becomes extremely important should more severe action become necessary. The counseling forms will be retained in the employee 's disciplinary file for a period of three (3) years from the date of issuance. They will only be removed upon written request to the Sheriff by the employee.

1. List the precise rule violation with detailed documentation, if applicable.
2. Document the warning to the employee that more severe forms of progressive discipline will be administered if the adverse behavior, or below average work performance continues.
3. Review departmental expectations with the employee.

C. Demotions, Loss of Vacation, Suspension without Pay, Fines. These sanctions constitute the next level in progressive discipline and involve the punitive loss of vacation or money.

They may be imposed because of:

1. Serious cases of misconduct
2. Severe inefficiency or incompetence
3. Continued relatively minor rule infractions not corrected by previous less severe disciplinary action.

D. Termination of Employment: Termination of employment is the most severe sanction imposed. It should be considered only if prior efforts at behavior modification through the progressive discipline process have failed, or if the violation is of such a magnitude that dismissal is justified. If the employee is terminated, they will be furnished with a personnel order giving the following information:

1. A statement citing the reason for dismissal.
2. Effective date of dismissal.
3. A statement of the status of fringe and retirement benefits after dismissal.
4. A statement as to the content of the employee 's employment record relating to the dismissal .

E. It is critical that violations of departmental policy and corrective action taken be accurately documented by supervisors at all levels of the disciplinary process.

**.04 Considerations when initiating Disciplinary Action**

- A. What has the employee done or not done?
- B. Is there an underlying cause to the problem?
- C. Has this been a repetitive problem?
- D. What steps have or can be taken for correction?
- E. Does the problem call for formal or informal action?
- F. What type of discipline should be used?
- G. Does the proposed discipline fit the violation?
- H. Has the rule been uniformly enforced?
- I. Does documentation exist to support the charges?

**1-905.00 Administrative Charging Procedures**

**.01** The Sheriff, or his designee, will, in certain instances of rule violations, decide that punitive action should be taken in the form of monetary or vacation loss. Administrative charging procedures for seeking punishment involving the loss of vacation time or money are as follows:

- A. Recommendation to the Sheriff:
  - 1. Information indicates that an employee has violated a departmental rule in a manner deserving disciplinary action.
  - 2. After preliminary review, the Sheriff decides that punishment beyond oral or written reprimand may be appropriate and assigns personnel to conduct internal investigation, if necessary.
  - 3. The Sheriff will review the file with recommendation and decide to:
    - a. Close the matter with no disciplinary action.
    - b. Administratively close the matter with training or other non-punitive measures.

- c. Administer minor negative disciplinary action; i.e., counseling form.
- d. Agree that punitive action involving a fine, loss of time, or termination of employment is appropriate. The Sheriff may agree upon the recommended punishment or increase/reduce it. The Sheriff will instruct the Patrol Commander to administratively charge the employee and either:
  - 1. Offer summary punishment to the employee after the charging procedure is complete, or;
  - 2. Seek punishment beyond the parameters of summary punishment and initiate actions necessary to convene a hearing board. Employee may waive right to a hearing board and accept the proposed punishment.

.02 Completion of Administrative Charging Documents

- A. Charging document may be initiated by the Sheriff, Shift Lieutenant, shift supervisor, or their designee.
- B. Each charge will reference the policy violated, be it a General Order, Special Order, Memoranda, or other official departmental publication.
- C. Charges will describe only the offense committed and the departmental policy violated.

**1-906.00 Summary Punishment**

.01 In cases involving a relatively minor infraction, the Sheriff may decide to offer Summary Punishment to the employee. Summary Punishment has the following components:

- A. Summary Punishment may be imposed when the facts of the incident are not in dispute. If Summary Punishment is offered and accepted, the employee will be given a copy of the "Department Finding of Fact". The employee will sign the original indicating there is no dispute on the facts. The Shift Lieutenant will complete the front of the "Notification of Charges" Form. The employee will sign the appropriate signature blocks indicating understanding of the material on the form, and that the rights to a hearing board and an appeal have been waived.

- B. Summary Punishment may not exceed three days Suspension Without Pay, or a Fine of \$150. (Public Safety Article, 3-111)
- C. The employee is not obligated to accept Summary Punishment, and may instead request a Board Hearing. If so, the Sheriff will appoint a one man or more Hearing Board. If the charges are sustained and punishment is recommended by the board, it cannot exceed three (3) days Suspension Without Pay or \$150 Fine. A finding of "not guilty" concludes the action.
- D. The employee will have three (3) working days from the date in which it was offered to decide if Summary Punishment will be accepted. If after three (3) working days no answer is forthcoming, the Shift Lieutenant will take action to convene a hearing board.

**1-907.00      Hearing Board**

- .01 If the investigation or interrogation of a law enforcement officer, as outlined in the Law Enforcement Officers' Bill of Rights, results in the recommendation of some action considered as a punitive measure; i.e., suspension without pay, fines, demotion, etc., (except for convicted felons), the law enforcement agency will give notice to the employee that he/she is entitled to a hearing board on the issues involved.
- .02 Before members of a hearing board are appointed, a copy of the entire investigative file will be forwarded to the Sheriff as to whether sufficient evidence is available for a viable case.
- .03 A hearing board will be convened in accordance with the LEOBR under the following circumstances:
  - A. When an employee has been offered Summary Punishment but refuses to accept the punishment. A board will be convened, as outlined in the LEOBR. If the board consists of a single member, the rank need not be the same as that of the accused.
  - B. A hearing board will be convened if the Sheriff decides to pursue punishment beyond that allowed by a summary type action, following investigation/interrogation of the employee.

- .04 The Board is authorized to hold a hearing on a complaint against personnel. The Board will consist of not less than three (3) members, (except a one person board as in LEOBR). The Board Members will be appointed by the Sheriff, and will be law enforcement personnel selected from the Sheriff's Office, or from other law enforcement agencies, with approval of their respective agency heads. The Board Members may not have participated in the investigation of the employee. At least one member of the Board will be of the same rank as the accused. (Public Safety Article, 3-107)
- .05 The Hearing Board Chairman will be a commissioned officer. The Chairman will administer oaths or affirmations and examine witnesses under oath. The Chairman will contact other Board Members prior to the hearing, inform them of the accused name and the charges, and ensure they are familiar with their responsibilities as Hearing Officers. The Chairman will preside over the hearing and decide issues of procedure or the admissibility of evidence. The Chairman will, at the request of either counsel, issue summons to compel the attendance and testimony of witnesses, the production of books, papers, records, reports, and other documents as may be relevant and necessary.
- .06 An official written and taped record will be kept of the hearing, along with all evidence and exhibits.

**1-908.00 The Accused Employee may be Represented by a Counsel of Choice.**

**1-909.00 Hearing Board Procedure**

- .01 There will be no weapons permitted at the Hearing Board.
- .02 Brief opening statements will be given first by the department and then by the defense.
- .03 The Department will present its case, introducing evidence and/or witnesses. The defense counsel may cross-examine witnesses. Board members may also ask questions of witnesses.
- .04 After the department has rested its case, the defense will present its case. The department may cross examine witnesses.
- .05 Rebuttal evidence may then be presented by the department.
- .06 Summation is made by the department, then by the defense, with a concluding summation by the department.

**1-910.00      Hearing Board Findings**

.01 After hearing witnesses and reviewing the evidence, the Board will reach a verdict of guilty or not guilty. A verdict of not guilty may be arrived at through several paths of finding:

- A.      GUILTY (Charges Sustained): Sufficient evidence has been presented to establish a *prima facie* case that the employee committed the actions as charged. A finding of "Guilty" must be based on a preponderance of the evidence, as opposed to "beyond a reasonable doubt" in criminal proceedings. If a guilty verdict is reached, the hearing enters a second phase. The Board will reconvene to receive and consider mitigating evidence that may include the employee's past record, work performance, the circumstances surrounding the incident, etc. The Board will then decide upon a recommendation for punishment.
- B.      NOT GUILTY: A "Not Guilty" verdict will conclude the administrative action on the charges. A not guilty verdict may be accompanied by one of several different findings:
  1.      NOT GUILTY (Charges Not Sustained): Insufficient evidence was presented to establish a *prima facie* case.
  2.      NOT GUILTY (Exonerated): Evidence shows that the employee's actions happened as alleged, but that the actions were legal, proper, and not inconsistent with departmental policy.
  3.      NOT GUILTY (Unfounded): The Board has found the allegations to be false, or no credible evidence was presented to support the allegations.
  4.      NOT GUILTY (Policy Failure): The evidence presented indicates the employee's actions were consistent with department policy; however, a recommendation is made that the policy be amended or modified.

**1-911.00      Board Decisions**

.01 The decisions and recommendations of a multi-member hearing board shall be governed by a majority vote of its members. Any decision, order, or action taken as a result of the hearing will be accompanied by a finding of fact. The finding shall consist of a statement upon each issue of the case. If the hearing board finds the employee "not guilty" the action is concluded.

- .02 A copy of the board 's findings, conclusions, decision, and recommendation if a guilty verdict is returned shall be delivered or promptly mailed to the employee or representative, and to the Sheriff. Any recommendations will be completed by the board and forwarded to the Sheriff within 72 hours starting the day after the board has reached a decision. An extension may be granted by the Sheriff for good cause. The board must notify the accused if it seeks an extension.
- .03 Written recommendations as to the extent of punishment from the board are not binding upon the Sheriff except as stated in "A" below of this paragraph. Within 30 days of receipt of the board 's recommendation, the Sheriff will make a final determination after review of submitted material. The Sheriff 's decision is final and binding but may be appealed to the Circuit Court in accordance with Maryland Rule 7-202 and subsequently to the Maryland Court of Special Appeals. Before the Sheriff can increase the recommended penalty of the board, he must personally review the entire record of the proceedings, permit the accused employee to be heard, and state the reason for increasing the recommended penalty. (Public Safety Article, 3-108(D))
  - A. If the Sheriff is an eyewitness to the incident under investigation, the decision of the hearing board as to verdict and punishment is final. (Public Safety Article, 3-104(O))

**1-912.00      Disciplinary Files**

- .01 A law enforcement agency may not insert any adverse material into any file of a deputy, except the file of an internal investigation or an intelligence file, unless the employee has an opportunity to review, sign, receive a copy of, and comment in writing upon the adverse material. The deputy may waive these rights in part or in whole. (Article 27, Section 728 (b) (12)).
- .02 Files of disciplinary actions will be maintained in a secure separate area from personnel files. Disciplinary investigations will remain confidential and the result will not become a part of the employee 's personnel file unless the charges are sustained and a guilty verdict reached. Copies of the personnel order resulting from guilty verdicts will be placed in personnel files.
- .03 Expungement of Disciplinary Records: A law enforcement officer, upon written request, may have any record of a complaint against him expunged from any file if:
  - A. The employee has been exonerated of all charges.
  - B. The charges have been determined to be not sustainable.

- C. An Administrative Board acquits, dismisses, or makes other findings of not guilty and:
  - 1. Three (3) years have passed since the findings of the law enforcement agency or administrative board. (Public Safety Article, 3-110)

**1-913.00      Annual Report and Public Information**

- .01 Personnel files will be maintained by the Sheriff in a secured area within his office. Access to Disciplinary Actions are restricted to the employee; to others on approval of the employee by signed release authorization; the Sheriff and Shift Lieutenant; Immediate Supervisors on an "as needed" basis, and/or Court Order.

By Order Of:

Craig A. Robertson, Sheriff