



# DESCHUTES COUNTY SHERIFF'S OFFICE

Policy Title: <b>Complaint Review</b>	Effective Date: June 28, 2016	Policy Number: <b>3.01</b>
Accreditation Reference: 1.2.5, 1.7.1, 1.7.2	Review Date: June 28, 2019	Supercedes: May 8, 2013
Attachments: <ul style="list-style-type: none"><li><a href="#">Insubordination Warning Forms</a> (2 pages)</li></ul>	L. Shane Nelson, Sheriff	

## I. PURPOSE

The purpose of this policy is to inform all members of agency procedures for addressing citizen complaints and/or allegations of misconduct.

## II. POLICY

The Deschutes County Sheriff's Office will investigate all complaints and allegations of member misconduct, determine whether the allegations are valid or invalid and take appropriate action.

Citizens making complaints regarding member conduct or agency policies or procedures will be kept informed of the investigative process and provided feedback on the results of the inquiry.

Internal investigations will be conducted in a timely manner and fully documented as appropriate. Internal investigative files are confidential and will not be released except in response to a court order or as otherwise required by law.

Internal investigations will be conducted in such a manner as to protect the rights of agency members and public citizens.

It is not the intent of this policy to contradict existing labor agreements. Any time such contradiction occurs, the labor agreement shall supercede.

## III. DEFINITIONS

*Citizen Complaints* are minor complaints, such as a procedural or policy inquiry that originates from outside the organization. These complaints can usually be resolved by an on-duty supervisor without referral to the Internal Affairs function.

*Allegation of Misconduct* refers to a complaint against a member, regardless of the origin, alleging conduct that constitutes a crime, bias based profiling, or that constitutes a serious violation of agency policy or procedure.

*Internal Affairs* mean the function ultimately responsible for conducting administrative investigations into allegations of serious member misconduct that could potentially result in termination initiated either internally, by a citizen, or by some other governmental agency.

*Member Performance Issues* mean minor complaints originating internal to the organization are to be handled in the normal course of supervision and are not intended to be addressed by this policy.

## **IV. PROCEDURES**

### **A. Citizen Complaints**

Citizen complaints against any member or the agency shall be resolved by the ranking supervisor on duty, if possible. If the complaint cannot be resolved, the supervisor will refer the complaint to the Sheriff via the chain of command for review and possible assignment to Internal Affairs. Whether or not the complaint is resolved by the supervisor, a written report will be forwarded to the Sheriff through the chain of command.

1. All citizen complaints pertaining to agency policies or procedures or those that allege member misconduct shall be documented and investigated by the Sheriff's Office. Complaint forms will be available at the front counter of the Bend Sheriff's Office, jail facility and at each substation.
  - a. Citizen complaints may not be made more than 180 days (six months) after the alleged incident. Complaints received after 180 days will be reviewed by the Patrol Captain on a case-by-case basis.
  - b. Complaints may be given in person, over the telephone or in writing. Writings include complaints delivered by hand, postal mail, facsimile or Email.
  - c. Anonymous complaints, complaints from citizens who wish their names to be held in confidence, or complaints made through a third party shall be accepted for investigation to the extent possible.
2. Citizen complaints will be referred to and accepted by any supervisor of the agency who is approached for such assistance. While it is preferable that a supervisor takes the complaint, any member may take the complaint in the absence of a supervisor. Members accepting complaints must maintain confidentiality and forward the complaint to a supervisor as soon as practicable.
  - a. Upon receiving a citizen complaint, the supervisor shall attempt to contact the complainant and obtain complete information regarding the complaint.
  - b. It may be necessary to contact other witnesses to determine the facts surrounding the complaint.
  - c. The supervisor should attempt to resolve a complaint by an exploration of agency policies and procedures, where applicable. Attempts to resolve complaints shall be noted on the complaint form.
  - d. In the case of minor complaints where it is determined that member counseling or training is the appropriate action, the corrective action taken will be included in the documentation.
  - e. If the supervisor determines that disciplinary action is warranted, the procedures in [Policy 3.03 Disciplinary Action](#) should be followed.
  - f. If it is an allegation of conduct sufficiently grave as to potentially warrant termination proceedings, the complaint shall be treated as an allegation of misconduct and referred up the chain of command to the Sheriff for his consideration and/or assignment to the Internal Affairs function.
3. Upon review of the documentation resulting from a citizen complaint, a division commander or other higher authority may recommend to the Sheriff that the complaint be assigned to the Internal Affairs function for further investigation. The Sheriff or his/her designee will, if necessary, assign an impartial investigator to complete the investigation under the authority of the Internal Affairs function.

### **B. Allegations of Misconduct**

1. Upon receipt of a complaint alleging the commission of a crime or a serious violation of Sheriff's Office policy or procedure, the receiving supervisor shall make an initial determination whether to assume primary investigative responsibility for the case or to refer it to another, more appropriate supervisor.
2. The supervisor will conduct a preliminary investigation to determine the nature of the allegation, collect any physical evidence that is relevant to the investigation and in jeopardy of being lost, secure any crime scene if appropriate, and immediately notify the appropriate division commander. The

preliminary investigation shall be limited to questioning the member, witnesses and complainants, and securing all relevant evidence.

3. A supervisor's investigation may be terminated at any time by a superior officer and the investigation referred up the chain of command for assignment to the Internal Affairs function.
4. Upon completion of the preliminary investigation, the supervisor shall forward to the division commander, through the appropriate chain of command:
  - a. A report of the alleged violation;
  - b. All documents and evidence relating to the investigation; and
  - c. Recommendations for further investigation, or other disposition of the case.
5. The Division Commander will notify the Sheriff who will determine assignment to the Internal Affairs function or return the investigation to the supervisor who will continue with an Internal Administrative Investigation.

If there is a potential for criminal charges, the Sheriff will also arrange for a separate criminal investigation in accordance with section F, 1, below.

### **C. Relieving a Member from Duty**

Any sergeant or higher authority may suspend a member with pay, pending the completion of a formal investigation, if that supervisor believes the member:

- a. Is physically, mentally, or emotionally incapable of performing his duties;
- b. Has committed a violation of law; or
- c. Has committed a violation of agency directive(s) of such a nature or extent that the continuance of his duties pending the outcome of an investigation would not be in the best interests of the agency.

Any supervisor suspending a member shall complete a report of the incident and expeditiously forward it through the chain of command. The report shall be provided to the Sheriff no later than 9:00 A.M. on the next working day. The supervisor shall immediately notify the Sheriff via the chain of command.

### **D. Allegations Stemming From a Tort Claim Notice**

An allegation that was brought to the agency's attention as a result of a Tort Claim Notice shall be immediately referred to the DCSO Legal Counsel and the Sheriff. Any subsequent investigation shall be commenced at the direction, and under the authority, of the DCSO Legal Counsel. The investigation shall otherwise comply with these procedures. A copy of the investigation may be provided to the County Legal Counsel only after a full review by the DCSO Legal Counsel and the Sheriff.

### **E. Responsibilities of Internal Affairs Function**

The Internal Affairs function shall have primary supervisory responsibility for the review and investigation of all complaints against members, whether initiated by a citizen or the agency that could potentially result in the member's termination. While investigating a complaint of misconduct, the Internal Affairs function is delegated by authority of the Sheriff for the purposes of directing the investigation and reports directly to the Sheriff or his designee.

Upon receipt of a complaint, the Internal Affairs function shall contact the Sheriff's Office Human Resource Specialist to obtain an administrative inquiry number for the purposes of tracking and auditing Internal Affairs investigations. The Internal Affairs function shall contact the complainant and advise him that the matter is under investigation, and that the complainant shall receive written notice of the final disposition of the case. The Internal Affairs function shall advise the complainant of agency procedures for the processing and investigation of complaints, and provide the complainant with the name of the person to contact if the complainant wishes to check on the status of the complaint.

Investigations of complaints shall be completed within 10 days after the member is notified of the investigation. If more time is needed for an extensive investigation, the investigator will request a time

extension from the Sheriff. Regular status reports shall be filed to keep the Sheriff informed of the progress of the investigation. The member under investigation, as well as the complainant, shall also be notified of the time extension.

The Internal Affairs function shall have the following responsibilities:

- a. Maintain confidentiality;
- b. Maintenance of a complaint log;
- c. Maintenance of a central file for complaints in a secured area, kept in conformity with state law;
- d. Conducting a regular audit of complaints to ascertain the need for changes in training or policy; and
- e. The Internal Affairs function may recommend to the Sheriff that a case be referred to the District Attorney's Office for review of possible criminal charges.

## **F. Member's Duties and Rights During Investigations**

### **1. Criminal Investigations**

- a. An investigation of alleged criminal misconduct may be investigated by an outside agency at the request of the Sheriff. Commonly, those agencies would be in Deschutes County and may include the Bend Police Department, Redmond Police Department or the Oregon State Police.
- b. There may be occasions when the allegations may be referred to agencies outside Deschutes County. Examples of agencies that may become involved are the Oregon Department of Justice and the Federal Bureau of Investigation.
- c. Any criminal investigation will be conducted separately from the internal investigation and any member who is the subject of a criminal investigation will be afforded all of his civil rights the same as any other citizen.
- d. Allegations of criminal misconduct should be referred to the district attorney's office. Prior to any interview conducted as part of a criminal investigation, the member under investigation shall be read the Miranda Warning. The provisions of Miranda will be adhered to throughout the interview.

### **2. Internal Administrative Investigations**

- a. During an administrative investigation, if a member refuses to answer questions directly related to his duties, the member under investigation shall be advised as follows:
  - 1) The member can be required to truthfully answer all questions specifically, narrowly and directly related to the performance of his official duties. (*See attached Insubordination Warning Form.*)
  - 2) Refusal to comply with an order to answer such questions is a violation of agency rules that may subject the member to further discipline up to, and including, dismissal.
  - 3) Any required self-incriminatory admission made during the interview may only be used in subsequent administrative proceedings, and shall not be used against the member in subsequent criminal proceedings.

### **3. Representatives at Interviews:**

- a. A member will be permitted to have an association representative of the member's choosing with him in the room during any interview regarding allegations of misconduct by the member.
- b. The member's representative is limited to acting as an observer of the interview but may ask the investigator to clarify a question. The representative may not interfere with the interview in any way, nor suggest responses to the member. When the interview focuses on, or leads to, evidence of potential criminal activity by the member, the member may request and must be informed of the member's right to consult with criminal defense counsel with respect to the

criminal charge an attorney who may then advise and confer with the member during the interview.

- c. In a disciplinary or administrative investigation, the member's chosen representative may not be required to disclose, or be subject to disciplinary action for refusing to disclose, statements made by the officer to the representative for purposes of the representation.

#### 4. Special Examinations

- a. A member under investigation may request an intoxilyzer, blood, urine, psychological, or medical examination if it is believed that such an examination would be beneficial to his defense. Should probable cause exist, the agency may require such examination upon the direction of the Sheriff.
- b. A member may also be asked to submit a financial disclosure statement if that information is germane to an internal investigation currently being conducted or if they are the records of Sheriff's Office funds. If the member fails to voluntarily provide the information, the agency may seek that information through any available legal channels. Failure to provide financial records of agency funds may result in disciplinary action.
- c. An on-duty supervisor is required to direct a member to submit to a breath, blood or urine test when a level of impairment or drug usage is suspected as a factor directly related to duty performance or operating an agency vehicle.
- d. If an identification line-up is solely for administrative purposes, and criminal prosecution is not anticipated, a member can be required to be photographed or participate in a line-up. (This would be for identification verification.)
- e. Property belonging to the law enforcement agency is subject to inspection at any time. Property includes, but is not limited to, computers, vehicles, desks, files and storage lockers.
- f. No member will be required, as a condition of employment, to submit to any polygraph examination or psychological stress test examination. This testing is prohibited under ORS 659.840. However, under ORS 659A.300, the member can consent to a polygraph examination voluntarily during the course of criminal proceedings or investigations, or during the course of civil judicial proceedings.

#### 5. Rights During an Internal Affairs Investigation

- a. Prior to any interview or special examination, the member under investigation will receive confidential written notification of the complaint. This notification will include a copy of the original complaint or a summary adequately listing the relevant facts and the member's rights and responsibilities relative to the investigation.
- b. All interviews will be conducted while the member is on duty or during the member's normal waking hours, unless the seriousness of the investigation is such that an immediate interview is required. If the interview is conducted when the member is off duty, the member must be compensated appropriately.
- c. The interview will be held at the member's work area or at a location agreeable to both parties.
- d. The interview may not last an unreasonable amount of time, taking into consideration the gravity and complexity of the matter under investigation.
- e. During the interview, the member must be allowed to attend to physical needs.
- f. No more than two interviewers at a time may question the member.
- g. The interviewers shall inform the member of their authority to compel a statement and of the identity of the investigators and all persons present during the interview.
- h. The member is not required to answer questions until the member has been informed of the nature of the investigation and of facts reasonably sufficient to inform the member of the circumstances surrounding the allegations under investigation. This paragraph does not apply to

preliminary questions directed at gaining a general overview of events in order to assess whether an inquiry is necessary and to effectively investigate and gather evidence.

- i. Members under investigation shall not be threatened with punitive action (with the exception of subparagraph j) or subjected to offensive language, nor threatened with transfer, dismissal, or disciplinary action during an interview. No promise or reward shall be made by the internal investigators as an inducement to answer any questions.
- j. In a compelled interview solely for noncriminal purposes, a member who refuses to respond to questions or to be interviewed must be informed that refusal may lead to disciplinary action.
- k. The complete interview shall be recorded. Any interruptions will be noted, and any relevant discussions transpiring during breaks will be summarized on the tape recorder and verified for accuracy by the member.
- l. The member must be given a copy of the tape or digital interview and, upon request, a transcript of any recording that has been transcribed by the employer. The member must be given a copy of any written statement or report describing the member's statements. Materials required to be given to the member under this paragraph must be given before subsequent interviews in the course of the same investigation.
- m. The member may record the interview.
- n. Accused members or their supervisor may contact the Internal Affairs function to ascertain the status of the investigation of a complaint filed against them.

The safeguards above do not apply to the questioning of the member in the normal course of informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or other member; or an investigation concerned solely with alleged criminal activities.

#### 6. Reporting

- a. After completion of the investigation, the person conducting the investigation shall complete a full report listing the specific allegations, the involved members, the witnesses contacted, and a summary of the investigation and conclusions of fact. A separate memo should be attached with the investigator's adjudication of each of the listed allegations.
- b. Investigative reports will not be placed in member personnel files. In the event that a complaint is sustained and results in discipline, the disciplinary memo is the only documentation that is placed in the personnel file. All other investigative material and adjudication memos will be kept only in the Internal Affairs files.

#### **G. Investigation Timeline**

An investigation into an allegation of misconduct by a member shall be completed no later than six months from the date of the first interview. The investigation may be extended to a maximum of 12 months from the date of the first interview, provided that, before the extended period begins, written notice explaining the reason for the extension is provided to the member and the member's chosen representative, if any.

1. The time limit does not apply if:
  - a. The investigation involves a member who is incapacitated or unavailable.
  - b. The investigation involves an allegation of workers' compensation or disability fraud by the member.
  - c. The member waives the limit in writing.
  - d. The investigation requires a reasonable extension of time for coordination with one or more other jurisdictions.
  - e. The investigation involves more than one member and requires a reasonable extension of time.
  - f. The alleged misconduct is also the subject of a criminal investigation or criminal prosecution.

- g. The investigation involves a matter in civil litigation in which the member is a named defendant or the member's actions are alleged to be a basis for liability.
  - h. If the investigation is the result of a complaint by a person charged with a crime.
2. An investigation may be reopened if:
- a. Significant new evidence is discovered that is likely to affect the outcome of the investigation;
  - b. The evidence resulted from the member's pre-disciplinary response; or
  - c. The evidence could not have been discovered by the employer without resorting to extraordinary measures.

#### **H. Adjudication**

1. Upon completion of an investigation, the investigator shall adjudicate the allegations contained in the original complaint, or discovered during the investigation, as follows:
  - a. Sustained: Evidence sufficient to prove allegations.
  - b. Not sustained: Insufficient evidence to either prove or disprove allegations.
  - c. Exonerated: Incident occurred but was lawful or proper.
  - d. Unfounded: Allegation is false or not factual.
  - e. Policy failure: Flaw in policy caused incident.
2. The investigative report and the accompanying adjudication will be forwarded through the chain of command to the Sheriff. The division commander will review the adjudication and forward his concurrence or disagreement with the adjudication. If the Sheriff concurs with the adjudication, the report will be forwarded to the appropriate supervisor for final disposition.
3. If the complaint is sustained, the disposition will be in accordance with the discipline policy, 3.03, or the applicable collective bargaining. If the complaint is adjudicated as not sustained, exonerated, or unfounded, the adjudication will be forwarded to the involved member's immediate supervisor for communication to the member.
4. If the adjudication includes a conclusion that the incident was in any way affected by a flaw in policy or agency training, the matter will be assigned to the appropriate personnel with instructions to develop recommendations to correct the relevant policy or training deficiency.

Complaint files will be reviewed annually to determine any patterns that would reflect the need for additional training and/or policy recommendations.

WARNING AND ASSURANCE TO EMPLOYEE REQUESTED  
TO PROVIDE INFORMATION ON A VOLUNTARY BASIS

You are being contacted to solicit your cooperation in an inquiry regarding information pertaining to or allegations of misconduct or improper performance of official duties.

The matter under investigation could also constitute a violation of law which could result in criminal prosecution of responsible individuals.

This inquiry concerns \_\_\_\_\_

\_\_\_\_\_  
(State the general nature of the inquiry)

You have the right to remain silent if your answers may tend to incriminate you. If you do decide to answer questions or make a statement, you may stop answering at any time.

Although you would normally be expected to answer questions regarding your official duties, in this instance you are not required to do so. Your refusal to answer on the grounds that the answers may tend to incriminate you will not subject you to disciplinary action by the Sheriff's Office.

Any statement you furnish may be used as evidence against you in any future criminal proceeding or disciplinary proceeding, or both.

WAIVER

I understand the warnings and assurances stated above and I wish to answer questions or make a statement concerning this matter.

\_\_\_\_\_  
Investigator (Print)

\_\_\_\_\_  
Employee (Print)

\_\_\_\_\_  
Investigator (Signature)

\_\_\_\_\_  
Employee (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



WARNING AND ASSURANCE TO EMPLOYEE REQUIRED  
TO PROVIDE INFORMATION

This is an official administrative inquiry regarding information pertaining to or allegations of misconduct or improper performance of official duties.

This inquiry pertains to \_\_\_\_\_

\_\_\_\_\_  
(State the general nature of the inquiry)

The purpose of this interview is to obtain information which will assist in the determination of whether administrative action is warranted.

You are going to be asked a number of specific questions regarding the performance of your official duties.

You have a duty to reply to these questions and agency disciplinary actions, including dismissal, may be undertaken if you refuse to answer or fail to reply fully and truthfully.

Neither your answers nor any information or evidence gained by reason of your answers can be used against you in any criminal proceeding, except that if you knowingly and willfully provide false statements or information in your answers, you may be disciplined up to and including discharge, and may be prosecuted criminally for that action. The answers you furnish and any information or evidence resulting therefrom may be used in the course of agency disciplinary proceedings which could result in disciplinary action, including dismissal.

ACKNOWLEDGMENT

I have read and understand my rights and obligation as set forth above.

\_\_\_\_\_  
Investigator (Print)

\_\_\_\_\_  
Employee (Print)

\_\_\_\_\_  
Investigator (Signature)

\_\_\_\_\_  
Employee (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date