

**EASTON POLICE DEPARTMENT
ADMINISTRATIVE ORDER
CHAPTER 5: COUNSELING AND DISCIPLINE**

	Title: Complaint Investigations		Number: 05-5
	Effective: December 29, 2011	Revised: Oct. 1, 2016	General Order #16-008
	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amends	Notes: Replaces Administrative Manual Chapter 5-5 (12-11)	
Authority: _____ <div style="text-align: center;">Chief of Police</div>			Total Pages: 6

5-5.0 PURPOSE

The purpose of this General Order is to establish guidelines for investigating complaints against department members.

5-5.1 DEFINITIONS/ABBREVIATIONS

ADP	Alternative Disciplinary Process
LEOBR	Law Enforcement Officers' Bill of Rights

5-5.2 FORMS

Form 4	Alcohol Influence Report
Form 24	Complaint Against Personnel
Form 26	Notification of Investigation
Form 27	Notification of Interrogation
Form 27A	Order to Submit to Interrogation
Form 28	Explanation of Police Officer's Rights
Form 30	Reprimand and Disciplinary Action Report
Form 31	Internal Investigation Disposition

5-5.3 POLICY

Investigations initiated under this general order shall be under the authority of the Deputy Chief of Police, and conducted in accordance with the LEOBR found in the Annotated Code of Maryland. Criminal and administrative investigations will be conducted when a member is accused of violating criminal law or using force resulting in serious or life-threatening injury, or death.

5-5.4 DEPUTY CHIEF OF POLICE

1. Decides whether an investigation will be conducted by the Internal Affairs Unit or at the command level.
2. Supervises all investigations.

5-5.5 COMMAND LEVEL INVESTIGATIONS

1. Should be completed within 30 days of assignment.
2. Extension requests must be approved by the Division Commander.
3. Must be reviewed by the respective commander prior to being forwarded to the Deputy Chief of Police.

5-5.6 INVESTIGATION PROCEDURES

1. An internal investigation is complete when:
 - a. The complainant and witnesses have been interviewed.
 - b. Members have been questioned.
 - c. All physical evidence has been examined.
 - d. All leads have been explored.
 - e. The case has been accurately reported.
2. Assigned investigators will:
 - a. Pursue all leads developed through complainant and witness interviews.
 - b. Handle all physical evidence in accordance with established procedures.
 - c. Obtain all pertinent records (MVA records, telephone bills, court documents, EPD reports) that could be used to:
 - 1) Assist the investigation.
 - 2) Corroborate or refute statements.
 - d. Develop leads.
 - e. Photograph the complainant, employee and the scene of the incident if photographs are useful for evidentiary purposes (identification, to document injury, etc.).
 - f. Sketches may supplement photographs, where appropriate.
 - g. Treat firearms in accordance with established procedures.
 - h. When a weapon is used by a member, determine:
 - 1) If the weapon is an approved weapon.
 - 2) If it was issued by EPD.
 - 3) If it is a primary or secondary weapon.
 - 4) If the ammunition is EPD approved.
 - 5) The condition of the weapon, including a complete description of its:
 - a) Make
 - b) Model
 - c) Caliber
 - d) Serial number

5-5.7 USE OF ALCOHOL INVESTIGATIONS

1. Alcohol Violation Reporting:
 - a. The investigating officer will record the member's appearance and demeanor on a Form 24 and a Form 4, Alcohol Influence Report.
 - b. The accused member may be compelled to submit to blood tests, standardized field sobriety testing, Drug Recognition Expert testing, breath tests and urinalysis tests for controlled dangerous substances and/or alcohol.
 - c. The breathalyzer test will be administered as soon as feasible after initiation of the allegation. The two-hour time limit as outlined in the Maryland Vehicle Law Annotated Code, applies if the member is, or may be, criminally charged with violating Transportation Article 21-902; Driving while under the influence of

alcohol, while under the influence of alcohol per se, while impaired by alcohol, or while impaired by a drug, a combination of drugs, a combination of one or more drugs and alcohol, or while impaired by a controlled dangerous substance.

- d. When a member is charged, or may be charged, with violating Transportation Article 21-902, the investigating officer shall be responsible for following the proper procedures as outlined in Chapter 2 of the Department Field Manual, Traffic Procedures.
- e. The Form 4 will include the:
 1. Results of both the dexterity test and the breathalyzer test.
 2. Lapse of time, expressed in minutes, between the initial report or observation of the member's condition and the intoxication test.

5-5.8 COMPLAINANT AND WITNESS INTERVIEWS

1. The investigator shall, when feasible:
 - a. Conduct all complainant/witness interviews in person and obtain all pertinent identifiers from the person interviewed.
 - b. Take formal taped and written statements from the complainant and witness(s).
 - c. Preserve all statements as evidence according to guidelines for preserving evidence.
 - d. Determine every relevant fact known to the complainant and/or witness(s).
 - e. Determine the motivation of the complainant and/or witness(s), such as his relationship with the complainant or member.

5-5.9 STATEMENTS/INTERROGATION OF AN ACCUSED MEMBER

1. General:
 - a. Normally, the interview of a member occurs after the complainant and all witnesses have been interviewed, however, the investigator determines the sequence of interviews.
 - b. Member's verbal statements will be recorded.
2. Written reports:
 - a. Members may be required to submit additional reports beyond reports required in the ordinary course of business detailing the facts concerning their involvement in an incident.
3. Interrogation:
 - a. All interrogations of officers shall be in conformance with the LEOBR.
 - b. Probationary officers are not entitled to LEOBR protections, unless the allegation involves brutality or excessive force complaints.
 - c. Before ordering an administrative report or conducting an interrogation where criminal charges may result, the ordering authority will consult with the investigator of the criminal complaint about the propriety of the order.
 - d. Before every interrogation, including the submission of a detailed report that was ordered as a result of an internal investigation, the member will be allowed to read, or have read to him, the Form 27, Notification of Interrogation, and the Form 28, Explanation of Police Officer's Rights.
 - e. The member will be served with a Form 27A, Order to Submit to Interrogation, ordering the member when and where to appear for the interrogation.
 - f. The interrogating officer must be certain the member is given the opportunity to waive his LEOBR rights before any statement can be taken.
 1. If the member waives their LEOBR rights the interrogating officer may continue with the interrogation.

2. If the member does not waive their LEOBR rights, the interrogation will stop and be rescheduled to afford the member an opportunity to seek legal counsel.
- g. The original forms will be placed in the case file and the member will receive a copy of each form.
- h. The member has the right to be represented by counsel or any other responsible representative of his choice, who shall be present and available for consultation at all times during the interrogation, unless the member waives this right.
- i. All questions directed to the member during the investigation shall be asked by, and through, one interrogator during any interrogation session.
- j. The interrogation shall take place at EPD headquarters or any other reasonable and appropriate place designated by the investigating officer, unless waived by the member.
- k. No weapons shall be permitted in the interrogation room for the duration of the interrogation.
- l. The interrogator will tape record the interrogation, and include the date and time the interrogation begins, all interruptions, and the time the questioning terminates.
- m. Upon completion of the investigation, and no less than ten days prior to any hearing, the member, or his counsel, may request to receive a copy of the record of the interrogation.

5-5.10 COMPELLED TESTS

1. General:
 - a. Members may be compelled to submit to blood tests, breath tests and urinalysis tests for controlled dangerous substances and alcohol.
 - b. Members may be compelled to submit to other forensic tests, such as providing handwriting samples, hair samples, etc., as may be required to conduct a thorough investigation.
2. Polygraph Examinations:
 - a. Shall be conducted in accordance with Public Safety Article, Section 3-104(m) of the Annotated Code of Maryland.
 - b. Members may voluntarily submit, or be ordered to submit, to polygraph examinations.
 - c. Results of polygraph examinations are not admissible in administrative hearings, unless the officer and the agency agree to the submission of the results at the administrative hearing.
 - d. The member's representative need not be present during the actual administration of a polygraph examination if:
 - 1) The questions to be asked are reviewed with the member, or his representative, prior to administering the examination;
 - 2) The representative is allowed to observe the administering of the polygraph examination, and;
 - 3) A copy of the final report is made available to the member or his representative within ten days.
3. Failure to comply:
 - a. Before ordering the member to submit detailed reports; or submit to an interrogation, blood, breath, urine tests, polygraph or forensic tests; the member must first be advised of the following:
 - 1) Information supplied through a member's answer will not be used against him in related criminal proceedings.
 - 2) The following actions are separate violations of the rules of conduct and

constitute grounds for disciplinary action, which may cause the member's dismissal:

- a) Refusal to cooperate in an investigation.
- b) Refusal to submit to a blood alcohol test, or a blood, breath, or urine test for use of controlled dangerous substances.
- c) Refusal to submit to a polygraph examination, an interrogation, or submit a detailed report.

5-5.11 REPORT FORMAT

1. General Format:
 - a. All completed investigation files will be bound in a binder. Each report will include an index listing the appropriate appendices.
 - b. The first section will start with Roman Numeral "I" and will run sequentially. This section will contain the complaint, Form 24, executive summary and investigative report.
 - c. The appendices will begin with Tab "A" and run sequentially through "Z". If additional tabs are needed, these will begin with "AA" and run sequentially.
2. Form 31- Internal Investigation Disposition:
 - a. Each separate allegation must be classified individually.
 - b. The standard of care in administrative investigations is "preponderance of evidence"; rather than the criminal standard of "beyond a reasonable doubt"; Preponderance of evidence has been described as a "slight tipping of the scales of justice" or "more than 50 percent".
 - c. The investigator will recommend for each allegation a finding of:
 - 1) **NOT-SUSTAINED** – The investigation failed to produce a preponderance of evidence to either prove or disprove the allegation.
 - 2) **EXONERATED** – The allegation in fact did occur, but the actions of the agency member were legal, justified, proper and in conformance with the law and the agency policy and procedure.
 - 3) **UNFOUNDED** – The alleged misconduct did not occur.
 - 4) **SUSTAINED** – The investigation produced a preponderance of evidence to prove the allegation of an act, which was determined to be misconduct.
3. Report Review:
 - a. The member's commander, upon receipt of the completed investigation, will complete the Form 31 which will indicate whether the commander agrees with the findings of the investigator. If the commander disagrees with the findings of the investigator the commander will state the factual basis for not accepting the investigator's findings.
 - b. The Deputy Chief of Police upon receipt of the completed investigation from the commander will complete the Form 31 which will indicate whether he agrees with the findings of the investigator and/or the commander. In order to change a recommended finding from the investigator the commander and Deputy Chief must be in concurrence.
 1. The Deputy Chief may send the investigation back for further investigation.
 - c. The Chief of Police upon receipt of the completed investigation from the Deputy Chief will have final review and authority on the Form 31.

5-5.12 CONCLUDED INVESTIGATIONS

1. Not-Sustained/ Exonerated/Unfounded and ADP Cases:
 - a. The original case file will be retained in the Internal Affairs Investigation file maintained by the Deputy Chief of Police.
 - b. The case file will include the Internal Investigation Disposition Form 31 and a copy of the letter of case disposition to the complainant.
2. Sustained Cases:
 - a. The original case file will be forwarded to the Deputy Chief of Police for disciplinary action.
 - b. The Deputy Chief will prepare a Form 30, Reprimand and Disciplinary Action Report, and send a Disciplinary Assessment Criteria request to the member's immediate supervisor.
3. Cases Screening for Prosecution:
 - a. All completed cases that recommend disciplinary action that carries a penalty under Category "E" of the disciplinary matrix shall be reviewed for legal sufficiency by the Town Attorney, or other attorney designated to represent the Department, prior to serving the charges on the member.
 - b. If additional information is needed to support the charges the Deputy Chief will request the investigator submit the information.
 - c. If the attorney determines that the case is not legally sufficient and it is determined it cannot be prosecuted, the Deputy Chief will notify the member that the case will not be presented for prosecution.
4. Resolution of case prior to hearing:
 - a. A member may waive all rights afforded by the LEOBR after the member is charged with a violation of rules and regulations.
 - b. The case prosecutor can be contacted by the member or his representative to engage in negotiations to resolve the case at any time.
 - c. Recommendations to resolve the case will be approved by the Chief of Police.

5-5.13 REQUESTS FOR NON-AGENCY INVESTIGATIONS

1. The Easton Police Department will conduct an internal investigation for an allied police department only when authorized by the Chief of Police.
2. Allied police departments may request the Easton Police Department to conduct an internal investigation for their department. The request must be made in writing and must be submitted by the Chief of Police or the Chief Executive of the requesting municipality and/or political sub-division directly to the Chief of Police.
3. The Chief of Police will review all requests and decide whether the Easton Police Department will conduct the investigation. All decisions by the Chief of Police as to whether the Easton Police Department will conduct an internal investigation for an allied police department will be made in writing to the individual making the request.
4. When the Chief of Police declines a request, the matter is closed and no further action is necessary.
5. When the Chief of Police accepts a request, the Deputy Chief of Police will be notified and a Non-Agency Investigation tracking number will be initiated.
6. When the Non-Agency Investigation is complete, the original investigative report, including any tape recordings and appendices will be forwarded thru the Chief of Police to the requestor.
7. A complete copy of the investigative report, including any tape recordings and appendices, will be maintained by the Deputy Chief for five years and then destroyed.