

TOMPKINS COUNTY SHERIFF'S OFFICE GENERAL ORDERS



G.O. 400

PERSONNEL COMPLAINTS AND INTERNAL INVESTIGATIONS

new: <input checked="" type="checkbox"/> rescinds: 25.1 <input checked="" type="checkbox"/> amends:	cross-reference:
	accreditation standards: NYSLEAP Standard(s): 25.1
effective date: August, 2011	amend date: June, 2020

I. PURPOSE

The purpose of this Order is to provide all Tompkins County Sheriff's Office employees, and the public, the procedures for processing and investigating allegations of officer misconduct or community complaints. Sheriff's Office employees are expected to maintain the highest standards of conduct. Officers shall conduct themselves properly and professionally, on or off duty. The purpose of this policy is to establish responsibilities and procedures for conducting investigations of misconduct and serious misconduct (administrative and/or criminal) that may result in disciplinary action and/or criminal prosecution.

II. POLICY

The Tompkins County Sheriff's Offices' public image is determined by a professional response to allegations of misconduct against its employees. The establishment of procedures for the investigation of complaints is crucial to demonstrate and protect the Office's integrity. This Office shall accept and fairly and impartially investigate all complaints or allegations of misconduct to determine their validity, and to timely impose any disciplinary or non-disciplinary corrective actions that may be warranted. It is Sheriff's Office policy to investigate every instance of alleged misconduct against a member of this Office, whether criminal or administrative in nature, in accordance with federal, state or local laws, and Office policies and procedures.

The Office of the Sheriff shall be responsible for the investigation of all allegations of serious misconduct and serious use of force incidents pursuant to Office policies and procedures. The Sheriff will have the authority to utilize resources outside the office to conduct investigations including retaining outside investigators.

III. DEFINITIONS

Complaint: Any allegation by an individual regarding Sheriff's Office services, policies, practices or procedures, claims for damages which allege officer misconduct, or officer misconduct any allegation of possible misconduct made by a Sheriff's Office employee.

Complainant: Any person who files a complaint regarding the conduct of any Office employee,

of the Office's policies, procedures, or action.

Complaint Control Number: A sequential number used to identify and track community complaint investigations.

Clear and Convincing: This burden of proof is a more rigorous standard to meet than the preponderance of the evidence standard, but a less rigorous standard to meet than proving beyond a reasonable doubt. In order to meet this standard, the party alleging the contention must prove that the allegation is substantially more likely than not that it is true.

Class One (1) Complaints: Serious allegations, including alleged criminal conduct that has the potential to damage the reputation of the Office or its personnel.

Class Two (2) Complaints: Less serious allegations that warrant an investigation, but do not rise to the level of a more serious complaint.

Class Three (3) Complaints: Minor complaints by a community member desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.

Class Four (4) Complaints: Minor service complaints by a community member who contacts the Office questioning, or informally complaining, about a policy, procedure, or tactic used by the Office or an employee.

Critical Firearm Discharge: A discharge of a firearm by an officer, but does not include range and training discharges and discharges at animals.

Counseling: Information relayed to an employee by a ranking officer or training officer, in which the information relayed points out strengths, weakness, or training needs, or offers the employee the opportunity to improve performance. Counseling is not disciplinary by itself, but may progressively lead to discipline.

Discipline: Includes any written reprimand or written reference to an oral reprimand, reduction in compensation, demotion in salary grade, imposition of a fine or suspension, which the Office seeks to impose on a member as a penalty for misconduct or incompetence.

Employee: Any person employed by the Sheriff's Office, whether sworn or non-sworn, part-time, or full-time.

External Complaint: A complaint that originated from outside the office.

Garrity Rights: Apply to the right of a public employee not to be compelled to incriminate themselves during investigatory interviews conducted by their employer. These rights are based on the 1967 United States Supreme Court decision *Garrity v. New Jersey*. Garrity Rights apply only to public employees, because they are employed by the government itself.

Internal Complaint: A complaint that originates from within the Sheriff's Office. Such complaints may be initiated by other Office employees or from supervisors who observed, or were informed by other employees, of possible policy violations.

Misconduct: Any conduct by a Tompkins County Sheriff's Office employee that violates Office policy or the law.

Officers: Any corrections and/or law enforcement officer employed by the Sheriff's Office.

Preponderance of the Evidence Standard: The quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula. A preponderance of evidence has been described as just enough evidence, no matter how slight, to make it more likely than not that the allegation sought to be proved is true or false.

Serious Misconduct: Suspected criminal misconduct and the specific forms of misconduct identified below in Section IV.D.

Serious Use of Force: Any action by an officer that involves the use of deadly force, including all critical firearm discharges, a use of force in which the person suffers serious bodily injury, or requires hospital admission, a canine bite, and the use of chemical spray or electronic control weapon against a restrained person.

Use of Force Incidents Indicating Potential Criminal Liability: Includes, but is not limited to, all strikes, blow, kicks, or other similar uses of force against a handcuffed subject, and all accusations or complaints of excessive force.

IV. PROCEDURES

A. Investigations of Community Complaints

1. All investigations shall, to the extent reasonably possible, determine whether the officer's conduct was justified. No investigation being conducted by the Office of the Sheriff shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury.
2. All investigations shall be conducted by a supervisor who did not authorize, witness, or participate in the incident, and all investigations shall contain:
 - a. Documentation of the name and badge number of all officers involved in, or on the scene during, the incident, and a canvass of the scene to identify civilian witnesses.
 - b. Thorough and complete interviews of all witnesses, subject to the Sheriff's Office Garrity protocol, and an effort to resolve material inconsistencies between witness statements.
 - c. Photographs of the subject(s) and officer(s) injuries or alleged injuries and
 - d. Documentation of any medical information provided.

B. Precautionary Investigations

1. Under certain circumstances, upon direction of the Sheriff, a precautionary investigation will be conducted regardless of whether a complaint from the public has been filed (i.e., on-duty death or serious physical injury of an employee, officer-involved shootings, Office

owned vehicle accidents, etc.)

2. At the request of the County Attorney, or upon direction of the Sheriff, a precautionary investigation may be conducted in cases in which civil litigation is anticipated or has been commenced.

C. Role of the Undersheriff

1. The Undersheriff shall serve as the internal investigations authority for the Office and has primary oversight responsibility for the review and investigation of all complaints against employees whether internal or external complaints.
2. Upon receipt of the [Complaint or Commendation Form](#), the complaint will be reviewed by a supervisor and classified in its proper category for assignment. Categories are identified in Section C below. The reviewing supervisor will complete the [Personnel Complaint/Commendation Tracking Form](#) and forward it to the Undersheriff, via the chain of command, for assignment.
3. The Undersheriff shall evaluate complaints of criminal conduct made against Office employees, and report findings to the Sheriff. The Sheriff will authorize transfer of the criminal allegation investigation to the District Attorney's Office and/or the State Attorney's Office.
4. In fulfilling this function the duties and responsibilities of the Undersheriff include but are not limited to the following:
 - a. Conduct a preliminary review of all complaints of misconduct by employees.
 - b. Make an initial determination whether to personally assume primary investigative responsibility for the case or assign it to another supervisor to conduct the investigation. *See Section E for responsibilities of the Undersheriff if responsibility is assumed for the case.*
 - c. Maintain a complaint log.
 - d. Maintain a central file for complaints in a secured area, and in conformity with records retention requirement of local law and contractual provisions.
 - e. Conduct a regular audit of complaints to ascertain the need for changes in training or policy.
 - f. Maintain statistical and related information to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority.
 - g. Track complaints against individual employees to assist in employee risk analysis and intervention programs and
 - h. Provide the Sheriff with a written status summary of complaints and final dispositions on a quarterly basis.

C. Complaint Categories

1. The following chart depicts the types of complaints, which are defined by the seriousness of the allegation, along with whom the complaint is generally investigated and reviewed by.

TYPES	DESCRIPTION	EXAMPLES	GENERALLY HANDLED BY
CLASS 1	Allegations that have the potential to damage the reputation of the Office or its personnel, and generally include, but are not limited to allegations of serious misconduct, serious violations of the Code of Conduct and other written directives, or criminal conduct.	<ul style="list-style-type: none"> • Excessive and/or improper use of force • False arrest • Unlawful search and/or seizure • Corruption • Dishonesty • Sexual Harassment • Bias-Based profiling • Violation of civil rights • Workplace violence • Violation of criminal statutes • Gross insubordination 	The Office of the Sheriff/Undersheriff <ul style="list-style-type: none"> • Formal and documented with written statements and tape/video recorded interviews. • Possible Criminal Investigation Division and/or outside agency involvement.
CLASS 2	Allegations that generally include, but are not limited to, allegations of a less-serious nature and violations of the Code of Conduct and other written directives of a less-serious nature.	<ul style="list-style-type: none"> • Violations of policies procedures or rules, other than those which constitute a Class I allegation • Inappropriate conduct and/or behavior of a less-serious nature, such as rudeness, courtesy, and offensive language • Violation of personnel policies 	Supervisor/ Undersheriff <ul style="list-style-type: none"> • Formal and documented with written statements.
CLASS 3	Minor complaints by a community member desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.	<ul style="list-style-type: none"> • When a community member complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint. 	First-Line Supervisor <ul style="list-style-type: none"> • Informal and documented as informational purposes only.
	Minor complaints by a community member who contacts the Office questioning or informally complaining about a policy,	<ul style="list-style-type: none"> • When a community questions or complains about the procedures or tactics 	First-Line Supervisor <ul style="list-style-type: none"> • Informal and documented as

CLASS 4	procedure, or tactic used by the Office or an employee.	used by the Office or employee, such as on-scene command presence, or why handcuffs were used when detaining a subject, but does not wish to file an official formal complaint	informational purposes only.
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D. Serious Misconduct

1. Serious Misconduct is understood by the Tompkins County Sheriff's Office to mean suspected criminal misconduct and the following misconduct:
 - a. All civil suits alleging any misconduct by an officer while acting in an official capacity.
 - b. All civil suits against an officer for off-duty conduct (while not acting in an official capacity) alleging physical/sexual violence, threats of physical violence, racial bias, dishonesty, or fraud.
 - c. All criminal arrests or filing of criminal charges against an officer.
 - d. All allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination.
 - e. All allegations of an unlawful search and seizure.
 - f. All allegations of false arrests or filing of false charges.
 - g. Any act of retaliation or retribution against an officer or person.
 - h. Any act of retaliation or retribution against a person for filing a complaint against a member.
 - i. All allegations of excessive force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a complaint subject or administered with a punitive purpose).
 - j. Any failure to complete use of force reports required by Office policies and procedures.
 - k. The providing of false or incomplete information during the course of a Sheriff's Office investigation, or in any report, log, or similar document.
1. All incidents in which the Sheriff's Office is notified that charges are being

- dismissed based upon officer credibility and/or
- m. All incidents in which the Sheriff's Office has received written notification from the attorney in a criminal case that there has been an order suppressing evidence because of any constitutional violation involving potential misconduct by an officer, or any other judicial finding of officer misconduct made in the course of a judicial proceeding, or any request by a federal judge, local judge, or magistrate that a misconduct investigation be initiated pursuant to some information developed during a judicial proceeding before a judge or magistrate. The Sheriff's Office shall request that all such entities provide them with written notification whenever it has been determined that any of the above has occurred.
2. Serious misconduct complaints must be supervised or directly investigated by the Undersheriff.
- E. Investigation of Public Complaints: Supervisor's Role/Responsibility
1. The supervisor assigned to investigate a community complaint shall ensure the following protocols are applied in all investigations.
 - a. Every complaint must be investigated and evaluated based on the Preponderance of Evidence standard (non-termination). In discharge cases, the Office must establish the employee's guilt by clear and convincing evidence.
 - b. Any supervisor who is the subject of a complaint, or who authorized the conduct that led to the complaint, is explicitly prohibited from investigating said incident.
 - c. Supervisors shall ensure that all officers who use force, or are involved in the use of force, shall submit a written statement regarding the incident, using the Defensive Action Report form.
 - d. During the investigation of a community complaint, all relevant evidence including circumstantial, direct, and physical will be considered, and credibility determinations made, if feasible. Officer's statements will not be given any automatic preference over a community member's statement, nor will a witness' statement be disregarded on account that the witness is connected to the complainant. Every effort will be made to resolve material inconsistencies or discrepancies between witness statements and other collected evidence.
 - e. The supervisor will not close an investigation because the complainant is unwilling or unable to provide medical records or proof of injury, or the complainant will not provide additional medical statements or written statements.
 - f. The supervisor will consider whether any rule, policy, or procedure of the Sheriff's Office was violated.
 - g. Conduct an investigation in accordance with the procedures outlined in this order.

2. At the conclusion of the investigation the supervisor shall prepare the [Report of Internal Investigation Form](#) in accordance with the requirements outlined in this order and forward it to the Undersheriff.

F. Employee Responsibilities to Report Misconduct

1. An employee must report any instances of employee misconduct as soon as practicable following receipt of information regarding the misconduct.
2. In applicable circumstances, employees are to prevent the deterioration or destruction of any evidence that would support or refute the allegation of misconduct.

G. Confidentiality of Complaints

1. All employees who have knowledge that a Notice of Discipline has been submitted, or will likely occur, are prohibited from discussing material issued related to the matter.
2. Exemptions include employees subject to the investigation when consulting with Union or legal representation, in accordance with supervisory directives, testifying at unofficial hearing(s) regarding the matter, or otherwise authorized by law, policy, or regulation.

H. Time Limits on Completing Internal Affairs Investigations

1. Generally, the Office should strive to complete internal investigations as soon as practical. In cases of informal complaints, it may be possible to complete such an investigation within a few days or a calendar week. Once assigned, informal complaint investigations by a supervisor should be forwarded to the Undersheriff for review within ten (10) days.
2. Formal complaint investigations shall be priority for the Office, and should be expeditiously investigated and reviewed. These investigations will be completed by the Undersheriff and forwarded to the Sheriff for review within thirty (30) days. The Sheriff may waive the 30-day requirement for complex investigations and investigations involving extenuating circumstances.
3. Time limits governing disciplinary actions which may arise from internal investigations for officers and civilian employees shall comply with all applicable State or Federal statutes, Tompkins County policy, and provisions of the respective labor agreements for sworn and non-sworn employees.
4. Supervisors shall be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action, or neglects to implement appropriate correction action.

I. Notifying Complainant Regarding Status of Complaint Investigation

1. Upon receipt of a complaint, the Office shall acknowledge its receipt by sending a letter to the complainant (if known) under the signature of the Sheriff, acknowledging its receipt. In some cases, this may be accomplished in person and/or via telephone. A written letter, however, should still be sent to the complainant for additional verification of receipt of the

complaint.

2. The assigned supervisor or Undersheriff is responsible for providing periodic status reports to complaints on all pending internal investigations assigned to them. Generally, personnel assigned to internal investigations should maintain periodic contact with their complainants and provide them status reports on the investigation, as far as practical. Such contact can be accomplished by telephone or email, in lieu of a written letter.
3. For formal or informal investigations, the reporting party shall be notified as indicated below, by the Sheriff or designee, informing them of the results of the Office's investigation. Such notification should normally occur within ten (10) days after the conclusion of the investigation and the determination by the Sheriff or Undersheriff of the "finding of facts."

J. Investigative Interviews and Procedures of Officers (*See Respective Collective Bargaining Agreements*)

1. Prior to an employee being summoned to a meeting with the Sheriff or the County for matters of discipline or discharge, or for investigation concerning same, the employee will be made aware that they have the right to Union representation and the issue to be discussed at the meeting.
 - a. Employees, under internal review, may have present a union representative with them during any administrative internal investigative interrogation so long as the representative is not involved in any manner (i.e. a witness or subject of the complaint) with the incident under investigation, or a conflict of interest does not exist.
2. The employee, by written communication to the Sheriff and the Union President, may waive the right to Union representation. Except in extremely extenuating circumstances the Sheriff shall provide the employee with twenty-four (24) hours' notice of the meeting.
3. The representative's role is primarily that of an observer and shall not be permitted to interrupt the interview except for the purpose of advising and/or conferring with the employee who is concerned about a contractual right.
4. In criminal investigations the employee has the right to talk to legal counsel or have one present during questioning.
5. Prior to the service of formal charges, the Sheriff may initiate an informal meeting with the employee and the Union, if the employee requests the presence of the Union, for the purpose of attempting to resolve the situation informally. In the event the meeting does not resolve the disciplinary action, formal charges may be served on the employee at the end of the meeting.
6. Subject to the approval of the Sheriff, officers will be administered the applicable warning prior to the interview:
 - a. Garrity Warnings - or compelled statements if the inquiry is administrative.

- b. Miranda Warnings – where the inquiry is criminal and the officer is under arrest or in custody.

7. Searches:

- a. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and vehicles are the property of Tompkins County and are subject to inspection. They may also be searched to retrieve county owned property, or to discover evidence of work related misconduct, if there is reason to suspect (reasonable suspicion) such evidence is contained therein.
 - b. Private property can be stored in areas mentioned above; however, employees will not expect privacy in those areas. Only those employees who are acting in their official capacity may be authorized to search or inspect areas assigned to other employees.
8. In the event that the Sheriff learns of an allegation of employee misconduct which generates concern for the safety and welfare of other employees or the public, the Sheriff may suspend the employee against whom the allegations are made, with pay, up to thirty days in order to further investigate the allegation.

K. Disposition and Adjudication of Complaints

- 1. All investigations into community complaint allegations of misconduct require review and disposition by the officer's chain of command.
- 2. All community complaint allegations of officer misconduct will be fully investigated and documented. Office personnel should provide and/or direct community members to the *Public Complaint or Commendation Process Pamphlet* to explain the procedure.
- 3. In many cases, mediation or explanation can successfully resolve community complaints. If the complaint is of a minor nature or could be resolved by an explanation of applicable legal standards, or Office policies and procedures, the supervisor receiving the complaint will attempt to mediate the complaint or explain the employee's actions.
- 4. The supervisor attempting to mediate the complaint may make subsequent appointments to meet the complainant, the subject officer and other involved parties as part of the mediation process. A summary of all mediation sessions will be documented on the Report of Internal Investigations Form.
- 5. All summary actions shall be documented and copies and disposition(s) provided to the subject officer. Copies may, where appropriate, be placed in the employee's personnel file.
- 6. Once the investigation is deemed complete, the primary investigative authority for the investigation (i.e., the supervisor or Undersheriff) shall review the complaint report and investigative findings. This authority will compile a report of findings and provide a disposition for each allegation as follows (*Report of Internal Investigations*):
 - a. **Sustained:** where the investigation determines, by the necessary burden and

quantum of proof, that the person's allegation is supported by sufficient evidence to determine that the incident occurred and the actions of the officer were improper.

- b. ***Not sustained***: where the investigation determines, by the necessary burden and quantum of proof, that there is not sufficient fact(s) to decide whether the alleged misconduct occurred.
 - c. ***Exonerated***: where the investigation determines, by the necessary burden and quantum of proof, that the alleged conduct did occur but did not violate Office policies, procedures, training, or tactics.
 - d. ***Unfounded***: where the investigation determines, by the necessary burden and quantum of proof, that there are no facts to support that the incident complained of actually occurred.
 - e. ***Withdrawn by Complainant***: where the complainant expresses a desire to terminate the investigation and no longer pursue the complaint.
 - f. ***Policy Failure***: a flaw in the office's policies or procedures caused the incident.
7. Investigative findings shall also include whether:
 - a. The police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm;
 - b. The incident involved misconduct by any officer;
 - c. The use of different tactics should or could have been employed;
 - d. The incident indicates a need for additional training, counsel, or other non-disciplinary corrective measure; and
 - e. The incident suggests that the Sheriff's Office should revise its policies, training, and tactics.
 8. Disciplinary action shall be administered in accordance with Office policy and the applicable Collective Bargaining Agreement (CBA). *See G.O. 312 Disciplinary System.*
 9. Following final disposition of the complaint, a letter shall be sent to the complainant, addressed from the Sheriff or designee, explaining the final disposition.
 10. Whenever reasonably possible, the investigation of complaints should be completed within ninety (90) days from the time the office knew, or should have known, about the alleged violation, unless a stay is granted by the Sheriff, or another time frame is required by office policy, law, or applicable CBA.
 11. Final disciplinary authority is vested in the Sheriff.

12. In cases where there exists probable cause to believe that a fraudulent complaint was logged (officially documented) in violation of New York State law, the case may be referred to the District Attorney's Office for a prosecutorial determination.

L. Internal Investigation Records and Confidentiality

1. All internal investigation records are confidential and information shall not be shared outside of Office staff and Human Resources Department staff investigating the matter. All records shall be kept secured by the Undersheriff at all times.

M. Training

1. The Office will provide training to all employees on the community complaint process and the appropriate responses in handling community complaints, as developed and administered by the Office.

Attachments:

- A. [Complaint or Commendation Form](#)
- B. [Personnel Complaint or Commendation Tracking Form](#)
- C. [Report of Internal Investigation](#)
- D. [Public Complaint or Commendation Process Pamphlet](#)

By Order Of



Derek Osborne
Sheriff