	<b>Winchester City Sheriff's Office</b> <b>Manual of General Orders</b>  <b>Administration</b> <b>123</b>	<b>Effective Date:</b> May 1, 2014
		Accreditation Standards: ADM .18.01 ADM .18.05 ADM .18.02 ADM .18.03 ADM .18.04
<b>Subject: Complaints and Internal Affairs</b>		<b>Original Policy:</b> May 1, 2014 <b>Last Review Date:</b> October 31, 2023 <b>Next Review Date:</b> October 31, 2024
		<b>By Authority of:</b>  _____ <b>William E Sales, Sheriff</b>

Effective /Review Date	Sections Changed	Changes	Reviewed by	Approved by
06-11-18	III D. 3.	Removed "Lieutenant"	EAS	LRT
06-11-18	VIII A 3.	Changed Lieutenant" to "Sergeant"	EAS	LRT
02-08-21	VII B	Removed paragraph, "Therefore, the Sheriff's Office recognizes that an employee, though terminated or suspended, may have a liberty interest to enjoy future employment elsewhere, and if terminated or suspended, should have an opportunity to set forth his/her point of view for name-clearing purposes. In view of this interest the Sheriff's Office affords an employee a hearing in accordance with Winchester City Grievance Policy set forth in the Winchester City Employee Manual."	EAS	LRT
02-08-21	III H 3.	Changed, "with regard to" to "regarding".	EAS	LRT
02-08-21	IV B 3 a.	Changed, "I wish to advise you that you are being questioned as part of an official investigation of the Sheriff's Office. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this state and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to Sheriff's Office charges, which could result in your dismissal from the Sheriff's Office. If you do answer, neither your statements nor any information or evidence, which is gained by reason of such statements, can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent Sheriff's Office charges." To	EAS	LRT

	<p>“I wish to advise you that you are being questioned as part of an official investigation of the Sheriff’s Office. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this Virginia and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be in violation of Sheriff’s Office General Order 101 Code Conduct, Section VII Subsection 2, which could result in your dismissal from the Sheriff’s Office. If you do answer, neither your statements nor any information or evidence, which is gained by reason of such statements, can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to violation of Sheriff’s Office General Orders.”.</p>	
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**I. PURPOSE**

The purpose of this order is to establish guidelines to ensure that complaints and internal affairs investigations are handled in a manner that maintains the integrity of the Winchester City Sheriff’s Office. The Internal Affairs Unit shall maintain as its central objective the promotion of justice in a manner that is fair and objective. This will be accomplished through intensive and impartial investigation and review of all complaints and allegations of wrongdoing on the part of Sheriff’s Office employees. Furthermore, this policy will describe procedures for making complaints against Sheriff’s Office personnel, for investigating complaints, and it will list and define the dispositions of complaints.

**II. POLICY**

The image of the Winchester City Sheriff Office depends on the personal integrity and discipline of all Sheriff’s Office employees. To a large degree, the public image of this Office is determined by the professional response of the Sheriff’s Office to allegations of misconduct against it, or its employees. The Sheriff’s Office must competently and professionally investigate all allegations of misfeasance, malfeasance, nonfeasance by employees and complaints bearing on the Sheriff’s Office’s response to community needs. It is the policy of the Sheriff’s Office to record, investigate, and adjudicate all complaints against the agency or employees of the agency.

**III. PROCEDURE**

- A. Virginia Code § 9.1-600 (A) states that state, local, and other public law-enforcement agencies, which have ten or more law-enforcement officers, shall have a procedure established, allowing citizen submission of complaints regarding conduct of the law-enforcement agency, law-enforcement officers in the agency, or employees of the agency.

B. Law-enforcement agencies shall ensure, at a minimum, that in the case of all written complaints:

1. The public has access to the required forms and information concerning the submission of complaints.
2. The law-enforcement agency assists individuals in filing complaints; and
3. Adequate records are maintained of the nature and disposition of such cases. Therefore, the Winchester City Sheriff's Office encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Sheriff's Office members shall receive complaints courteously and shall handle them efficiently. All deputies are obligated to explain to inquiring citizens the complaint procedures and assist citizens with the filing of complaints.

C. The Sheriff's Office recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In such situations, words, actions, and events frequently result in misunderstanding and confusion. All employees benefit from a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of police work.

D. Responsibilities of supervisors (Sergeant, Corporal)

1. Supervisors are primarily responsible for enforcing conformance with Sheriff's Office standards and orders.
2. Supervisors shall know the deputies in their charge by closely observing their conduct and appearance.
3. Supervisors shall be alert to behavioral changes or problems in their deputies and, if necessary, document these changes and confer with higher authorities. The first-line supervisor shall assess the behavior, and then take or recommend.
4. The supervisor shall recommend and, if appropriate, help conduct extra training for deputies not performing according to established standards.
5. The supervisor shall employ counseling techniques sanctioned by the Sheriff's Office. Counseling is used to adjust and correct minor, infrequent errors or instances of poor performance and to ascertain the nature of any professional or personal problems that bear on performance. The supervisor shall document in writing all instances of counseling.

E. A copy of "How To Make A Complaint Against Sheriff's Office Personnel" will be posted in the public area of the Sheriff's Office and a copy may be given to any citizen requesting information on how to make a complaint against the Sheriff's Office or an employee of the Sheriff's Office. This policy will be disseminated to all personnel

F. Responsibility for handling complaints

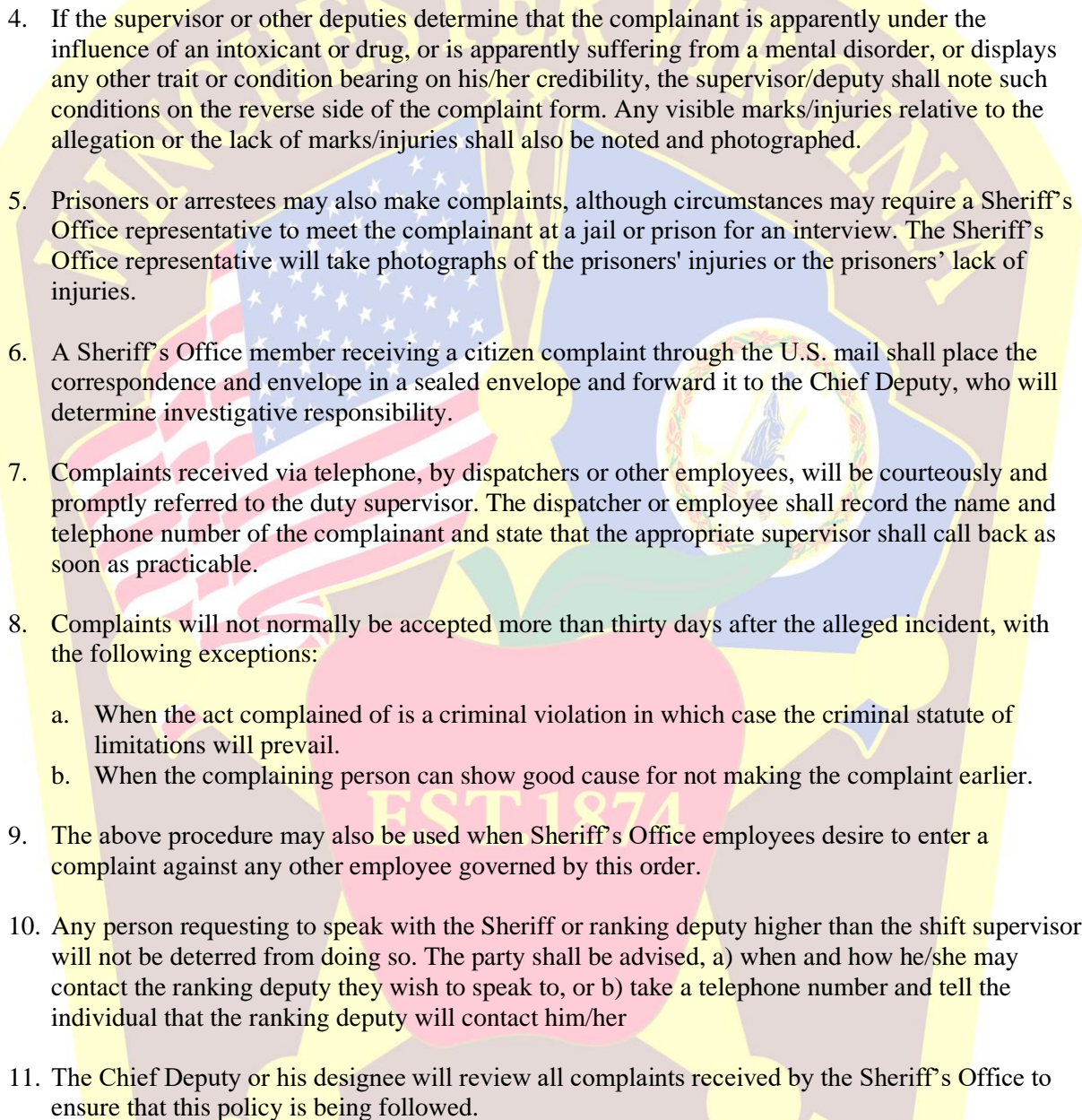
1. As a rule, complaints regarding law enforcement operations will be handled through the chain of command. Routine or minor complaints should be handled through the chain of command, beginning at the shift level. The Sheriff or Chief Deputy shall determine investigative

responsibility for complaints involving how Sheriff's Office service is provided, or a failure to provide service, or grossly improper attitudes or behavior. The Chief Deputy is responsible for overseeing the internal affairs function of the Sheriff's Office.

2. Complaints alleging grossly improper conduct, brutality, or misconduct involving several personnel or supervisory personnel will be handled as an internal affairs matter, and shall be investigated by the Major, as assigned by the Sheriff.
3. Internal Affairs investigations are the responsibility of the Sheriff or his designee. The Sheriff shall assign the appropriate personnel to investigate the Internal Affairs complaint. The Internal Affairs investigator will be responsible to the Sheriff and will coordinate and exercise supervision over the investigations of complaints or allegations of misconduct against members of the Sheriff's Office. Internal Affairs will conduct investigations into serious allegations or complaints which may include, but are not limited to:
  - a) Use of excessive force.
  - b) Violation of civil rights.
  - c) Misconduct.
  - d) Criminal actions.
  - e) Code of ethics violations.
  - f) Discrimination.
  - g) Sexual harassment.
  - h) Any other action deemed by the Sheriff.
4. Any employee who is informed they are the subject of an Internal Affairs investigation will be informed in writing. The notice shall advise the employee of the allegations, the employee's rights relative to the investigation, and the employee's responsibilities relative to the investigation. The written statement will also refer the employee to this policy. The Sheriff may appoint deputies to assist the Internal Affairs investigator on a temporary basis for specific investigations.

#### G. Receipt of complaints

1. Complaints, regardless of nature, may be lodged in person, by mail, or by phone at any time. As part of the follow-up investigative activity, persons making complaints by mail or phone will normally be interviewed, and if requested by the complainant, a written signed complaint may be prepared. A copy of the complaint form is located in the Sheriff's Office's forms section on the network. Anonymous complaints will be followed up to the extent possible and treated as any other complaint.
2. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of citizen complaints. An employee of the Sheriff's Office who interferes with, discourages, or delays the making of such complaints shall be subject to disciplinary action.
3. Normally, a citizen with a complaint will be referred to the highest ranking on duty supervisor. The supervisor will assist the citizen in recording pertinent information. If the complaint is of a procedural matter, or minor in nature, the on duty supervisor will attempt to resolve the complaint. Regardless of the nature or outcome of the complaint the supervisor or other person receiving the complaint will record the complaint and forward the complaint to the Chief Deputy who shall determine investigative responsibility. If the complaint is criminal or corrupt in nature, the supervisor will notify the Chief Deputy immediately.

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4. If the supervisor or other deputies determine that the complainant is apparently under the influence of an intoxicant or drug, or is apparently suffering from a mental disorder, or displays any other trait or condition bearing on his/her credibility, the supervisor/deputy shall note such conditions on the reverse side of the complaint form. Any visible marks/injuries relative to the allegation or the lack of marks/injuries shall also be noted and photographed.
  5. Prisoners or arrestees may also make complaints, although circumstances may require a Sheriff's Office representative to meet the complainant at a jail or prison for an interview. The Sheriff's Office representative will take photographs of the prisoners' injuries or the prisoners' lack of injuries.
  6. A Sheriff's Office member receiving a citizen complaint through the U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the Chief Deputy, who will determine investigative responsibility.
  7. Complaints received via telephone, by dispatchers or other employees, will be courteously and promptly referred to the duty supervisor. The dispatcher or employee shall record the name and telephone number of the complainant and state that the appropriate supervisor shall call back as soon as practicable.
  8. Complaints will not normally be accepted more than thirty days after the alleged incident, with the following exceptions:
    - a. When the act complained of is a criminal violation in which case the criminal statute of limitations will prevail.
    - b. When the complaining person can show good cause for not making the complaint earlier.
  9. The above procedure may also be used when Sheriff's Office employees desire to enter a complaint against any other employee governed by this order.
  10. Any person requesting to speak with the Sheriff or ranking deputy higher than the shift supervisor will not be deterred from doing so. The party shall be advised, a) when and how he/she may contact the ranking deputy they wish to speak to, or b) take a telephone number and tell the individual that the ranking deputy will contact him/her
  11. The Chief Deputy or his designee will review all complaints received by the Sheriff's Office to ensure that this policy is being followed.

#### H. Disposition of complaints

The Chief Deputy or his designee shall:

1. Notify the complainant, in writing, as soon as practicable, that the Sheriff's Office acknowledges receipt of the written complaint, that the complaint is under investigation, that the investigation will be completed within a reasonable time, and that the complainant will be advised of the outcome. If the investigation exceeds sixty days, the Chief Deputy shall write the complainant a letter explaining the circumstances of the delay.

2. Confidentially maintain, or cause to be maintained, complaint files separate from Personnel files.
3. Be responsible to the Sheriff regarding all complaints filed.
4. Take appropriate action following the investigation.
5. Notify the complainant of the disposition of the complaint.
6. Notify the employee that the complaint was made on of the disposition.

I. Internal Affair complaints

1. Complaints alleging violations of criminal law, or gross negligence in violating, or failing to enforce civil rights of citizens. Internal investigations shall examine alleged brutality, gross excesses of legal authority, or allegations involving supervisory personnel, multiple Sheriff's Office personnel, etc.
2. In such cases, the Sheriff, or his designee shall:
  - a. Record, register, control or cause to be recorded, registered, or control the investigations of employees.
  - b. Supervise the activities under "a".
  - c. Maintain confidential records of same.
  - d. Maintain close liaison with the Commonwealth's Attorney in investigating alleged criminal conduct. Where liability is at issue, the Sheriff shall similarly maintain contact with the city attorney.
3. Shall be confidentially maintained in files separate from Personnel files. These files shall be sealed by the Chief Deputy and then placed in the Internal Affairs File.

**IV. INVESTIGATION--** Two types of investigations may take place: administrative or criminal. Different rules govern interviews of employees in each case. Before any interview, the employee under investigation shall receive a confidential written notice of the complaint. This notice will include a summary of the complaint.

Note: Administrative and Criminal investigations may be conducted simultaneously, but investigators assigned to either may not collaborate or share information.

A. Assistance of Legal Counsel

1. Employees are permitted to have an attorney, supervisor, or other representative with them in the room during any interview regarding allegations of misconduct.
2. The employee's representative is limited to acting as an observer at the interview on administrative investigations.
3. Legal Counsel may be consulted during any criminal investigation.

B. Interviews for administrative purposes- If the Sheriff wishes to compel an employee to answer questions directly related to his/her official duties, the Sheriff or the IA interviewer shall advise the employee that:

1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
2. All questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
3. No answers given or any information obtained by reason of such statements may be admissible against the employee in any criminal proceeding.
- a. Read to the employee the following:

"I wish to advise you that you are being questioned as part of an official investigation of the Sheriff's Office. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this Virginia and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be in violation of Sheriff's Office General Order 101 Code Conduct, Section VII Subsection 2, which could result in your dismissal from the Sheriff's Office. If you do answer, neither your statements nor any information or evidence, which is gained by reason of such statements, can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to violation of Sheriff's Office General Orders."

4. In an interview for an administrative purpose, no Miranda rights are required. Further, the foregoing rules are inconsistent with Miranda in that employees' statements cannot be used as evidence.
  - a. The governing case is *Garrity v. New Jersey*, 385 U.S. 483, 87 S. Ct. 616 (1967).
  - b. The interviewing deputies shall use the "administrative proceedings rights" form found in the Appendix to this instruction.
- C. Interviews for criminal investigative purposes: If the Sheriff or IA Investigator believes that criminal prosecution is a possibility and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, the Sheriff or other interviewer shall:
  1. Give the employee Miranda rights
  2. Advise the employee that if he asserts his right not to answer questions, no adverse administrative action will be taken based upon the refusal.
    - a. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.
    - b. Note that the Miranda admonition includes the provision that a lawyer may be present at an interview. Although technically the employee has no right to counsel until the employee has been criminally charged or his or her freedom of action has been deprived, the Sheriff's Office wishes the employee to have the option. The Sheriff's Office wishes no possibility to arise in which its actions might be construed coercive.

- c. The governing case is *Gardner v. Broderick*, 392 U.S. 273, 88 S.Ct. 1913, 1916 (1968). The case made clear that a public employee may not be fired for asserting his Fifth Amendment right not to incriminate himself.

**V. INVESTIGATIVE TOOLS AND RESOURCES:** In addition to interviews of the employee and witnesses, the Sheriff may require other activities in support of a complaint investigation or internal investigation, including:

A. **Medical/Forensic Examination:** -- The Sheriff or any administrator/supervisor may, based on his/her observation, require a Sheriff's Office employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be treated as a positive test and will be grounds for disciplinary action and may result in the employee's dismissal.

1. If the employee is believed to be under the influence of alcohol, a licensed breath operator will administer the test. A supervisor or the IA investigator will witness the test and will be required to sign the report.
2. If the breath test shows any reading, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty by the Sheriff, or any administrator/supervisor, pending further disciplinary action.
3. If the employee is suspected to be under the influence of self-administered drugs, he/she may be compelled to submit to a blood and/or urine test by the administrator/supervisor. The test shall be administered under medical supervision where hygienic safeguards are met. The sample will be handled using the same safeguards as evidence in a criminal process. The employee will be on administrative leave until the results of the test are available.
4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the results/information shall be forwarded to the Sheriff for disciplinary action.
5. If an employee refuses to submit to a test, (alcohol or drugs) then the Sheriff, or any higher-ranking supervisor, will immediately relieve the employee from duty for failure to cooperate in an administrative investigation.
6. An administrator/supervisor may direct an employee to submit to a breath, blood, or urine test when a level of inebriation or drug usage is suspected as interfering with the performance of duty.
7. All property assigned to the employee but belonging to the Sheriff's Office is subject to inspection where the department has a reasonable suspicion that evidence of work-related misconduct may be found therein. Winchester City Sheriff's Office property includes but is not limited to:
  - a. File cabinets, including all files and papers stored in the file cabinet.
  - b. Storage cabinets, lockers, closets, desks, etc and all contents therein.
  - c. Vehicles, including the trunk and glove box areas.
  - d. Computers and any electronic files stored on the network or hard drives including e-mail correspondence.
  - e. Electronic devices, including cellular telephones, pagers, cameras, audio and visual recording devices.
  - f. All issued weapons.



B. Photograph and Lineup Identification Procedures-- Employees may be required to stand in a lineup for viewing by citizens for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and could result in dismissal if criminal prosecution is not anticipated.

1. Optical images of all employees will be kept in the Sheriff's Information System and may be used for the purpose of identification by citizens of an employee accused of misconduct. Photographs of employees will be used as it narrowly relates to the employee's job.
2. Photographs or videotape pictures of employees may be taken, whether knowingly or unknowingly by the employee, for the purpose of internal investigations when it relates to the employee's job or conduct unbecoming a Winchester City Sheriff's Office employee and the employee is suspected of misconduct.

C. Financial Disclosure Statements-- An employee may be compelled to make financial disclosure statements when it is directly and narrowly related to allegations of misconduct involving any unlawful financial gain. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding and will be held in strict confidence.

D. Polygraph

1. All Sheriff's Office personnel, effective with the promulgation of this policy, shall be required to submit to a polygraph when ordered to do so by the Sheriff, or by an administrator/supervisor with the authorization of the Sheriff, for just cause.
2. The results of the polygraph examination will not be used as the sole basis for disciplinary action against any employee.
3. Any polygraph examination administered under the provisions of this policy and procedure shall be done by a private contractor licensed to administer polygraph examinations in the Commonwealth of Virginia or a licensed examiner from another law enforcement agency. No Sheriff's Office employee shall be used to administer an examination to another Sheriff's Office employee.
4. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination shall be grounds for disciplinary action and may result in dismissal from the Sheriff's Office.
5. The following information must be provided to the deputy when asked to submit to such examination:
  - a. The nature of the inquiry, the name and rank of the investigating deputy, and the name and rank of any person present during the examination.
  - b. That his/her answers will not be used to prosecute him/her, but may be used in disciplinary actions.
  - c. That he/she may refuse to take the polygraph examination or to answer any questions, however, such refusal shall be grounds for disciplinary action, which may include dismissal.
  - d. That answers given during the polygraph examination do not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.

- e. A Polygraph Examination Acknowledgment of Rights form must be initialed and signed in the spaces indicated. The form is located in the Appendix of this policy. Refusal to do so shall be grounds for disciplinary action, which may result in dismissal.
6. The declaration is hereby made that the intent of all of the above is that any person who refuses to submit to a polygraph examination or refuses to answer any questions pertaining to the charges in such an examination may be terminated from employment.

## **VI. ADJUDICATION OF COMPLAINTS**

- A. The Sheriff or his designee will classify completed internal affairs' investigations as:
  1. Unfounded - no truth to allegations.
  2. Exonerated - allegations true but result of adherence to proper and appropriate police procedures and techniques.
  3. Not sustained - unable to verify the truth of the matters under investigation.
  4. Sustained - allegations true.
  5. Completed investigations classified as unfounded, exonerated or not sustained will be retained in the Sheriff's Office internal affairs files for 3 years after the investigation is completed and then destroyed. (See The Library of Virginia Records Retention Schedule)
  6. Sustained complaints will be retained in the Sheriff's Office internal affairs file for 5 years after the termination of employment of the employee. (See The Library of Virginia Records Retention Schedule)
  7. The internal affairs files will be viewed only by authorized personnel or by court order.
- B. Disciplinary records: All disciplinary actions shall be permanently retained in the employee's personnel file.
- C. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim. It shall be proportionate with the circumstances surrounding the incident and in consideration of the deputy's service record and prior sustained complaints.

## **VII. DUE PROCESS**

- A. The Fourteenth Amendment to the Constitution provides that a citizen may not be deprived of "life, liberty, or property, without due process of law." Public employees have a limited property interest in continued employment sufficient to require due process in any administrative proceedings that might result in the suspension or dismissal.
- B. The Sheriff's Office seeks to observe due process of law in the philosophy of the Fourteenth Amendment in any disciplinary proceeding. Nevertheless, the foregoing policy circumscribes when legal counsel may or may not be used during interviews of employee suspected of misconduct. Despite an employee's limited interest in his/her employment, as described previously, the simple fact that an employee has held a position for years does not entitle him/her to retain it.

## **VIII. INTERNAL AFFAIRS ROUTING**

A. All complaints received by Sheriff's Office employees will be routed in the following manner:

1. Upon complaint, the highest ranking on duty supervisor will be notified.
2. The supervisor will receive the complaint and record the information on Sheriff's Office form "Report of Complaint against Sheriff's Office Personnel." This form will be routed to the Chief Deputy by confidential means.
3. If the matter is not criminal or corrupt in nature the supervisor will notify the Sergeant.
4. The Chief Deputy will assure the complaint is entered into the complaint file by confidential means and determine investigative responsibility for the complaint.
5. The Chief Deputy will notify the Sheriff as soon as possible.
6. Upon initiating the investigation, the Chief Deputy will forward a completed "Notification of Allegation" to the employee the complaint is regarding, unless the investigation is of a sensitive nature and the need to establish proof requires secrecy.
7. If the complaint is of an urgent nature/criminal, the on-duty supervisor will notify the Sheriff and the Chief Deputy immediately. If the Sheriff and Chief Deputy cannot be reached, then notification will be as prescribed in section B of the Sheriff's Office Organization and Authority. (Preface 005)

