

Investigation and Prosecution

600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal investigations.

600.2 POLICY

It is the policy of the Milwaukee County Sheriff's Office to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

600.3 INVESTIGATIVE PROCEDURES

600.3.1 DEPUTY RESPONSIBILITIES

A deputy responsible for an initial investigation shall complete no less than the following:

- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
 - 1. An initial statement from any witnesses or complainants.
 - 2. A cursory examination for evidence.
- (b) If information indicates a crime has occurred, the deputy shall:
 - 1. Preserve the scene and all evidence as required to complete the initial and follow-up investigation.
 - 2. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Shift Commander.
 - 3. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
 - 4. Take any appropriate law enforcement action.
 - 5. Complete and submit the appropriate reports and documentation.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

600.3.2 CRIMINAL INVESTIGATION DIVISION COMMANDER RESPONSIBILITIES

The Criminal Investigation Division Divisional Commander or the authorized designee shall be responsible for developing, maintaining and reviewing detailed investigative procedures. Such procedures will minimally include:

- (a) Case file management.
- (b) Preliminary and follow-up criminal investigations.
- (c) Vice, narcotics and organized crime investigative and administrative protocols.

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- (d) Multi-jurisdictional investigative task force roles and responsibilities.
- (e) Cold case definition, evaluation criteria and documentation.
- (f) Undercover surveillance, decoy and raid operations.
- (g) Funeral escorts for in-custody inmates.
- (h) Photographic (conventional and digital) and other digital evidence collection.
- (i) Known source evidence collection for physical evidence comparison.
- (j) Forensic laboratory evidence submission.
- (k) Latent fingerprint preservation.
- (l) Interrogations of adults and juveniles.
- (m) On-call schedule to ensure 24-hour availability of investigative personnel.

600.4 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the Miranda warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the [Temporary Custody of Juveniles Policy](#).

600.4.1 AUDIO/VIDEO RECORDINGS

Any custodial interrogation of a person who is suspected of having committed a felony shall be electronically recorded (audio/video or both as available) in its entirety. Regardless of where the interrogation occurs, every reasonable effort should be made to secure functional recording equipment to accomplish such recordings (Wis. Stat. § 968.073(1)(a)); Wis. Stat. § 968.073(2)).

- (a) Exceptions to an audio/visual recording of the interrogation include (Wis. Stat. § 972.115(2)(a)):
 - 1. The person refused to respond or cooperate in the interrogation if a recording was being made. The refusal shall be recorded or documented in a written report.
 - 2. The statement was made in response to a question asked as part of the routine processing.
 - 3. The statement was made spontaneously and not in response to a question.
 - 4. The deputy in good faith failed to make a recording because the recording equipment did not function, malfunctioned, stopped operating or the deputy inadvertently failed to operate the equipment properly.
 - 5. Exigent public safety circumstances existed that prevented the making of a recording or rendered the making of such a recording infeasible.
 - 6. The deputy conducting the interrogation believed at the commencement of the interrogation that the offense for which the person was taken into custody or for which the person was being investigated was not a felony.

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Consideration should also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

No recording of a custodial interrogation should be destroyed or altered without written authorization from the prosecuting attorney and the Criminal Investigations Division supervisor. This does not include evidentiary items that are scheduled for destruction. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

Recordings should not take the place of a thorough report and investigative interviews. Written statements from suspects should continue to be obtained when applicable.

600.5 DISCONTINUATION OF INVESTIGATIONS

The investigation of a criminal case or efforts to seek prosecution should only be discontinued by the Criminal Investigation Division if one of the following applies:

- (a) All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.
- (b) The perpetrator of a misdemeanor has been identified and it has been determined that a citation is the most appropriate disposition.
 - (a) In these cases, the investigator shall document that the person was cited and why prosecution was not sought.
 - (b) Citations shall not be given for felony offenses or other offenses identified in this policy or by law that require an arrest or submission of a case to a prosecutor.
- (c) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
- (d) The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted or requested, and there is no need to take the suspect into custody.
- (e) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.
- (f) Investigation has proven that a crime was not committed (see the [Sexual Assault Investigations Policy](#) for special considerations in these cases).
- (g) The case has been turned over to another jurisdiction for continued investigation (e.g., federal authority).

The Domestic Abuse, Child Abuse, Sexual Assault Investigations and Adult Abuse policies may also require an arrest or submittal of a case to a prosecutor.

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600.6 COMPUTERS AND DIGITAL EVIDENCE

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, detectives should request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, detectives should take reasonable steps to prepare for such seizure and use the resources that are available.

600.6.1 PROCESSING DIGITAL EVIDENCE

The Criminal Investigation Division Divisional Commander shall ensure personnel are trained to handle digital evidence.

600.7 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this agency. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using agency equipment.

Information obtained via the Internet should not be archived or stored in any manner other than agency-established record keeping systems (see the Records Maintenance and Release and Criminal Organizations policies).

600.7.1 ACCESS RESTRICTIONS

Accessing information that requires the use of a third party's account or online identifier requires the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any Internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an Internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

600.7.2 INTERCEPTING ELECTRONIC COMMUNICATION

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Deputies should seek legal counsel before any such interception.

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600.8 MODIFICATION OF CHARGES FILED

Members are not authorized to recommend to the prosecutor or to any other official of the court that charges on a pending case be amended or dismissed without the authorization of a Divisional Commander or the Sheriff. Any authorized request to modify the charges or to recommend dismissal of charges shall be made to the prosecutor.

Personnel Complaints

1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Milwaukee County Sheriff's Office. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY

The Milwaukee County Sheriff's Office takes seriously all complaints regarding the service provided by the Agency and the conduct of its members.

The Agency will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local laws; municipal and county rules; and the requirements of any collective bargaining or employment agreements.

It is also the policy of this agency to ensure that the community can report misconduct without concern for reprisal or retaliation.

Professional Standards Division staff, in conjunction with the Chief Legal and Compliance Officer, are the direct representative of the Sheriff.

1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of agency policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate agency policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Agency.

All citizen/inmate complaints received by the Professional Standards Division, against any member of the Milwaukee County Sheriff's Office, will be reviewed and entered into the Citizen Complaint Database. A preliminary inquiry into the allegation will be conducted. At the conclusion of this inquiry, all information will be reviewed to determine if an internal investigation is warranted. No investigation against agency members shall be started without the prior approval of the Sheriff or his/her designee.

1010.4 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

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1010.4.1 SUPERVISOR RESPONSIBILITIES

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Responding to all complaints in a courteous and professional manner.
- (b) Resolving those personnel complaints that can be resolved immediately.
- (c) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Shift Commander is notified via the chain of command as soon as practicable.
- (d) Forwarding unresolved personnel complaints to the Division Commander, who will determine whether to contact the complainant or if additional investigation is appropriate.

1010.4.2 INTERVIEWS

All information, facts, documents and records accumulated during investigations shall remain confidential. Under no circumstances are copies to be generated without prior approval of the Sheriff or his/her designee, or through approved open records request. If a member is under investigation and is interviewed for any reason, the result of which could lead to disciplinary action, demotion, or dismissal, the following shall be complied with:

- (a) The member shall be informed that he/she is the subject of the investigation and the nature of the investigation prior to the interview. The member shall be informed verbally and by being shown a copy of the Administrative Rights Form and the Notice of Investigation form. They shall be advised that:
 - 1. The purpose of the interview is to solicit responses that will assist in determining whether disciplinary action is warranted, and the answers furnished may be used in disciplinary proceedings that could result in administrative action being taken, including dismissal.
 - 2. All questions relating to the performance of official duties must be answered fully and truthfully, and disciplinary action, including dismissal, may be undertaken if there is a refusal to answer fully and truthfully.
 - 3. No answers given nor any information gained by reason of such statements may, as a matter of constitutional law, be admissible against them in criminal proceedings. (Garrity v. New Jersey 385.U.S 493 167).
 - 4. At the member's request, they may be represented by a representative of their choice with whom they may consult with at all reasonable times during the interview.
- (b) Members are to cooperate with the investigation.
- (c) Interviews shall be conducted at a reasonable hour, preferable when the member is on duty, unless the seriousness of the investigation requires otherwise. If the

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interview occurs during off duty hours, the member shall be compensated in accordance with his /her respective labor agreement.

- (d) The interview shall last for a reasonable period, taking into confederation the seriousness of the issues being investigated.
- (e) Professional Standards Division personnel may record interviews.
- (f) No member may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Wis. Stat. § 111.37).
- (g) A member shall not be disciplined, retaliated against or threatened with retaliation for exercising his/her rights as described in this policy (Wis. Stat §164.03)

1010.4.3 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve agency members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Reviewed/Closed - No action warranted other than that directed by the Sheriff or his/her designee in closing the file. The following extensions to "Reviewed/Closed" may be imposed:

- Reviewed/Closed; HAL: Handle at Administrative level
- Reviewed/Closed; HBL: Handle at Bureau level
- Reviewed/Closed; NFA: No further action

1010.4.4 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation, absent mitigating factors i.e. criminal investigations which may affect the investigative completion time.

1010.5 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

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1010.6 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Agency, the Sheriff or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any agency badge, identification, assigned weapons and any other agency equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, during the investigation, either from within the Agency or an outside agency. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.
- (d) May have their duties as a Deputy Temporarily suspended until the investigation is completed.
- (e) Will be issued an equipment receipt and a copy of the "Suspension of Powers" form if applicable.
- (f) If applicable, the employee's badge and firearm will be retained by the Professional Standards Division.
- (g) The member will not exercise any power of arrest or any other police powers bestowed upon them by the Agency.

1010.7 POST- ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Sheriff or his/her designee through the chain of command. The Sheriff or his/her designee may accept or modify any disposition or recommendation for disciplinary action.

1010.7.1 CASE REVIEW

If case has been sustained, the member under investigation will have the opportunity to view the complete investigative file in the Professional Standards Division. Attendance at the case review meeting is optional, therefore employees will not be compensated. The file will be made available to the member during normal business hours of the Professional Standards Division.

If a member chooses to view the case file or have a representative view the case file on their behalf, they must contact Professional Standards no later than the date listed on the Case Review Notification form to schedule an appointment. Failure to contact Professional Standards by the date indicated on the form will constitute a waiver to view the file.

A supervisor from the member's assigned division will serve the form. The Notice of Service form will be signed by the member receiving the document and by the supervisor serving said document. That Notice of Service will be returned to the Professional Standards Division by the supervisor promptly upon the completion of service.

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At the time of the review, the member may advise the Professional Standards staff of any issues that they have with the content of the investigative file and will have the opportunity to put their concerns regarding the investigation in writing. Those writings will become part of the case file. Members may not disclose, remove, distribute, reproduce, or alter the investigative file in any way. Failure to adhere to these case review guidelines may result in additional disciplinary action.

1010.8 DISCIPLINARY REVIEW

For cases with a sustained finding, members may be scheduled for a disciplinary review to determine the amount of discipline, if any, that should be imposed.

The Sheriff or his/her designee may conduct disciplinary reviews.

In the event of a scheduled disciplinary review, the subject will be notified of the hearing at least 48 hours prior to the hearing date and time. A copy of the review notice may be forwarded to the member's respective union office.

Appearance by the subject/employee is at the discretion of the Sheriff or his/her designee.

The Professional Standards Division staff will advise the member of any disciplinary action, which shall occur based on the internal investigation. A written notice will be sent to the subject.

An action may include, but is not limited to:

- Employee Activity Documentation
- Written Reprimand
- Suspension
- Demotion
- Termination
- Additional Training
- Or any combination of the above

1010.9 RETENTION OF RECORDS

The following files shall be under the control and maintenance of the Professional Standards Division:

- (a) All Professional Standards Division investigations and case files
- (b) All Fitness for Duty investigations and case files
- (c) All agency background investigations, whether hired or not
- (d) Agency photographs of personnel
- (e) Corporation Counsel opinions
- (f) Suspension of Powers of Arrest forms and Equipment Tracking forms
- (g) All Citizen Complaint forms

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- (h) All information relative to lawsuits against the agency or its personnel

1010.10 CORPORATION COUNSEL

The Professional Standards Division is to be the primary liaison with Corporation Counsel in matters of litigation claims, legal opinions, and general counsel pertaining to the Office of the Sheriff.

Personnel Records

1013.1 PURPOSE AND SCOPE

This policy governs the maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

1013.2 POLICY

It is the policy of this Agency to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of Wisconsin (Wis. Stat. § 19.36(10)).

1013.3 AGENCY PERSONNEL FILE

The agency file shall be maintained as a record of a person's employment/appointment with this agency. The agency file should contain, at a minimum:

- (a) Personal data and marital status.
- (b) Personnel action reports reflecting assignments, promotions and other changes in employment/appointment status. These should be permanently retained.
- (c) Performance evaluations. These should be permanently maintained.
- (d) Discipline records, including copies of sustained personnel complaints.
- (e) Employee Activity Documentation records such as supervisor notes or memos may be retained in the agency file after the member has had the opportunity to read and initial the record.
 - 1. Once a member has had an opportunity to read and initial any Employee Activity Documentation records, the member shall be given the opportunity to respond in writing to the record.
 - 2. Any member response shall be attached to and retained with the original Employee Activity Documentation records (Wis. Stat. § 103.13).
 - 3. If a member refuses to initial or sign an Employee Activity Documentation records, at least one supervisor should note the date and time of such refusal on the original record. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the record into the member's file.
- (f) Commendations and awards.
- (g) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

1013.4 DIVISION FILE

Division files may be separately maintained internally by a member's supervisor for the purpose of completing timely performance evaluations. The Division file may contain supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

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1013.5 TRAINING FILE

An individual training file shall be maintained by the Training Director for each qualifying member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications. Training records may also be created and stored remotely, either manually or automatically (e.g., Daily Training Bulletin (DTB) records).

- (a) The involved member is responsible for providing the Training Academy with evidence of completed training/education in a timely manner.
- (b) The Training Director or the authorized designee shall ensure that copies of such training records are placed in the member's training file.

1013.6 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the Internal Affairs Division in conjunction with the office of the Sheriff. Access to these files may only be approved by the Sheriff or the Internal Affairs Division supervisor.

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition. Investigations of complaints that result in the following findings shall not be placed in the member's agency file but will be maintained in the internal affairs file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

1013.7 MEDICAL FILE

A medical file shall be maintained by Milwaukee County Department of Human Resources separately from all other personnel records. Any medical-related documents received by the agency shall be maintained in a separate file at the appropriate location.

1013.8 SECURITY

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by Human Resources, Milwaukee County Corporation Counsel or other attorneys or representatives of the County in connection with official business.

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1013.8.1 REQUESTS FOR DISCLOSURE

Any member receiving a request for a personnel record shall promptly notify the Custodian of Records or other person charged with the maintenance of such records (Wis. Stat. § 19.31 et seq.).

Upon receipt of any such request, the responsible person shall notify the affected member as soon as practicable that such a request has been made.

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

All requests for disclosure that result in access to a member's personnel records shall be logged in the corresponding file, and the affected employee will be notified in writing prior to access and within three days after the decision is made to permit access (Wis. Stat. § 19.356(2)(a)).

1013.9 MEMBER ACCESS TO HIS/HER OWN PERSONNEL RECORDS

Any member may request access to his/her own personnel records. The request shall occur during the normal business hours of those responsible for maintaining such files. Any member may request access to his/her own personnel records twice in a calendar year or more if authorized or as otherwise authorized in a collective bargaining agreement. If doing so requires the member to take time off work, arrangements for an alternate reasonable time should be made for the member to access the files. The Agency will grant the inspection within seven working days (Wis. Stat. § 103.13).

Any member seeking the removal or correction of any item from his/her personnel records shall file a written request to the Sheriff through the chain of command. The Agency may remove or correct any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed or changed. If the contested item is not removed or changed, the member's request and the written response from the Agency shall be retained with the contested item in the member's corresponding personnel record as long as the contested item is a part of the file (Wis. Stat. § 103.13).

Members may obtain a copy of the information or part of the information contained in their file (Wis. Stat. § 103.13).

A member who is involved in a current grievance against the Agency may designate in writing a representative of the member's union or collective bargaining unit or other representative to inspect the member's personnel record which may have a bearing on the resolution of the grievance (Wis. Stat. § 103.13).

Members may be restricted from accessing files containing any of the following information (Wis. Stat. § 103.13):

- (a) An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.

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- (b) Confidential portions of internal affairs files that have not been sustained against the member.
- (c) Criminal investigations involving the member.
- (d) Letters of reference concerning employment/appointment, licensing or issuance of permits regarding the member.
- (e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- (f) Materials used by the Agency for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for agency planning purposes.
- (g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (h) Records relevant to any other pending claim between the Agency and the member that may be discovered in a judicial proceeding.
- (i) Medical records where it would have a detrimental effect on the member, in which case the Agency may release the medical records to a physician designated by the member so that the physician may release the medical records to the member.

1013.10 RETENTION AND PURGING

Unless provided otherwise in this policy, personnel records shall be maintained in accordance with the established records retention schedule.

- (a) During the preparation of each member's performance evaluation, all personnel complaints and disciplinary actions should be reviewed to determine the relevancy, if any, to progressive discipline, training and career development. Each supervisor responsible for completing the member's performance evaluation should determine whether any prior sustained disciplinary file should be retained beyond the required period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the required period, approval for such retention should be obtained through the chain of command from the Sheriff.
- (c) If, in the opinion of the Sheriff, a personnel complaint or disciplinary action maintained beyond the required retention period is no longer relevant, all records of such matter may be destroyed in accordance with the established records retention schedule.

Personnel Complaints

109.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the Milwaukee County Sheriff's Office. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment, or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

109.2 POLICY

The Milwaukee County Sheriff's Office takes seriously all complaints regarding the service provided by the Agency and the conduct of its members.

The Agency will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local laws, municipal and county rules, and the requirements of any collective bargaining or employment agreements.

It is also the policy of this agency to ensure that the community can report misconduct without concern for reprisal or retaliation.

Professional Standards Division staff, in conjunction with the Chief Legal and Compliance Officer, are the direct representative of the Sheriff.

109.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of agency policy or federal, state, or local law, policy, or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate agency policy or federal, state, or local law, policy, or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures, or the response to specific incidents by the Agency.

All citizen/inmate complaints received by the Professional Standards Division, against any member of the Milwaukee County Sheriff's Office, will be reviewed and entered into the Citizen Complaint Database. A preliminary inquiry into the allegation will be conducted. At the conclusion of this inquiry, all information will be reviewed to determine if an internal investigation is warranted. No investigation against agency members shall be started without the prior approval of the Sheriff or his/her designee.

109.4 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

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109.4.1 SUPERVISOR RESPONSIBILITIES

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include but are not limited to:

- (a) Responding to all complainants in a courteous and professional manner.
- (b) Resolving those personnel complaints that can be resolved immediately.
- (c) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Division Commander is notified via the chain of command as soon as practicable.
- (d) Forwarding unresolved personnel complaints to the Division Commander, who will determine whether to contact the complainant or if additional investigation is appropriate.

109.4.2 INTERVIEWS

All information, facts, documents and records accumulated during investigations shall remain confidential. Under no circumstances are copies to be generated without prior approval of the Sheriff or his/her designee, or through approved open records request. If a member is under investigation and is interviewed for any reason, the result of which could lead to disciplinary action, demotion, or dismissal, the following shall be complied with:

- (a) The member shall be informed that he/she is the subject of the investigation and the nature of the investigation prior to the interview. The member shall be informed verbally and by being shown a copy of the Administrative Rights Form and the Notice of Investigation form. They shall be advised that:
 - 1. The purpose of the interview is to solicit responses that will assist in determining whether disciplinary action is warranted, and the answers furnished may be used in disciplinary proceedings that could result in administrative action being taken, including dismissal.
 - 2. All questions relating to the performance of official duties must be answered fully and truthfully, and disciplinary action, including dismissal, may be undertaken if there is a refusal to answer fully and truthfully.
 - 3. No answers given nor any information gained by reason of such statements may, as a matter of constitutional law, be admissible against them in criminal proceedings. (*Garrity v. New Jersey* 385.US 493 167).
 - 4. At the member's request, they may be represented by a representative of their choice with whom they may consult with at all reasonable times during the interview.
- (b) Members are to cooperate with the investigation.
- (c) Interviews shall be conducted at a reasonable hour, preferable when the member is on duty, unless the seriousness of the investigation requires otherwise. If the interview occurs during off duty hours, the member shall be compensated in accordance with his/her respective labor agreement.

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- (d) The interview shall last for a reasonable period, taking into consideration the seriousness of the issues being investigated.
- (e) Professional Standards Division personnel may record interviews.
- (f) No member may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Wis. Stat. § 111.37).
- (g) A member shall not be disciplined, retaliated against or threatened with retaliation for exercising his/her rights as described in this policy (Wis. Stat. § 164.03).

109.4.3 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve agency members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful, and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Reviewed/Closed - No action warranted other than that directed by the Sheriff or his/her designee in closing the file. The following extensions to "Reviewed/Closed" may be imposed:

- Reviewed/Closed; HAL: Handle at Administrative level
- Reviewed/Closed; HBL: Handle at Bureau level
- Reviewed/Closed; NFA: No further action

109.4.4 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the initiation of an investigation, absent mitigating factors i.e. criminal investigations which may affect the investigative completion time.

109.5 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces, and other areas, including desks, offices, and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

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Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio, or other document or equipment.

109.6 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Agency, the Sheriff or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any agency badge, identification, assigned weapons, and any other agency equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, during the investigation, either from within the Agency or an outside agency. The employee may be required to remain available for contact at all times during such shift and will report as ordered.
- (d) May have their duties as a Deputy temporarily suspended until the investigation is completed.
- (e) Will be issued an equipment receipt and a copy of the "Suspension of Powers" form if applicable.
- (f) If applicable, the employee's badge and firearm will be retained by the Professional Standards Division.
- (g) The member will not exercise any power of arrest or any other police powers bestowed upon them by the Agency.

109.7 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Sheriff or his/her designee through the chain of command. The Sheriff or his/her designee may accept or modify any disposition or recommendation for disciplinary action.

109.7.1 CASE REVIEW

If case has been sustained, the member under investigation will have the opportunity to view the complete investigative file in the Professional Standards Division. Attendance at the case review meeting is optional, therefore employees will not be compensated. The file will be made available to the member during normal business hours of the Professional Standards Division.

If a member chooses to view the case file or have a representative view the case file on their behalf, they must contact Professional Standards no later than the date listed on the Case Review Notification form to schedule an appointment. Failure to contact Professional Standards by the date indicated on the form will constitute a waiver to view the file.

A supervisor from the member's assigned division will serve the form. The Notice of Service form will be signed by the member receiving the document and by the supervisor serving said

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document. That Notice of Service will be returned to the Professional Standards Division by the supervisor promptly upon the completion of service.

At the time of the review, the member may advise the Professional Standards staff of any issues that they have with the content of the investigative file and will have the opportunity to put their concerns regarding the investigation in writing. Those writings will become part of the case file. Members may not disclose, remove, distribute, reproduce, or alter the investigative file in any way. Failure to adhere to these case review guidelines may result in additional disciplinary action.

109.8 DISCIPLINARY REVIEW

For cases with a sustained finding, members may be scheduled for a disciplinary review to determine the amount of discipline, if any, that should be imposed.

The Sheriff or his/her designee may conduct disciplinary reviews.

In the event of a scheduled disciplinary review, the subject will be notified of the hearing at least 48 hours prior to the hearing date and time. A copy of the review notice may be forwarded to the member's respective union office.

Appearance by the subject/employee is at the discretion of the Sheriff or his/her designee.

The Professional Standards Division staff will advise the member of any disciplinary action, which shall occur based on the internal investigation. A written notice will be sent to the subject.

An action may include, but is not limited to:

- Employee Activity Documentation
- Written Reprimand
- Suspension
- Demotion
- Termination
- Additional Training
- Or any combination of the above

109.9 RETENTION OF RECORDS

The following files shall be under the control and maintenance of the Professional Standards Division:

- (a) All Professional Standards Division investigations and case files
- (b) All Fitness for Duty investigations and case files
- (c) All agency background investigations, whether hired or not
- (d) Agency photographs of personnel

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- (e) Corporation Counsel opinions
- (f) Suspension of Powers of Arrest forms and Equipment Tracking forms
- (g) All Citizen Complaint forms
- (h) All information relative to lawsuits against the agency or its personnel

109.10 CORPORATION COUNSEL

The Professional Standards Division is to be the primary liaison with Corporation Counsel in matters of litigation claims, legal opinions, and general counsel pertaining to the Office of the Sheriff.

Personnel Records

210.1 PURPOSE AND SCOPE

This policy governs the maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

210.2 POLICY

It is the policy of this Agency to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of Wisconsin (Wis. Stat. § 19.36(10)).

210.3 AGENCY PERSONNEL FILE

The agency file shall be maintained as a record of a person's employment/appointment with this agency. The agency file should contain, at a minimum:

- (a) Personal data and marital status.
- (b) Personnel action reports reflecting assignments, promotions and other changes in employment/appointment status. These should be permanently retained.
- (c) Performance evaluations. These should be permanently maintained.
- (d) Discipline records, including copies of sustained personnel complaints.
- (e) Employee Activity Documentation records such as supervisor notes or memos may be retained in the agency file after the member has had the opportunity to read and initial the record.
 - 1. Once a member has had an opportunity to read and initial any Employee Activity Documentation records, the member shall be given the opportunity to respond in writing to the record.
 - 2. Any member response shall be attached to and retained with the original Employee Activity Documentation records (Wis. Stat. § 103.13).
 - 3. If a member refuses to initial or sign an Employee Activity Documentation records, at least one supervisor should note the date and time of such refusal on the original record. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the record into the member's file.
- (f) Commendations and awards.
- (g) Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

210.4 DIVISION FILE

Division files may be separately maintained internally by a member's supervisor for the purpose of completing timely performance evaluations. The Division file may contain supervisor comments, notes, notices to correct and other materials that are intended to serve as a foundation for the completion of timely performance evaluations.

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210.5 TRAINING FILE

An individual training file shall be maintained, either digital or hard copy, by the Training Director for each qualifying member. Training files will contain records of all training; original or photocopies of available certificates, transcripts, diplomas and other documentation; and education and firearms qualifications.

- (a) The involved member is responsible for providing the Training Academy with evidence of completed training/education in a timely manner.
- (b) The Training Director or the authorized designee shall ensure that copies of such training records are placed or recorded in the member's training file.

210.6 PROFESSIONAL STANDARDS DIVISION FILE

The Professional Standards Division files shall be maintained under the exclusive control of the Professional Standards Division in conjunction with the office of the Sheriff. Access to these files may only be approved by the Sheriff or the Professional Standards Division supervisor. These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition. Investigations of complaints that result in the following findings shall not be placed in the member's agency file but will be maintained in the Professional Standards Division file:

- (a) Not sustained
- (b) Unfounded
- (c) Exonerated

210.7 MEDICAL FILE

A medical file shall be maintained by Milwaukee County Department of Human Resources separately from all other personnel records. Any medical-related documents received by the agency shall be maintained in a separate file at the appropriate location.

210.8 SECURITY

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by Human Resources, Milwaukee County Corporation Counsel or other attorneys or representatives of the County in connection with official business.

210.8.1 REQUESTS FOR DISCLOSURE

Any member receiving a request for a personnel record shall promptly notify the Custodian of Records or other person charged with the maintenance of such records (Wis. Stat. § 19.31 et seq.).

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Upon receipt of any such request, the responsible person shall notify the affected member as soon as practicable that such a request has been made.

The responsible person shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

All requests for disclosure that result in access to a member's personnel records shall be logged in the corresponding file, and the affected employee will be notified in writing prior to access and within three days after the decision is made to permit access (Wis. Stat. § 19.356(2)(a)).

210.8.2 BACKGROUND REQUESTS

The Agency shall release personnel records as set forth in Wis. Stat. § 165.85 to another agency submitting a waiver from a candidate. The requested personnel records should be supplied within 21 days of the receipt of the waiver. The Agency should not release a candidate's personnel records if it is prohibited from providing the records under a binding nondisclosure agreement that was executed before November 7, 2021.

Only the Professional Standards Division is permitted to respond to requests for employment information regarding current or former employees. Employment related requests shall be directed to the Professional Standards Division.

210.9 MEMBER ACCESS TO HIS/HER OWN PERSONNEL RECORDS

Any member may request access to his/her own personnel records. The request shall occur during the normal business hours of those responsible for maintaining such files. Any member may request access to his/her own personnel records twice in a calendar year or more if authorized or as otherwise authorized in a collective bargaining agreement. If doing so requires the member to take time off work, arrangements for an alternate reasonable time should be made for the member to access the files. The Agency will grant the inspection within seven working days (Wis. Stat. § 103.13).

Any member seeking the removal or correction of any item from his/her personnel records shall file a written request to the Sheriff through the chain of command. The Agency may remove or correct any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed or changed. If the contested item is not removed or changed, the member's request and the written response from the Agency shall be retained with the contested item in the member's corresponding personnel record as long as the contested item is a part of the file (Wis. Stat. § 103.13).

Members may obtain a copy of the information or part of the information contained in their file (Wis. Stat. § 103.13).

A member who is involved in a current grievance against the Agency may designate in writing a representative of the member's union or collective bargaining unit or other representative to inspect the member's personnel record which may have a bearing on the resolution of the grievance (Wis. Stat. § 103.13).

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Members may be restricted from accessing files containing any of the following information (Wis. Stat. § 103.13):

- (a) An ongoing Professional Standards Division investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.
- (b) Confidential portions of Professional Standards Division files that have not been sustained against the member.
- (c) Criminal investigations involving the member.
- (d) Letters of reference concerning employment/appointment, licensing or issuance of permits regarding the member.
- (e) Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- (f) Materials used by the Agency for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for agency planning purposes.
- (g) Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (h) Records relevant to any other pending claim between the Agency and the member that may be discovered in a judicial proceeding.
- (i) Medical records where it would have a detrimental effect on the member, in which case the Agency may release the medical records to a physician designated by the member so that the physician may release the medical records to the member.

210.10 RETENTION AND PURGING

Unless provided otherwise in this policy, personnel records shall be maintained in accordance with the established records retention schedule.

- (a) During the preparation of each member's performance evaluation, all personnel complaints and disciplinary actions should be reviewed to determine the relevancy, if any, to progressive discipline, training, and career development. Each supervisor responsible for completing the member's performance evaluation should determine whether any prior sustained disciplinary file should be retained beyond the required period for reasons other than pending litigation or other ongoing legal proceedings.
- (b) If a supervisor determines that records of prior discipline should be retained beyond the required period, approval for such retention should be obtained through the chain of command from the Sheriff.
- (c) If, in the opinion of the Sheriff, a personnel complaint or disciplinary action maintained beyond the required retention period is no longer relevant, all records of such matter may be destroyed in accordance with the established records retention schedule.