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Sheriff

HARFORD COUNTY SHERIFF'S OFFICE PERSONNEL POLICY

Correctional Officers' Bill of Rights

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1. Purpose

To provide the Correctional Officers' Bill of Rights (COBR) within the Manual of Operations as a reference.

2. Policy

The HCSO will include the current version of the COBR within the Manual of Operations.

3. Definitions

Definitions that are specific to this written directive may be found below in Correctional Services § 11-1001 DEFINITIONS.

4. Background

This written directive is copied, *verbatim*, from the Annotated Code of Maryland. For consistency, the original numbering and outline system have been retained.

5. Correctional Services Article, Title 11

§11-1001.

- (a) In this subtitle the following words have the meanings indicated.
- (b) In Harford County, "agency" means the Office of the Sheriff of Harford County.
- (c)
 - (1) "Correctional officer" has the meaning stated in § 8-201 of this article.
 - (2) "Correctional officer" does not include an officer who is in probationary status on initial entry into the correctional agency except if an allegation of brutality in the execution of the officer's duties is made against the officer.
- (d)
 - (1) "Hearing" means a proceeding during an investigation conducted by a hearing board to take testimony or receive other evidence.
 - (2) "Hearing" does not include an interrogation at which no testimony is taken under oath.
- (e) "Hearing board" means a board that is authorized by the managing official to hold a hearing on a complaint against a correctional officer.

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- (f) "Internal investigation unit" means the internal investigation unit of a correctional facility charged with the investigation of complaints within a correctional facility.
- (g) In Harford County, "managing official" means the Sheriff of Harford County

§11-1002.

This subtitle applies only in Allegany County, Carroll County, Cecil County, Garrett County, Harford County, and St. Mary's County.

§11-1003.

- (a) Except as otherwise provided, the provisions of this subtitle supersede any inconsistent provisions of any other State or local law that conflicts with this subtitle to the extent of the conflict.
- (b) This subtitle does not limit the authority of the managing official to regulate the competent and efficient operation and management of a county correctional facility by any reasonable means including transfer and reassignment if:
 - (1) that action is not punitive in nature; and
 - (2) the managing official determines that action to be in the best interests of the internal management of the correctional facility.

§11-1004.

- (a)
 - (1) Except as provided in paragraph (2) of this subsection, a correctional officer has the same rights to engage in political activity as a State employee.
 - (2) The right of a correctional officer to engage in political activity does not apply when the correctional officer is on duty or acting in an official capacity.
- (b) A managing official:
 - (1) may not prohibit secondary employment by a correctional officer; but
 - (2) may adopt reasonable regulations that relate to secondary employment by a correctional officer.
- (c) A correctional officer may not be required or requested to disclose an item of the correctional officer's property, income, assets, source of income, debts, or personal or domestic expenditures, including those of a member of the correctional officer's family or household, unless:
 - (1) the information is necessary to investigate a possible conflict of interest with respect to the performance of the correctional officer's official duties; or
 - (2) the disclosure is required by federal or State law.
- (d) A correctional officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to the correctional officer's employment or be threatened with that treatment because the correctional officer:
 - (1) has exercised or demanded the rights granted by this subtitle; or
 - (2) has lawfully exercised constitutional rights.
- (e) A statute may not abridge and a correctional facility may not adopt a regulation that prohibits the right of a correctional officer to bring suit that arises out of the correctional officer's duties as a correctional officer.
- (f) A correctional officer may waive in writing any or all rights granted by this subtitle.

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§11-1005.

- (a) The investigation or interrogation by an internal investigation unit of a correctional officer for a reason that may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with this section.
- (b) For purposes of this section, the investigating officer or interrogating officer shall be a sworn law enforcement or correctional official or an individual with former law enforcement or corrections experience.
- (c) (1) A complaint against a correctional officer that alleges brutality in the execution of the correctional officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, by:
 - (i) the aggrieved individual;
 - (ii) a member of the aggrieved individual's immediate family;
 - (iii) an individual with firsthand knowledge obtained because the individual was present at and observed the alleged incident; or
 - (iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.(2) Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated.
- (d) (1) The correctional officer under investigation shall be informed of the name, rank, and command of:
 - (i) the law enforcement or correctional official or other individual in charge of the investigation;
 - (ii) the interrogating official; and
 - (iii) each individual present during an interrogation.(2) Before an interrogation, the correctional officer under investigation shall be informed in writing of the nature of the investigation.
- (e) If the correctional officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the correctional officer shall be informed completely of all of the correctional officer's rights before the interrogation begins.
- (f) Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the correctional officer is on duty.
- (g) (1) The interrogation shall take place:
 - (i) at the office of the command of the investigating officer or at the office of the managing official of the correctional facility in which the incident allegedly occurred, as designated by the investigating official; or
 - (ii) at another reasonable and appropriate place.(2) The correctional officer under investigation may waive the right described in paragraph (1)(i) of this subsection.
- (h) (1) All questions directed to the correctional officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation consistent with paragraph (2) of this subsection.
(2) Each session of interrogation shall:
 - (i) be for a reasonable period; and
 - (ii) allow for personal necessities and rest periods as reasonably necessary.
- (i) The correctional officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

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- (j)
 - (1)
 - (i) On request, the correctional officer under interrogation has the right to be represented by counsel or another responsible representative of the correctional officer's choice who shall be present and available for consultation at all times during the interrogation.
 - (ii) The correctional officer may waive the right described in subparagraph (i) of this paragraph.
 - (2)
 - (i) The interrogation shall be suspended for a period not exceeding 10 days until representation is obtained.
 - (ii) Within the 10-day period described in subparagraph (i) of this paragraph, the managing official, for good cause shown, may extend the period for obtaining representation.
 - (3) During the interrogation, the correctional officer's counsel or representative may:
 - (i) request a recess at any time to consult with the correctional officer;
 - (ii) object to any question posed; and
 - (iii) state on the record outside the presence of the correctional officer the reason for the objection.
- (k)
 - (1) A complete record shall be kept of the entire interrogation, including all recess periods, of the correctional officer.
 - (2) The record may be written, taped, or transcribed.
 - (3) On completion of the investigation, and on request of the correctional officer under investigation or the correctional officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.
- (l)
 - (1) The internal investigation unit may order the correctional officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation.
 - (2) If the internal investigation unit orders the correctional officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the correctional officer refuses to do so, the internal investigation unit may commence an action that may lead to a punitive measure as a result of the refusal.
 - (3) If the internal investigation unit orders the correctional officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the correctional officer.
- (m)
 - (1) If the internal investigation unit orders the correctional officer to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the internal investigation unit and the correctional officer agree to the admission of the results.
 - (2) The correctional officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygrapher if:
 - (i) the questions to be asked are reviewed with the correctional officer or the counsel or representative before the administration of the examination;

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- (ii) the counsel or representative is allowed to observe the administration of the examination; and
 - (iii) a copy of the final report of the examination by the certified polygrapher is made available to the correctional officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the examination.
- (n) (1) On completion of an investigation and at least 10 days before a hearing, the correctional officer under investigation shall be:
 - (i) notified of the name of each witness and of each charge and specification against the correctional officer; and
 - (ii) provided with a copy of the investigatory file and any exculpatory information, if the correctional officer and the correctional officer's representative agree to:
 - 1. execute a confidentiality agreement with the internal investigation unit not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the correctional officer; and
 - 2. pay a reasonable charge for the cost of reproducing the material.
- (2) The internal investigation unit may exclude from the exculpatory information provided to a correctional officer under this subsection:
 - (i) the identity of confidential sources;
 - (ii) nonexculpatory information; and
 - (iii) recommendations as to charges, disposition, or punishment.
- (o) (1) The internal investigation unit may not insert adverse material into a file of the correctional officer, except the file of the internal investigation, unless the correctional officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.
- (2) The correctional officer may waive the right described in paragraph (1) of this subsection.

§11-1006.

- (a) A correctional officer who is denied a right granted by this subtitle may apply to the circuit court of the county where the correctional officer is regularly employed for an order that directs the internal investigation unit to show cause why the right should not be granted.
- (b) The correctional officer may apply for the show cause order:
 - (1) either individually or through the correctional officer's certified or recognized employee organization; and
 - (2) at any time prior to the beginning of a hearing by the hearing board.

§11-1007.

- (a) Subject to subsection (b) of this section, an internal investigation unit may not bring administrative charges against a correctional officer unless the unit files the charges within 1 year after the act that gives rise to the charges comes to the attention of the managing official.
- (b) The 1-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force.

§11-1008.

- (a) (1) Except as provided in paragraph (2) of this subsection and § 11-1012

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of this subtitle, if the investigation or interrogation of a correctional officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the correctional officer is entitled to a hearing on the issues by a hearing board before the managing official takes that action.

- (2) A correctional officer who has been convicted of a felony is not entitled to a hearing under this section.
- (b)
 - (1) The internal investigation unit shall give notice to the correctional officer of the right to a hearing by a hearing board under this section.
 - (2) The notice required under this subsection shall state the time and place of the hearing and the issues involved.
- (c)
 - (1) Except as provided in paragraph (4) of this subsection and in § 11-1012 of this subtitle, the hearing board authorized under this section shall consist of at least three members who:
 - (i) are appointed by the managing official and chosen from correctional officers within that correctional facility, or from correctional officers of another correctional facility with the approval of the managing official of the other facility; and
 - (ii) have had no part in the investigation or interrogation of the correctional officer.
 - (2) At least one member of the hearing board shall be of the same rank as the correctional officer against whom the complaint is filed.
 - (3)
 - (i) This paragraph does not apply in Harford County.
 - (ii) If the managing official is the correctional officer under investigation, the managing official of another correctional facility in the State shall function as the correctional officer of the same rank on the hearing board.
 - (iii) If the managing official of a correctional facility of a county or municipal corporation is under investigation, the official authorized to appoint the managing official's successor shall select the managing official of another correctional facility to function as the correctional officer of the same rank on the hearing board.
 - (4)
 - (i) This paragraph does not apply in Harford County.
 - (ii) A correctional facility or the facility's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board.
 - (iii) A correctional officer may elect the alternative method of forming a hearing board if:
 - 1. the correctional officer works in a correctional facility described in subparagraph (ii) of this paragraph; and
 - 2. the correctional officer is included in the collective bargaining unit.
 - (iv) The internal investigation unit shall notify the correctional officer in writing before a hearing board is formed that the correctional officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.
 - (v) If the correctional officer elects the alternative method, that method shall be used to form the hearing board.
 - (vi) A correctional facility or exclusive collective bargaining

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representative may not require a correctional officer to elect an alternative method of forming a hearing board.

(vii) If the correctional officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.

(viii) This paragraph is not subject to binding arbitration.

- (d) (1) In connection with a disciplinary hearing, the managing official or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.
- (2) The subpoenas may be served without cost in accordance with the Maryland Rules that relate to service of process issued by a court.
- (3) Each party may request the managing official or hearing board to issue a subpoena or order under this subtitle.
- (4) In case of disobedience or refusal to obey a subpoena served under this subsection, the managing official may apply without cost to the circuit court of a county where the subpoenaed party resides or conducts business, for an order to compel the attendance and testimony of the witness or the production of the books, papers, records, and documents.
- (5) On a finding that the attendance and testimony of the witness or the production of the books, papers, records, and documents is relevant or necessary:
- (i) the court may issue without cost an order that requires the attendance and testimony of witnesses or the production of books, papers, records, and documents; and
- (ii) failure to obey the order may be punished by the court as contempt.
- (e) (1) The hearing shall be conducted by a hearing board.
- (2) The hearing board shall give the internal investigation unit and correctional officer ample opportunity to present evidence and argument about the issues involved.
- (3) The correctional facility and correctional officer may be represented by counsel.
- (4) Each party has the right to cross-examine witnesses who testify and each party may submit rebuttal evidence.
- (f) (1) Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect.
- (2) The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.
- (3) Each record or document that a party desires to use shall be offered and made a part of the record.
- (4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- (g) (1) The hearing board may take notice of:
- (i) judicially cognizable facts; and
- (ii) general, technical, or scientific facts within its specialized knowledge.
- (2) The hearing board shall:
- (i) notify each party of the facts so noticed either before or during the hearing, or by reference in preliminary reports or otherwise; and

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- (ii) give each party an opportunity and reasonable time to contest the facts so noticed.
- (3) The hearing board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.
- (h)
 - (1) With respect to the subject of a hearing conducted under this subtitle, the managing official shall administer oaths or affirmations and examine individuals under oath.
 - (2) In connection with a disciplinary hearing, the managing official or a hearing board may administer oaths.
- (i)
 - (1) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.
 - (2) Witness fees, mileage, and the actual expenses necessarily incurred in securing the attendance of witnesses and their testimony shall be itemized and paid by the correctional facility.
- (j) An official record, including testimony and exhibits, shall be kept of the hearing.

§11-1009.

- (a)
 - (1) A decision, order, or action taken as a result of a hearing under §11-1008 of this subtitle shall be in writing and accompanied by findings of fact.
 - (2) The findings of fact shall consist of a concise statement on each issue in the case.
 - (3) A finding of not guilty terminates the action.
 - (4) If the hearing board makes a finding of guilt, the hearing board shall:
 - (i) reconvene the hearing;
 - (ii) receive evidence; and
 - (iii) consider the correctional officer's past job performance and other relevant information as factors before making recommendations to the managing official.
 - (5) A copy of the decision or order, findings of fact, conclusions, and written recommendations for action shall be delivered or mailed promptly to:
 - (i) the correctional officer or the correctional officer's counsel or representative of record; and
 - (ii) the managing official.
- (b)
 - (1) After a disciplinary hearing and a finding of guilt, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive.
 - (2) The recommendation of a penalty shall be in writing.
- (c)
 - (1) Notwithstanding any other provision of this subtitle, the decision of the hearing board as to findings of fact and any penalty is final if:
 - (i) a managing official is an eyewitness to the incident under investigation; or
 - (ii) except in Harford County, a managing official has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.
 - (2) The decision of the hearing board then may be appealed in accordance with § 11-1010 of this subtitle.
 - (3) Paragraph (1)(ii) of this subsection is not subject to binding arbitration.
- (d)
 - (1) Within 30 days after receipt of the recommendations of the hearing board, the managing official shall:

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- (i) review the findings, conclusions, and recommendations of the hearing board; and
- (ii) issue a final order.
- (2) The final order and decision of the managing official is binding and then may be appealed in accordance with § 11-1010 of this subtitle.
- (3) The recommendation of a penalty by the hearing board is not binding on the managing official.
- (4) The managing official shall consider the correctional officer's past job performance as a factor before imposing a penalty.
- (5) The managing official may increase the recommended penalty of the hearing board only if the managing official personally:
 - (i) reviews the entire record of the proceedings of the hearing board;
 - (ii) meets with the correctional officer and allows the correctional officer to be heard on the record;
 - (iii) discloses and provides in writing to the correctional officer, at least 10 days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and
 - (iv) states on the record the substantial evidence relied on to support the increase of the recommended penalty.

§11-1010.

- (a) An appeal from a decision made under § 11-1009 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202.
- (b) A party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals.

§11-1011.

On written request, a correctional officer may have expunged from any file the record of a formal complaint made against the correctional officer if:

- (1)
 - (i) the internal investigation unit that investigated the complaint:
 - 1. exonerated the correctional officer of all charges in the complaint; or
 - 2. determined that the charges were unsustainable or unfounded; or
 - (ii) a hearing board acquitted the correctional officer, dismissed the action, or made a finding of not guilty; and
- (2) at least 3 years have passed since the final disposition by the correctional facility or hearing board.

§11-1012.

- (a) This subtitle does not prohibit summary punishment by higher-ranking correctional officers as designated by the managing official.
- (b) (1) Summary punishment may be imposed for minor violations of correctional facility rules and regulations if:
 - (i) the facts that constitute the minor violation are not in dispute;
 - (ii) the correctional officer waives the hearing provided under this subtitle; and
 - (iii) the correctional officer accepts the punishment imposed by the highest-ranking correctional officer, or individual acting in that capacity, of the unit to which the correctional officer is attached.

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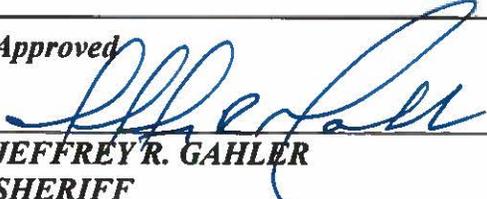
- (2) Summary punishment imposed under this subsection may not exceed suspension of 3 days without pay or a fine of \$150.
- (c) (1) If a correctional officer is offered summary punishment in accordance with subsection (b) of this section and refuses:
- (i) the managing official may convene a hearing board of one or more members; and
 - (ii) the hearing board has only the authority to recommend the sanctions provided in this section for summary punishment.
- (2) If a single member hearing board is convened:
- (i) the member need not be of the same rank as the correctional officer; but
 - (ii) all other provisions of this subtitle apply.

§11-1013.

- (a) This subtitle does not prohibit emergency suspension by higher-ranking correctional officers as designated by the managing official.
- (b) (1) The managing official may impose emergency suspension with pay if it appears that the action is in the best interest of the inmates, public, and the correctional facility.
- (2) If the correctional officer is suspended with pay, the managing official may suspend the correctional powers of the correctional officer and reassign the correctional officer to restricted duties pending:
- (i) a determination by a court with respect to a criminal violation; or
 - (ii) a final determination by a hearing board with respect to a correctional facility violation.
- (3) A correctional officer who is suspended under this subsection is entitled to a prompt hearing.
- (c) (1) If a correctional officer is charged with a felony, the managing official may impose an emergency suspension of correctional powers without pay.
- (2) A correctional officer who is suspended under paragraph (1) of this subsection is entitled to a prompt hearing.

§11-1014.

- (a) A person may not knowingly make a false statement, report, or complaint during an investigation or proceeding conducted under this subtitle.
- (b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding \$500 or both.

<p><i>Approved</i></p>  <p>JEFFREY R. GAHLER SHERIFF</p> <p>DATE <u>8-25-16</u></p>
