


Executive Directive



Title: Employee Discipline — Case Processing	Executive Directive Number: ADM.050.0052 Revised
Related MD Statute/Regulations: Correctional Services Article, §2-103, Annotated Code of Maryland; Executive Order 01.01.2015.08, State Personnel and Pensions Article, §§ 11-101 through 11-402, Annotated Code of Maryland, and Department of Budget and Management Regulations (COMAR 17.04)	Supersedes: ADM.050.0052, dated 10/15/15
Related ACA Standards: 4-4048, 4-4069; -CO-1C-04; 4-ALDF-7E-01	F  F Services Division
Related MCCS Standards: N/A	Effective Date: February 22, 2016 Number of Pages: 10



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Secretary



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.01 Purpose.

This directive establishes procedures for the Department of Public Safety and Correctional Services (Department) and assigns responsibilities for reporting and processing a complaint of employee misconduct.

.02 Scope.

This directive applies to all units of the Department.

.03 Policy.

- A. The Department shall implement standards related to employee conduct and an administrative process for enforcing those standards to ensure that employee personal conduct within, and outside, the workplace reflects favorably on the employee, the Department, and State government.
- B. The Department shall receive and investigate each complaint of employee misconduct in a thorough, fair, and expeditious manner consistent with applicable statutory and regulatory requirements.
- C. The Department shall take appropriate disciplinary action, up to and including termination and, if warranted, referral to the appropriate authority for criminal prosecution, if it is determined that the employee did not comply with federal and State laws, regulations, policy, or procedure.

.04 Definitions.

- A. In this directive, the following terms have the meanings indicated.

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B. Terms Defined.

- (1) "Appointing authority" means a Department official designated by statute or by the Department of Budget and Management to have the authority to hire, discipline, and conduct other personnel actions involving an employee.
- (2) "Criminal charge" means that an individual has been accused of committing a violation of law as indicated by the existence of an official court charging document that includes documents known as a:
 - (a) Statement of charges;
 - (b) Criminal summons;
 - (c) Criminal citation; or
 - (d) Civil citation.
- (3) Employee.
 - (a) "Employee" means an individual assigned to or employed by the Department in a full-time, part-time position.
 - (b) "Employee" does not include a:
 - (i) Temporary employee;
 - (ii) Contractual employee; or
 - (iii) Volunteer.
- (4) "HRSD Discipline Review Team" means a group consisting of the Director, Professional Standards, Police/Correctional Officer & Labor Liaison, Secretary's Director, Investigation, Intelligence and Fugitive Apprehension, and the following Human Resources Services Division (HRSD) staff positions:
 - (a) Executive Director, HRSD, or a designee;
 - (b) Manager, Employee Relations Unit (ERU); and
 - (c) Attorney Advisor.
- (5) "May not" means an absolute prohibition and does not infer discretion.
- (6) "Misconduct" means behavior that is in violation of federal, State, and local law, regulation, the Department's Standards of Conduct and Discipline Administrative Procedures Manual (Standards of Conduct), or other applicable Department policy or procedures.

.05 Responsibility/Procedures.

A. Reporting Employee Misconduct.

- (1) Except under §.05A(4) of this directive, an employee present during, observing or having knowledge of a violation of the Standards of Conduct, law, regulation, policy or procedure shall report the violation to a supervisor.
- (2) Except under §.05A(4) of this directive, a supervisor present during, observing a, having knowledge of, or is advised of a violation of the Standards of Conduct, law, regulation, policy or procedure shall notify the supervisor's appointing authority, or a designee:
 - (a) Immediately, if the circumstances demand immediate intervention, including, but not limited to, circumstances such as:
 - (i) Arrest of an employee;
 - (ii) Employee receives a criminal summons or citation;
 - (iii) Employee is charged with a violation of the Transportation Article with a penalty of \$500 or more, incarceration, or both; or
 - (iv) The employee's actions pose an immediate threat to safety and security of the workplace; or
 - (b) Within 24 hours of the supervisor's knowledge of the incident if the circumstances are such that there is no potential for loss of evidence, no harm will come to the victim or suspect employee, or hampering an investigation of the incident if action is delayed.
- (3) An appointing authority, or a designee, notified under §.05A(2) of this directive shall, using the same criteria established under §.05A(2)(a) or (b) of this directive, notify the Internal Investigative Division (IID) Duty Officer.
- (4) An employee or supervisor who has knowledge of misconduct that implicates the employee's or supervisor's appointing authority, shall notify the IID directly as required under §.05A(3) of this directive.

B. Investigating Employee Misconduct.

- (1) The IID Duty Officer receiving notification under §.05A of this directive shall:
 - (a) Assign a case number to the incident of employee misconduct.
 - (b) Record the following information concerning the incident of employee misconduct:
 - (i) The name of the employee allegedly committing the violation;
 - (ii) Available pertinent details concerning the alleged violation, for example location, date, time, witnesses, if the incident is still occurring or in the past, or law enforcement involvement; and

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- (iii) The employee's current work and pay status resulting from the incident, such as suspended with or without pay or temporary re-assignment.
 - (c) If the alleged employee misconduct is a newsworthy event as defined under Department policy for reporting a newsworthy event, ensure that the notifications required for reporting a newsworthy event are made, as well as notifying the:
 - (i) Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee; and
 - (ii) Executive Director, Human Resources Services Division, or a designee.
 - (d) Assign an investigator to take appropriate steps based on the degree of urgency required by the incident.
- (2) Each day the Director, IID, or a designee, shall:
- (a) Review newly assigned IID case numbers; and
 - (b) If a new case involves employee misconduct, ensure that the Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee, and Executive Director, Human Resources Services Division, or a designee, have been notified of the incident.
- (3) As soon as possible, but not more than 24 hours after notification under §.05B(2) of this directive, the Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee, shall:
- (a) Review the case to determine if a criminal investigation is to be conducted by IID in addition to an administrative investigation.
 - (b) Consult with the Director, IID to determine if an IID investigator or a field investigator is to conduct the administrative investigation.
- (4) As soon as possible, but not more than 24 hours after notification under §.05B(2) of this directive, the Executive Director, Human Resources Services Division, or a designee, shall:
- (a) Ensure that the Manager, HRSD Employee Relations Unit (ERU), or a designee:
 - (i) Verifies that the case information is appropriately documented in order to track events related to the internal administrative disciplinary process.
 - (ii) Determines the governing personnel law and the applicable time constraints under State Personnel and Pensions Article, §11-106, Annotated Code of Maryland (30 – day Rule), the Correctional Officer's Bill of Rights (COBR) or Law Enforcement Officer's Bill of Rights (LEOBR).
 - (b) If applicable, inform the assigned investigator and appropriate appointing authority of applicable time requirements identified according to §.05B(4)(a)(ii) of this directive.
 - (c) Assigns an HRSD Management Advocate to the case.

C. Time limit — Administrative Investigation.

- (1) If the case involves an employee covered under the COBR or the LEOBR, except under provisions of §.05C(3) of this directive, an administrative investigation of employee misconduct shall be completed within 45 days of the date that incident was reported to a supervisor, or if reported by an employee directly to IID, the date IID received the report.
- (2) If the case involves an employee who is not covered under the COBR or the LEOBR, except under provisions of §.05C(3) of this directive, an administrative investigation of employee misconduct shall be completed within:
 - (a) 25 calendar days of the date that incident was reported to a supervisor, or if reported by an employee directly to IID, the date IID received the report; or
 - (b) In any case in which the appointing authority intends to impose suspension without pay as discipline, 5 workdays following the close of the employee's next shift after the appointing authority acquires knowledge of the misconduct for which the suspension is imposed (Workday excludes Saturdays, Sundays, legal holidays, and employee leave days when calculating the 5-workday period under §.05C(2)(b) of this directive).
- (3) If requested by an investigator, the Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee; may grant an extension to the time frame established under §.05C(1) of this directive.
- (4) Once each week, the following HRSD staff shall meet to discuss open employee discipline cases:
 - (a) Manager, ERU;
 - (b) Attorney advisor; and
 - (c) HRSD Management Advocates.
- (5) At least within 21 days of receipt of a report of an incident of employee misconduct under §.05B(2) of this directive, or sooner if circumstances require, the Manager, ERU shall confer with the following staff to ensure the administrative disciplinary process is progressing within applicable timelines:
 - (a) The investigator assigned to the administrative investigation;
 - (b) Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee;
 - (c) Executive Director, Human Resources Services Division, or a designee; and
 - (d) The Director, Internal Investigative Division.
- (6) At the conclusion of an administrative disciplinary investigation the investigator shall:
 - (a) In addition to the detailed report of investigation otherwise required, prepare, a summary of the investigation, as soon as possible, but not later than 24 hours after the investigator completes the investigation; and

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- (b) Forward the summary to the Director, IID, or a designee for review and approval.
- (7) Within 24 hours of receipt of a summary under §.05C(6)(b) of this directive, the Director, IID, or a designee, shall:
 - (a) Review and approve the summary of the investigation; and
 - (b) Forward a copy of the summary to:
 - (i) Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee;
 - (ii) Manager, ERU, or a designee; and
 - (iii) The appointing authority of the employee alleged to have committed the violation.
- (8) Criminal investigations related to an allegation of employee misconduct shall be investigated by an IID investigator and processed according to IID policy and procedures and, if applicable COBR or LEOBR requirements.

D. Administrative Processing— Internal Disciplinary Case.

- (1) Administrative processing of an internal disciplinary case shall be in accordance with applicable requirements under COMAR 17.04.05 — Disciplinary Actions, COBR, LEOBR, and Department policy and procedures.
- (2) As soon as possible, but not later than 24 hours of receipt of a summary of an administrative disciplinary under §.05C(6)(b) of this directive, the Manager, ERU, or a designee, shall consult with the respective appointing authority to identify a charge and sanction in accordance with the governing personnel statutes, regulations, and the Standards of Conduct.
- (3) Unreconciled differences between ERU and an appointing authority concerning charges and sanctions to be applied shall be referred to the HRSD Discipline Review Team to resolve the differences with the appointing authority's Deputy or Assistant Secretary.
- (4) If an investigation of an allegation of employee misconduct determines the administrative discipline process involves misconduct that would be a criminal charge, the Manager, ERU, or a designee, shall:
 - (a) Prepare the required administrative discipline charging documents and related documentation based on the agreed upon charge and sanction;
 - (b) Have the HRSD Discipline Review Team review the:
 - (i) Documents for accuracy and required content; and
 - (ii) Sanction for consistency with the Standards of Conduct; and

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- (c) Once the charging documents are approved under §.05D(4)(b) of this section, forward the required documentation to the appropriate appointing authority to administer the agreed upon discipline.
- (5) An appointing authority receiving charging documents under §.05D(4)(c) of this directive shall:
- (a) Serve the charges consistent with time limits in accordance with applicable requirements under COMAR 17.04.05 — Disciplinary Actions, COBR, LEOBR, and Department policy and procedures;
 - (b) Serve charges on the employee and the employee’s legal counsel or agent of the employee organization selected by the correctional officer as required under Correctional Services Article, §10-908(b), Annotated Code of Maryland; and
 - (c) Notify the Manager, ERU of the date the charges were served.
- (6) If the employee files an appeal for a hearing board, the Manager, ERU, or a designee, shall forward the case to the HRSD Docket Specialist who shall:
- (a) Schedule a date, time and location for the trial board;
 - (b) Notify all parties to the case of the date time and location of the trial board; and
 - (c) Ensure that a trial board member selected to hear an employee disciplinary case signs a statement that indicates if the selected trial board member ever:
 - (i) Worked with the accused employee;
 - (ii) Personally associated with the accused; or
 - (iii) Worked for the accused’s managing official or unit head.
- (7) If the case involves a parallel criminal investigation, the IID investigator assigned to the case is responsible for preparation of documents related to criminal prosecution.
- (8) Unless otherwise designated a managing official or unit head shall be the designated point of contact for liaison with the Manager ERU, HRSD Management Advocate, and investigator concerning employee discipline at the respective work location.

E. Subpoenas — Internal Administrative Cases.

- (1) The HRSD Docket Specialist, or a designee, shall prepare and issue for service by a unit head or managing official subpoenas related to an internal administrative case requested by:
 - (a) A Department investigator or Management Advocate; or
 - (b) The employee accused of misconduct or the employee’s legal counsel or agent.
- (2) An individual identified under §.05E(1) of this directive as a party to an administrative disciplinary case that requires a subpoena be issued for the appearance of an individual or presentation of

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evidence at a disciplinary proceeding shall make the request in writing to the HRSD Docket Specialist as soon as possible to facilitate issuance and service of the subpoena.

- (3) Upon receipt of a request under §.05E(2) of this directive, the HRSD Docket Specialist, or a designee, shall:
 - (a) Communicate with the party making the request to obtain information necessary to prepare the subpoena.
 - (b) Prepare the subpoena so as to facilitate service of the document.
 - (c) Record the issuance of the subpoena on the HRSD Master Subpoena Log including the:
 - (i) Name of the case;
 - (ii) Case number assigned;
 - (iii) Date issued;
 - (iv) Name of the individual for whom the subpoena is issued;
 - (v) Name of the investigator assigned to the case; and
 - (vi) Name of the HRSD Management Advocate assigned to the case.
 - (d) Once the subpoena is prepared, send:
 - (i) The subpoena to the named individual's managing official or unit head for service; and
 - (ii) An e-mail to the party requesting the subpoena indicating that the subpoena has been sent for service.
- (4) A managing official or unit head receiving a subpoena for service on a subordinate employee shall ensure:
 - (a) That the subpoena is served in a timely manner to facilitate the required appearance on the date of the disciplinary proceeding;
 - (b) Receipt of the subpoena is signed and dated by the individual being served;
 - (c) A copy of the signed subpoena is made and sent to the HRSD Docket Specialist.
- (5) Upon receipt of copy of a served subpoena under §.05E(4)(c) of this directive, the HRSD Docket Specialist, or a designee shall:
 - (a) Record on the Master Subpoena Log the date of:
 - (i) Return; and
 - (ii) Service; and

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- (b) Make copies of the served subpoena and:
 - (i) File a copy in the HRSD Docket Specialist's file;
 - (ii) Deliver a copy to the party making the request for the subpoena.

F. Disposition — Employee Discipline Case.

- (1) At any point during the administrative disciplinary process, the Department or the employee accused of misconduct may make a settlement offer.
- (2) The HRSD Discipline Review Team shall negotiate a settlement offer on behalf of the Department with the accused employee or the employee's representative and the accused employee's appointing authority.
- (3) The Manager, ERU, or a designee, is responsible for documenting dispositions on all employee discipline cases.
- (4) The IID investigator assigned to conduct a criminal investigation that is in addition to an administrative investigation shall:
 - (a) Notify the Manager, ERU, or a designee, of:
 - (i) The outcome of the criminal investigation;
 - (ii) Criminal charges filed;
 - (iii) Arrest, detention, release, or bail resulting from the criminal charges;
 - (iv) Hearing and Court dates; and
 - (v) Outcome of the trial.
 - (b) Ensure that:
 - (i) The office responsible for prosecution of criminal charges in the jurisdiction where the criminal charge occurred is notified of the investigation;
 - (ii) Witnesses are summoned to appear;
 - (iii) Evidence is available at the trial; and
 - (iv) The investigator attends the trial; and
 - (v) The accused employee's appointing authority, managing official or unit head and the investigator are present at court as the Department's representative.
- (5) The Secretary's Director of Intelligence, Investigation and Fugitive Apprehension, or a designee, is responsible for compiling, analyzing, reporting information related to employee discipline.

G. Sanctions.

- (1) An employee who does not comply with requirements established under this directive is subject to disciplinary action up to and including termination of employment.
- (2) An employee directed to appear for an administrative proceeding conducted in accordance with the employee disciplinary process who, without proper notification and just cause does not appear as directed is subject to disciplinary action up to and including termination of employment.

.06 Attachment(s).

There are no attachments to this directive.

.07 History.

This directive replaces ADM.050.0052 dated 10/15/15 by correcting time limits requirements related to submission of an administrative investigation; and supersedes provisions of any other prior existing Department communication with which it may be in conflict.

.08 Correctional Facility Distribution Code.

- A
- B
- S Field Investigators