

Office of the Sheriff
Somerset County, Maryland

General Order: 01-14-16

Effective Date: September 1, 2014

Revised Date: February 1, 2014

Chapter 23
Response to Litigation

1. Policy

Litigation alleging misconduct by law enforcement officers has increased dramatically in recent years. These cases involved complex issues, turning upon evidence that has traditionally been considered confidential information. In order to be adequately prepared for such litigation, it shall be the policy of this Office to maintain a strong and coordinated response, and to reduce future litigation through increased training and education.

2. High Risk Incidents

- A. The following types of law enforcement activities generate the major amount of civil litigation; therefore, they merit special response procedures:
 - 1) Use of deadly force and non-deadly force that results in death or bodily injury.
 - 2) Vehicle pursuit resulting in death, personal injury or property damage.
 - 3) Searches and seizures; physical arrests.
 - 4) Rendering of medical assistance.
- B. All personnel shall regularly review office policy on these topics.

3. Response to High Risk Incidents

- A. The following procedures should be followed when on the scene of a high risk incident:
 - 1) Have a supervisor conduct an independent review of all relevant information prior to the booking process or search where circumstances indicate that there is a potential for false arrest or improper search.

- 2) Secure the scene and all evidence.
 - 3) Record all names and addresses of all witnesses and attempt to obtain statements. Statements should also be obtained from ambulance and emergency personnel where applicable.
 - 4) Request that a supervisor and an investigator be dispatched to the scene. Where a high speed pursuit has occurred, note all weather, traffic conditions, route of pursuit and use of emergency equipment and other relevant information.
- B. The scene investigator shall process the scene according to Somerset County Sheriff's Office procedures, including:
- 1) Take color photographs or videotape of the entire scene shall be taken from several angles, including from the perspective of the involved Officer.
 - 2) Where possible, take photographs of all persons at the scene.
- C. When an arrest has been made, the following information shall be documented by the Deputy during processing:
- 1) Whether medical treatment is necessary, was requested or was received prior to arrival at the office. The suspect's physical health and the presence of any specific health problems requiring treatment must be documented.
 - 2) Assessment of suspect's mental health, including any indications of overt aggressive behavior or potential suicidal tendencies indicating a need to summon a mental health specialist.
 - 3) An arrest photograph of the accused.
 - 4) Any injuries shall be photographed and documented.
4. Post Incident Procedures
- A. All law enforcement personnel involved in a high risk incident shall submit to their supervisor, before concluding their tour of duty, a detailed report documenting their involvement.
- B. The supervisor shall review the report and request any necessary supplemental information, and then forward it to the Sheriff as soon as practicable.
- C. The Sheriff or his designee will prepare and submit a confidential memorandum to the Office Legal Counsel Representative providing a full assessment of the incident. As soon as possible, the Sheriff or his designee shall meet with Legal Counsel and the officers involved in the incident to:

- 1) Advise the Deputies that any internal investigation does not imply misconduct on their part. All investigations will be conducted in accordance under LEOBR.
 - 2) Advise the Deputies that they are not required to discuss the incident with media or attorneys not associated with the SCSO or Attorney General's Office.
 - 3) Advise Deputies that they are entitled to legal representation by the OAG, County Attorney or insurance counsel, as applicable.
- D. The internal investigator has the responsibility to assemble the following items:
- 1) Copies of all relevant office policies pertaining to the incident.
 - 2) Copies of any relevant radio communications, computer or telephone records or tapes.
 - 3) Enlargements of all relevant photographs pertaining to the incident.
 - 4) Copies of the disciplinary and training records of all involved personnel.
 - 5) Where applicable, the criminal docket from any criminal case arising from the incident.
5. Responsibilities of the Sheriff's Office
- A. The Sheriff or his designee will coordinate all Office responses to litigation in conjunction with the Office Legal Counsel.
 - B. A file/record shall be developed and maintained containing copies of all legal documents generated in each case, and the responses to such documents. All litigation files/records shall be kept in a secure location.
 - C. An accounting process shall be established to ensure that:
 - 1) All documents are routed to the appropriate unit for resolution.
 - 2) All documents are processed by the due date.
 - 3) A record is kept detailing the information released in each case and for what purpose.
 - D. Accurate and current statistics shall be maintained at all times.
 - E. The Sheriff or his designee shall undertake a regular audit of the Office litigation to determine whether a need for policy revision or training exists. The audit shall include a review of all settlements and all pending litigations.
 - F. Updates on current case law and statutes relevant to law enforcement shall be disseminated to all office employees.

- G. Upon conclusion or settlement of any civil litigation, the Sheriff's Office shall provide notification of the outcome of the case to those Deputies who were directly involved with the incident forming the basis for the lawsuit.

6. Responsibilities of Units

- A. All Units shall comply with discovery requests and subpoenas for internal records as advised by the Office's legal counsel on or before the due date.
- B. Members of the SCSO may not provide information in response to discovery or subpoenas without the approval of the Chief Deputy who will coordinate with legal counsel.

7. Responsibilities of Law Enforcement Employees

- A. Any law enforcement employee who receives a subpoena to testify in a civil case as to actions undertaken in his official capacity shall immediately notify the Chief Deputy and the Office Legal Counsel of such subpoena. A copy of the subpoena shall be provided to the Chief Deputy.
- B. Any law enforcement employee named as a party in a civil action for acts or omissions allegedly arising out of the scope of his or her duties shall immediately notify the Sheriff and the Office Legal Counsel.
 - 1) The employee shall inform the legal counsel whether or not the employee will retain a private attorney, or whether representation through the Office's legal counsel is requested.
 - 2) Where the employee has requested legal counsel, the employee has a duty to cooperate fully with his or her legal representative.
- C. No law enforcement personnel shall make public statements in his or her official capacity as a law enforcement agency employee concerning litigation affecting the Office without the permission of the Sheriff.
- D. Documents and information that are electronically created or stored are discoverable in litigation and must be preserved.
- E. If litigation is expected or has commenced, or if the Office of Legal Counsel has issued a "litigation hold," office personnel are prohibited from deleting, editing, altering or destroying any electronic record related to the litigation.

F. "Electronically stored information" that must be preserved includes but is not limited to Word documents, Excel Spreadsheets, Power Point presentations, emails, digitally stored photographs, audio and video, e-citations and PDF documents.

8. Response to the Media

- A. The Sheriff or his designee shall be responsible for coordinating all Office statements pertaining to any agency litigation.
- B. The Chief Deputy will maintain a file detailing the media coverage of litigation and incidents involving the Somerset County Sheriff's Office.
- C. The Sheriff or his designee shall work with the legal counsel for the Somerset County Sheriff's Office to present fair and accurate media statements pertaining to testimony, legal issues or other concerns arising from litigation or any other incident involving the Somerset County Sheriff's Office.

9. Chapter Revisions

- A. General Order 01-10-18 has been revised.
- B. General Order 01-14-16 supersedes General Order 01-10-18.

Robert N. Jones

Sheriff
Somerset County Sheriff's office