

<b>POLICY TITLE: Investigations</b>		<b>PAGE 1 OF 5</b>
<b>POLICY NUMBER: 1.9</b>		
<b>CHAPTER: 1 Administration</b>		
	<b>SOMERSET COUNTY, SOMERSET COUNTY JAIL</b>	<b>ACA: 4D-22-2</b>
	<b>Approved by: ---- Original Signed -----</b> <b>Signature of Sheriff</b>	<b>MJA: F.17</b> <b>PREA:</b> <b>115.21, 115.22,</b> <b>115.71, 115.72,</b> <b>115.77, 115.86</b>
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**AUTHORITY:** Pursuant to M.R.S.A. 30-A, Section 1501, the Sheriff adopts this policy for Somerset County Jail.

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**POLICY:**

The Somerset County Jail maintains a full range of investigation processes to respond to allegations of policy and/or criminal violations in order to hold persons accountable for such misconduct and/or criminal activity and assure a safe, secure and well-managed operation. This process recognizes that staff must be free to exercise their best judgment and to initiate action in a reasonable, lawful, and impartial manner without fear of reprisal; staff must always observe the rights of all persons. Complaints and/or allegations of staff, volunteer and contract personnel misconduct are investigated in a manner that safeguards the individual's rights and protects them against unwarranted criticism for proper discharge of their approved activities, while holding them responsible for improper and/or illegal conduct. (4D-24)

**DEFINITIONS:**

**Criminal Investigation.** An investigation into the facts of a possible criminal violation of the statutes of the State of Maine or Federal Statutes conducted for the purposes of preparing a criminal case to be tried within the courts.

**Fact Finding.** A gathering of evidence, which may include physical evidence, video, photographic, audio and interviews, for the purpose of preparing an Inmate Disciplinary case or to ascertain the facts around an incident within the jail. The resulting reports and inmate disciplinary case file may be used by the Senior Projects Officer in preparing a criminal case against the inmate.

## PROCEDURE:

### A INVESTIGATIONS - GENERAL

1. The SCJ actively investigates allegations of misconduct and criminal activity. Investigations are required whenever a sexual assault or threat is reported. (4D-22-2) Citizens, inmates, staff, informants and others may submit evidence-based complaints alleging misconduct and/or criminal activity. Staff will request that the complainant submit such complaint in writing; if the complainant is unable to or unwilling to submit in writing, staff will forward a written summary of the complaint along with the complainant's contact information to the Jail Administrator for review. Complainant will be advised that prior to the initiation of a formal investigation that a written statement of allegations must be made.
2. For purposes of statutes or case law that require inmates to exhaust administrative remedies before filing legal claims, a written complaint filed by an inmate has the same status as a grievance when confidentiality is necessary to safeguard and protect the inmate or others. Where inmates file routine complaints against staff where confidentiality is not a concern, the inmate will be referred to the formal grievance process.
  - a. The employee assigned as the grievance officer will refer grievances that raise serious allegations against staff, volunteers and contract personnel to the Correctional Administrator for possible handling via a formal investigation.
3. When written complaints are received, the Senior Projects Officer assigns a number and records it on the *Internal Affairs Complaint* log. The initial entry in the log will reflect:
  - a. complaint number
  - b. date complaint is received
  - c. complainant's name
  - d. whether investigation is initiated
  - e. designated investigator
  - f. Upon disposition of the complaint, the Senior Projects Officer will complete the corresponding entry in the *Internal Affairs Complaint* log. The entry in the log will reflect:
  - g. disposition of investigation
  - h. complainant notification of investigation results
  - i. person subject to investigation notification of results
4. Investigations into inmate conduct that is a crime will be conducted by the Senior Projects Officer. Jail staff may be asked to assist in specific parts of the investigation by the Senior Projects Officer and will treat all aspects as confidential information. Conduct deemed criminal in nature will be referred for prosecution through the District Attorney's office having jurisdiction.
5. Investigations into staff conduct that is a crime will be coordinated with a law enforcement agency at the Correctional Administrator's discretion. Conduct deemed criminal in nature will be referred for prosecution through the District Attorney's office having jurisdiction.
6. In designating an investigator to investigate allegations made, the Correctional Administrator designates an impartial investigator who has experience and training in investigations and appropriate and effective interview techniques relevant to the nature of allegation(s) made.

7. Upon receipt of a complaint from the Correctional Administrator, the designated investigator schedules appointments with the complainant, witnesses, other pertinent persons, and the person accused of misconduct or criminal activity to discuss the complaint and gather facts and evidence.
8. Investigation-related interviews, matters and/or evidence are confidential, and shall not be disclosed unless authorized by the designated investigator or Correctional Administrator. Confidentiality provisions shall in no way limit the investigator or SCJ staff from cooperating with or appearing or testifying before a grand jury, court, or local, state or federal investigatory agency.
9. The designated investigator maintains ongoing investigative activity and information gathered in all cases until reaching a disposition or conclusion. The investigator has an obligation to secure a timely resolution, if possible.
10. Allegations of improper conduct or criminal allegations made against the Correctional Administrator will be referred to the MCJA Chair who will review the complaint with the Board of Trustees and determine the proper course of action based on the apparent veracity and seriousness of the complaint, and, if necessary, identify SCJ that will conduct the investigation. The Board of Trustees, through the MCJA Chair, refers criminal allegations against the Correctional Administrator for investigation to a law enforcement agency having jurisdiction. The Board of Trustees coordinates investigative activity related to MCJA Board-initiated investigations of misconduct by the Correctional Administrator; the Board of Trustees may elect to place the Correctional Administrator on paid leave pending the outcome of the investigation.
11. The Correctional Administrator apprises the MCJA Chair of active criminal-related SCJ investigations. The MCJA Chair will determine the appropriateness and necessity of sharing such information with other Board members.
12. SCJ requires employees, volunteers and contract personnel to fully and faithfully cooperate in any investigation by:
  - a. providing all pertinent information they have
  - b. answering any inquiry fully, truthfully and to the best of their knowledge
  - c. not withholding relevant material or information
  - d. not misleading the investigator
  - e. not demonstrating behavior that hampers an investigation
  - f. not obstructing the investigation
  - g. protecting and preserving evidence
  - h. Employees, volunteers and contract personnel must tell the truth about any incident, whether it may have an adverse effect on others or not. Failure to fully, and faithfully, cooperate during an investigation may be cause for disciplinary action, up to and including termination of employment, volunteer or contract status.
13. In the event an employee or other person has information that s/he feels is pertinent to an existing or potential internal investigation, the employee must immediately notify the Senior Projects Officer or designated investigator without going through the usual chain-of-command (the MJA Chair in cases of investigations involving the Correctional Administrator).
14. If the victim or complainant refuses to cooperate with the investigator, the investigator must follow up with any persons identified as having knowledge of the incident(s) before the investigation is closed. If no such persons are identified, and the victim or complainant had previously been cooperative, the

investigator must determine whether the victim or complainant has been threatened or coerced, and whether the investigation should proceed without his/her cooperation.

15. Factual findings may be based on a range of evidence, including physical and documentary evidence, witnesses' accounts, and circumstantial evidence. Prisoner witnesses and complainants' credibility shall be evaluated in an unbiased manner in accordance with established investigation methods.
16. Upon completion of the investigation, the investigator makes a report of his/her findings, and, when appropriate, recommendations for policy and procedure modifications, and forwards it, along with the complaint, to the Correctional Administrator. The final investigation report shall include, at a minimum, a narrative of the allegations, a comprehensive listing of factual findings, details of the interviews with all parties and witnesses, and conclusions and recommendations. The designated investigator classifies the complaint using one of the following dispositions:
  - a. Sustained – Allegation supported by sufficient evidence to justify a reasonable conclusion that criminal activity and/or violation of an agency rule, regulation or policy occurred.
  - b. Not Sustained – Insufficient evidence to either prove or disprove the allegation; Incident occurred, though conduct was lawful and proper; Allegation is false or did not occur, or the action did not involve the person implicated; and/or Misconduct other than that alleged occurred.
  - c. Internal investigation reports are directed only to the Correctional Administrator.
  - d. Requests for copies of Internal Investigation reports are approved only as authorized by the Correctional Administrator.
17. The Correctional Administrator reviews all statements/reports, findings and evidence provided by the investigator. The Correctional Administrator may direct the investigator to conduct further examination of the allegations, or may accept the report. Once the report is deemed completed, the Correctional Administrator concurs with or modifies the complaint's classification, renders a conclusion, and determines any action taken, which will be set forth in writing with a narrative supporting the findings, and completes the corresponding entry in the *Internal Affairs Complaint log* (Form 1901.a).
  - a. Action taken may include disciplinary action, up to and including termination of employment, volunteer or contract status.
18. Complainants receive notification of the disposition of complaints filed; complainants are not normally entitled to information relative to action(s) taken in regard to the person implicated.
19. All records pertaining to internal investigations will be securely maintained, accessible only as authorized by the Correctional Administrator.
20. Quarterly the Senior Projects Officer will review all cases from the previous quarter with the Jail Administrator or his designee. A record of this review will be maintained by the Senior Projects Officer.
21. Information explaining the process for inmates to lodge complaints against staff will be included in the Inmate Handbook; this will include when the grievance process must be used and when an alternative process, i.e., an internal affairs investigation, may be requested and how to access each process.  
(F.17)

## **B INVESTIGATIONS - STAFF**

1. Complaints of misconduct or criminal activity by SCJ staff will be forwarded directly to the Jail Administrator or Sheriff in writing from the complainant for review and further investigation by the Senior Projects Officer, if warranted.
2. The Senior Projects Officer will designate a trained, impartial investigator to handle investigations concerning criminal activity, use of excessive force, employee misconduct, allegations of constitutional violations, sexual misconduct against an inmate, sexual harassment claims, and others as deemed appropriate.
3. Any allegation of staff misuse of the METRO system or violation of the CJIS Security Policy will result in the staff member losing access to the METRO system immediately. The staff members access to METRO will remain blocked until the allegation is found to be sustained or not sustained. If, after investigation, the allegation is found to be sustained the results of the investigation will be forwarded to the Jail Administrator for consideration of disciplinary action.
4. First-line supervisors handle investigations concerning employee appearance, minor disputes between employees, demeanor, dereliction of duty, vehicle and equipment use, and others as designated by the Senior Projects Officer.
5. Pending the outcome of the investigation, the Senior Projects Officer may reassign or place on paid leave, an employee who is the subject of an investigation. The investigation will be completed, even if the accused employee terminates employment during the investigation.
6. Employees subject to internal investigation-related interviews will maintain matters and/or evidence discussed confidential, and shall not disclose interview contents unless authorized by the designated investigator or Correctional Administrator. Any breach of confidentiality concerning the investigation may warrant discipline. Employees will receive a *Personnel Investigation Notification –Witness Only*.
  - a. An employee may request Garrity protection in answering internal, investigatory questions if the answers implicate the employee in criminal activity. Once Garrity protection is requested, the investigator may invoke the “Garrity Rule,” which requires the employee to provide the requested information. Failure to respond to questioning after the Garrity Rule is invoked subjects the employee to discipline, up to and including termination. Information provided by the employee while under the Garrity Rule order cannot be used against the employee in a criminal proceeding.
7. Persons subject to internal investigation-related interviews may request to have a representative present during such interview. The Correctional Administrator will review such requests and reach a determination, taking into consideration any legal rights to such representation the employee may have plus other relevant factors. When representation is approved, the role of the representative is that of advisor; s/he shall not be entitled to question, cross-examine, and/or offer evidence or testimony on the person’s behalf.
8. Employees will be notified that they are the subject of a formal internal investigation; if and when substantial evidence exists to substantiate a formal investigation and charges of misconduct or criminal activity. Notification may take place prior to, during, or subsequent to investigative activity and will only be made as long as the notification does not in any way jeopardize the investigation. In notifying an employee that s/he is the subject of an internal investigation, the employee will be provided a written

statement of the allegation(s), and their rights and responsibilities relative to the investigation – *Personnel Investigation Notification*.

9. Polygraph examinations conducted as part of an active investigation into employee misconduct shall be administered in accordance with Title 32 MRSA §7166.
10. Disciplinary matters that result in termination will be reported to the Maine Criminal Justice Academy along with violations of law which may include A-B-C-D criminal convictions.

#### **C INVESTIGATIONS – VOLUNTEER & CONTRACT PERSONNEL**

1. Complaints of misconduct or criminal activity by a SCJ volunteer or contract personnel will be forwarded in writing directly to the Senior Projects Officer for review and further investigation, if warranted.
2. Volunteers and contract personnel subject to internal investigation-related interviews will maintain matters and/or evidence discussed confidential, and shall not disclose interview contents unless authorized by the designated investigator or Correctional Administrator. Any breach of confidentiality concerning the investigation may warrant termination of volunteer or contract status.

#### **D INVESTIGATIONS - VISITOR**

1. Complaints of misconduct or criminal activity by a SCJ visitor will be forwarded directly to the Senior Projects Officer in writing for review and further investigation, if warranted.
2. A visitor's privilege to visit may be suspended or modified (i.e., visits will be non-contact) pending the outcome of an investigation. The staff person who suspends or modifies a visitor's privilege to visit shall document reasons for the action, which shall be forwarded directly to the Senior Projects Officer for review and further direction, if warranted.

#### **E INVESTIGATIONS – INMATE**

1. Complaints of criminal activity by a SCJ inmate will be forwarded directly to the Senior Projects Officer in writing for review and further investigation, if warranted.
2. Written complaints of rules and regulations violation(s) by a SCJ inmate will be processed in accordance with Policy 10.1. Inmate Discipline.
3. Investigations when it appears to be a criminal matter to be pursued.
  - a. If the incident has already occurred, i.e. violating a bail condition/protective order, assault, etc. then write up the Disciplinary report for the violation and present a copy to the S.P.O. for investigation for criminal charges. Do not question the inmate without a Miranda warning as he is not required to self-incriminate without knowing his rights. The resulting investigation can be forwarded to the DHO to assist in his disciplinary hearing for the rule infractions cited for. Colored photographs should be included in the report if photograph's were taken and any video or CD's that were made.
  - b. When jail intelligence, outside sources, or an informant provide information on criminal activity a report detailing the information or interview should be forwarded to the Special Project's Office for investigation. Any resulting jail rules violated can be determined from the investigation and inmates written for the appropriate infractions after the criminal charges are first investigated. An

inmate can be written for a jail infraction as long as the disciplinary hearing can be completed within 30 days from the date of discovery of the infraction. Note: every effort should be made to complete a disciplinary hearing within 7 days from the date of discovery of the infraction.

- c. Investigations should not be predicated on suspicion by officers without facts or information to back up the suspicion. There may be times when it is necessary to talk to informants for information, to monitor telephone conversations, records, etc. to develop the necessary information to form a basis for an investigation to begin and it is then that the report should be generated and forwarded to the special projects officer for criminal investigation. If suspicion exists but not enough information can be generated, then forward an intelligence report to the Special Project's Office with your suspicion and the basis for it.
- d. Intelligence received or officer suspicion of events that may be occurring with the facility or with work details, etc. should be forwarded to the Special Projects Office for intelligence purpose that may have a bearing on current or future investigations. It also could be a matter for monitoring via camera's or telephone, visit, conversations. This intelligence will be submitted via an Intelligence Report (Form 1.3.E.) to the Special Projects Officer.
- e. Intelligence or direct knowledge of personnel activities that violate criminal law or personnel policies will be forwarded to the Jail Administrator for review and assignment to investigation as necessary. Should the jail administrator be involved then the report will be submitted to the Deputy Chief/Sheriff for review and if merited forwarded to the board of corrections for investigation.
- f. All officers are reminded that they can contact the Special Project's Office for advice on criminal, evidence or investigative matters.
- g. Officers are reminded that the inmates retain constitutional rights of due process that must be honored if a criminal case is to be brought against the inmate. Officers should only investigate a matter until it becomes evident or the evidence seized forms an opinion that the matter is criminal and should be investigated further for charges. At that point, questioning of the inmate should cease and the matter be referred to the Special Project's Office for a formal investigation. All available evidence should be gathered and documented in a report and forwarded to the Special Project's Office for investigation.

### **3.g.1. Evidence.**

- Evidence should be appropriately packaged and noted on the container as to date/time seized, location/person, by whom seized or use a continuity of evidence form and attach it to the container.
- Only one, continuity of evidence form is to be used.
- Do not staple the container or tape it so that it has to be torn to get into it. Evidence needs to be checked to verify it contains what is stated on the continuity of evidence form or container.
- Wet or stained clothing will be packaged in paper bags with a bio hazard sticker/label attached to the bag.
- Use a small container for small items.
- Do not leave evidence lying around.
- Limit the number of officers handling evidence.
- Preferably the officer seizing the evidence will be the officer depositing it in the evidence box after filling out a continuity of evidence form and logging into the log book, if not then there should be an evidence collection person at the scene collecting and logging all evidence seized.

**3.g.2. Reports.** Reports should address as much as possible the following:

- Who committed the violation of law
- What law was broken
- When did the violation occur
- Where did the violation occur
- Why did the violation occur, if known
- How was the violation committed, if known

All Officers are reminded that reports will bear the full name of the involved Officer in print as well as signature.

## **F PREA Investigations (115.21)**

1. To the extent SCJ is responsible for investigating allegations of sexual abuse, SCJ shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.
2. The protocol shall be developmentally appropriate for youth where applicable, and, as appropriate, shall be adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011.
3. SCJ shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiary or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. SCJ shall document its efforts to provide SAFEs or SANEs.
4. SCJ shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, SCJ shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. SCJ may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.
5. As requested by the victim, the victim advocate, qualified agency staff member, or qualified community-based organization staff member shall accompany and support the victim through the forensic medical examination process and investigatory interviews and shall provide emotional support, crisis intervention, information, and referrals.
6. To the extent SCJ itself is not responsible for investigating allegations of sexual abuse, SCJ shall request that the investigating agency follow the requirements of this section.
7. The requirements of this section shall also apply to:

- a. Any State entity outside of SCJ that is responsible for investigating allegations of sexual abuse in prisons or jails; and
  - b. Any Department of Justice component that is responsible for investigating allegations of sexual abuse in prisons or jails.
8. For the purposes of this section, a qualified agency staff member or a qualified community-based staff member shall be an individual who has been screened for appropriateness to serve in this role and has received education concerning sexual assault and forensic examination issues in general.
9. SCJ shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment. A polygraph examination will not be a requirement for the victim's allegation to be investigated.(115.71.e.)
10. SCJ shall have in place a policy to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. SCJ shall publish such policy on its Web site or, if it does not have one, make the policy available through other means. SCJ shall document all such referrals.
11. If a separate entity is responsible for conducting criminal investigations, such publication shall describe the responsibilities of both SCJ and the investigating entity. (115.22.)
12. In making a determination of whether an allegation of sexual abuse or sexual harassment is substantiated the investigator will use the standard of preponderance of the evidence in making this determination.