



| | | |
|---|---|--|
| POLICY TITLE: CRIMINAL INVESTIGATIONS | | PAGE 1 OF 7 |
| POLICY NUMBER: 7.1 | | |
| CHAPTER 7: INVESTIGATIONS | | |
|  | STATE of MAINE DEPARTMENT OF CORRECTIONS Approved by Commissioner:  | PROFESSIONAL STANDARDS: See Section VII |
| EFFECTIVE DATE: January 4, 2011 | LATEST REVISION: March 7, 2017 | CHECK ONLY IF APA [] |

I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in Title 34-A M.R.S.A. Sections 1403 and 3011. This policy constitutes the working agreement with the Attorney General's Office required by 34-A MRSA Section 3011(2).

II. APPLICABILITY

Entire Department of Corrections

III. POLICY

It is the policy of the Department of Corrections to conduct criminal investigations of allegations of criminal and juvenile criminal offenses relating to the security or orderly management of departmental facilities and of other criminal offenses related to the Department to determine whether or not the allegations have a basis in fact. These investigations shall be conducted in a thorough, fair, and timely manner. The process shall be consistent with collective bargaining agreements, state personnel policy, state and federal law, as applicable.

IV. CONTENTS

- Procedure A: Correctional Investigative Officers (Detectives)
- Procedure B: Special Investigations and Intelligence Officers
- Procedure C: Criminal Investigators (Correctional Investigative Officer or SII Officer)
- Procedure D: Investigation Report

V. ATTACHMENTS

- [Attachment A: Administrative Subpoena Form](#)
- [Attachment B: Miranda Warning](#)
- [Attachment C: Maine Polygraph Examiners Act](#)
- [Attachment D: Report of Investigation Form](#)

VI. PROCEDURES

Procedure A: Correctional Investigative Officers (Detectives)

1. Correctional Investigative Officers (Detectives) are employees of the Department certified by the Board of Trustees of the Maine Criminal Justice Academy as full-time law enforcement officers and authorized by the Commissioner to exercise law enforcement powers with respect to crimes or juvenile crimes relating to the security or orderly management of a departmental facility.
2. Correctional Investigative Officers report to and are directly supervised by the Department's Director of Security, or designee.
3. Correctional Investigative Officers are responsible to conduct criminal investigations of Department staff (Department employees and persons providing services to prisoners or residents by agreement with or under contract to the Department), volunteers, and student interns, so long as the potential criminal or juvenile criminal offense being investigated relates to the security or orderly management of a departmental facility.
4. Correctional Investigative Officers are also responsible to conduct criminal investigations of prisoners or residents and visitors and other civilians so long as the potential criminal or juvenile criminal offense being investigated relates to the security or orderly management of a departmental facility and it is an assault on Department staff or a Class A or B crime (except for drug offenses), unless the Department's Director of Security, or designee, determines to assign responsibility for the investigation to the facility's Special Investigations and Intelligence Unit (SII).
5. The criminal investigation of an allegation of abuse or neglect of a resident of a juvenile facility by Department staff, a volunteer, or a student intern, shall be conducted by a Correctional Investigative Officer.
6. The criminal investigation of an allegation of gross sexual assault shall be done by a Correctional Investigative Officer pursuant to Department Policy 6.11.3, Sexual Misconduct (PREA and Maine Statutes) Reporting and Investigation.
7. The criminal investigation of a homicide or potential homicide shall be conducted by the Maine State Police.
8. No criminal investigation may be initiated by a Correctional Investigative Officer, except with the approval of the Department's Director of Security, or designee.
9. Prior to obtaining the approval of the Department's Director of Security, or designee, the Correctional Investigative Officer may first interview the complainant to determine whether there is a potential crime or juvenile crime and may also secure the potential crime scene and any potential evidence.

| POLICY NUMBER/TITLE | CHAPTER NUMBER/TITLE | PAGE NUMBER |
|-----------------------------|----------------------|--------------------------|
| 7.1 Criminal Investigations | 7. Investigations | Page 2 of 7 03/07/17R |

10. Unless otherwise directed by the Department's Director of Security, or designee, all such criminal investigations shall be conducted by that facility's Correctional Investigative Officer.
11. If a criminal investigation relates to more than one facility, the Department's Director of Security, or designee, shall determine which Correctional Investigative Officer(s) will be assigned to conduct the investigation.
12. In addition, the Department's Director of Security, or designee, may designate a Correctional Investigative Officer to conduct a criminal investigation related to the Department but not involving any departmental facility.
13. The Department's Director of Security, or designee, shall notify the Department's Director of Human Resources, or designee, of the investigation, if it is against a Department employee.
14. After the Department's Director of Security, or designee, has approved the investigation, the Correctional Investigative Officer may consult with the Maine Attorney General's Office, or appropriate prosecutor's office, to plan how the case will be handled going forward.
15. When there is an administrative/personnel complaint investigation as well as a criminal investigation being conducted, separate investigators shall be utilized. As early on as possible, the investigators assigned shall schedule a meeting with the Office of Employee Relations, the Department's Director of Human Resources, and/or the appropriate prosecutor to plan how the case will be handled going forward. The Garrity interview of an employee under investigation, and any information obtained as a result of that interview, shall never be shared with the criminal investigator.
16. If a Correctional Investigative Officer receives a request from another criminal justice agency to cooperate with an investigation being conducted by the other agency, the Correctional Investigative Officer shall notify the Department's Director of Security, or designee, of the request and shall request authorization to cooperate with the investigation. Cooperation, if authorized, may take the form of monitoring prisoner or resident telephone calls in accordance with Department Policies 21.3 (AF), Prisoner Telephone System or 16.2 (JF), Access to Telephones, reading prisoner or resident correspondence in accordance with Department Policies 21.2 (AF), Prisoner Mail or 16.1 (JF), Resident Mail, conducting a pat search of a prisoner or resident or an area search in accordance with Department Policies 14.14 (AF), Search Procedures, General Guidelines or 9.7 (JF), Search Procedures, General Guidelines, reviewing documentation and conducting surveillance.

Procedure B: Special Investigations and Intelligence Officers

1. Special Investigations and Intelligence (SII) Officers are employees of the Department certified by the Board of Trustees of the Maine Criminal Justice Academy as part-time law enforcement officers and authorized by the

| POLICY NUMBER/TITLE | CHAPTER NUMBER/TITLE | PAGE NUMBER |
|-----------------------------|----------------------|--------------------------|
| 7.1 Criminal Investigations | 7. Investigations | Page 3 of 7 03/07/17R |

Commissioner to exercise law enforcement powers with respect to crimes or juvenile crimes relating to the security or orderly management of a departmental facility.

2. These officers must also be certified by the Board of Trustees of the Maine Criminal Justice Academy as corrections officers.
3. SII Officers report to and are directly supervised by the Department's Director of Security, or designee.
4. SII Officers are responsible to conduct criminal investigations of prisoners or residents and visitors and other civilians so long as the potential criminal or juvenile criminal offense being investigated relates to the security or orderly management of a departmental facility and it is a drug offense or a Class C or lower class crime, unless the Department's Director of Security, or designee, determines to assign responsibility for the investigation to a Correctional Investigative Officer.
5. The criminal investigation of an allegation of abuse or neglect of a resident of a juvenile facility by Department staff, a volunteer, or a student intern, may not be conducted by an SII Officer.
6. The criminal investigation of an allegation of gross sexual assault may not be conducted by an SII Officer.
7. No criminal investigation may be initiated by a SII Officer, except with the approval of the Department's Director of Security, or designee.
8. Prior to obtaining the approval of the Department's Director of Security, or designee, the SII Officer may first interview the complainant to determine whether there is a potential crime or juvenile crime and may also secure the potential crime scene and any potential evidence.
9. After the Department's Director of Security, or designee, has approved the investigation, the Correctional Investigative Officer may consult with the Maine Attorney General's Office, or appropriate prosecutor's office, to plan how the case will be handled going forward.
10. SII Officers are also responsible to assist a Correctional Investigative Officer conducting a criminal investigation, upon that officer's request.
11. If a SII Officer receives a request from another criminal justice agency to cooperate with an investigation being conducted by the other agency, the SII Officer shall notify the facility's Correctional Investigative Officer, who shall then notify the Department's Director of Security, or designee, as set out above in Procedure A.

| POLICY NUMBER/TITLE | CHAPTER NUMBER/TITLE | PAGE NUMBER |
|-----------------------------|----------------------|--------------------------|
| 7.1 Criminal Investigations | 7. Investigations | Page 4 of 7 03/07/17R |

Procedure C: Criminal Investigators (Correctional Investigative Officer or SII Officer)

1. The criminal investigator, whether a Correctional Investigative Officer or SII Officer, may use all of the powers that the officer has as an employee of the Department as set forth in departmental policies. These powers include, but are not limited to, the power to search as set out in Department Policies 14.14 (AF), Search Procedures, General Guidelines or 9.7 (JF), Search Procedures, General Guidelines; to carry a firearm and other equipment in Department Policies 14.24 (AF), or 9.24 (JF), Firearms; to use force as set out in Department Policies 14.17 (AF), Use of Force, General Guidelines or 9.18 (JF), Use of Force, General Guidelines; and to request drug or alcohol testing of a prisoner or resident as set out in Department Policies 20.2 (AF), Drug and Alcohol Testing of Adult Clients or 15.4 (JF), Drug and Alcohol Testing of Juvenile Clients; to conduct non-custodial interviews, to review documentation, to take and view photographs and videos, to collect, examine, and test physical evidence, and to conduct surveillance.
2. If authorized by the facility Chief Administrative Officer, a criminal investigator may read prisoner correspondence as provided in Department Policy 21.2 (AF), Prisoner Mail or resident correspondence as provided in Department Policy 16.1 (JF), Resident Mail.
3. The criminal investigator shall audio and/or video record any non-custodial interview, unless the recording is not feasible (e.g., the recording equipment malfunctions, the person makes a spontaneous statement prior to the interview, etc.). If a non-custodial interview is not recorded, the reason(s) shall be included in the report of the investigation, along with any refusal of the person to have the interview recorded, if applicable.
4. If authorized to do so by the Commissioner, either generally for all criminal investigations or in connection with a specific criminal investigation, the criminal investigator, whether a Correctional Investigative Officer or SII Officer, may exercise law enforcement powers. These powers include, but are not limited to, the power to summons or arrest, to search, to carry a firearm, to use force, and to conduct custodial interrogations.
5. If authorized by the facility Chief Administrative Officer in connection with a specific criminal investigation, a criminal investigator may intercept, disclose, and use an oral or wire communication sent or received by a prisoner of an adult facility or a resident of a juvenile facility, as provided by 15 M.R.S.A. Sections 709 to 713 and Department Policies 21.3 (AF), Prisoner Telephone System or 16.2 (JF), Access to Telephones, whichever is applicable.
6. If authorized to do so by the Commissioner, or designee, and by the Attorney General, or designee, either generally or in connection with a specific criminal investigation, a criminal investigator may issue an administrative subpoena(s) (Attachment A).
7. A criminal investigator is not authorized to engage in a pursuit of a motor vehicle.

| POLICY NUMBER/TITLE | CHAPTER NUMBER/TITLE | PAGE NUMBER |
|-----------------------------|----------------------|--------------------------|
| 7.1 Criminal Investigations | 7. Investigations | Page 5 of 7 03/07/17R |

8. The criminal investigator shall make it clear, at the commencement of any custodial interrogation that the investigation is being conducted as a criminal investigation.
9. If a criminal investigator is conducting a custodial interrogation, the officer shall provide the Miranda Warning (Attachment B) to the person and have the person sign and date it. The signed and dated original shall be included in the report of the criminal investigation. The criminal investigator shall audio and/or video record the interrogation, unless the recording is not feasible (e.g., the recording equipment malfunctions, the person makes a spontaneous statement prior to the interrogation, etc.). If a custodial interrogation is not recorded, the reason(s) shall be included in the report of the investigation, along with any refusal of the person to have the interrogation recorded, if applicable.
10. The criminal investigator may not, directly or indirectly require, request, or suggest that a departmental employee submits to a polygraph examination. If a departmental employee voluntarily requests a polygraph examination, the criminal investigator may arrange one, provided that the criminal investigator gives the employee a copy of the Maine Polygraph Examiners Act, 32 M.R.S.A. Sections 7151 to 7169 (Attachment C), when the employee requests the examination; that the examination is recorded or that a witness of the employee's choice is present during the examination, or both, as the employee requests; and that the results of the examination are not used against the employee. A criminal investigator may request, but not require, that any other person submits to a polygraph examination.
11. The criminal investigator shall preserve all evidence relating to the investigation including, but not limited to, physical evidence, test results, documents (including, but not limited to, photographs, videos, correspondence, etc.), audio and/or video recordings of custodial interrogations or non-custodial interviews, recordings of oral or wire communications, and summaries or transcriptions of interrogations or interviews, in accordance with departmental policy for the retention of records and evidence. Investigative notes shall be destroyed upon the approval of the investigative report by the Department's Director of Security, or designee.
12. The criminal investigator may not conduct an investigation pursuant to the prisoner or resident disciplinary processes, Department Policies 20.1 (AF), Prisoner Discipline or 15.3 (JF), Resident Discipline System, or the grievance processes, Department Policies 29.1 (AF), Prisoner Grievance Process, General or 29.1 (JF), Resident Grievance Process, General; Department Policies 29.2 (AF), Prisoner Grievance Process, Medical and Mental Health Process or 29.2 (JF), Resident Grievance Process, Medical and Mental Health Process.
13. The fact that a matter is the subject of a prisoner or resident disciplinary process, Department Policies 20.1 (AF), Prisoner Discipline or 15.3 (JF), Resident Discipline System; or the grievance process, Department Policies 29.1 (AF), Prisoner Grievance Process, General or 29.1 (JF), Resident Grievance Process, General; and Department Policies 29.2 (AF), Prisoner Grievance Process,

| POLICY NUMBER/TITLE | CHAPTER NUMBER/TITLE | PAGE NUMBER |
|-----------------------------|----------------------|--------------------------|
| 7.1 Criminal Investigations | 7. Investigations | Page 6 of 7 03/07/17R |

Medical and Mental Health Process or 29.2 (JF), Resident Grievance Process, Medical and Mental Health Process, or other established process (e.g., the prisoner administrative segregation process set out in Department Policy 15.1 (AF), Administrative Segregation Status or the resident observation status process set out in Department Policy 10.1 (JF), Observation Status, etc.) does not preclude it from being the subject of a separate criminal investigation.

14. The fact that a matter is the subject of an administrative/personnel complaint investigation does not preclude it from being the subject of a separate criminal investigation.

Procedure D: Investigation Report

1. The criminal investigator shall regularly verbally report on the progress of the investigation to the person(s) who approved it being initiated or assigned it.
2. When the criminal investigator has completed a criminal investigation, the officer shall prepare a report of the investigation using the Report of Investigation form (Attachment D). The investigator shall include, with the report a copy of all the evidence, including photographs of any physical evidence.
3. The criminal investigator shall forward the report of the criminal investigation to the Department’s Director of Security, or designee.
4. The Department’s Director of Security, or designee, shall review the report of the criminal investigation and either return it to the criminal investigator for additional investigation or information or rewrite of the report or approve it.
5. Once approved, the Department’s Director of Security, or designee, shall forward the report to the Commissioner, or designee, along with the reviewer's recommendations, if any, with a copy to the Chief Administrative Officer, if applicable, and a copy to the appropriate prosecutor’s office, if applicable.
6. All information pertaining to an allegation of a criminal or juvenile criminal offense and the investigation of the allegation is confidential by law and shall be kept confidential by all those who have learned of the allegation, except as otherwise provided in this policy and procedures or as otherwise determined by the Department’s representative in the Attorney General’s Office in consultation with the prosecutor’s office, if applicable.

VII. PROFESSIONAL STANDARDS:

None

| POLICY NUMBER/TITLE | CHAPTER NUMBER/TITLE | PAGE NUMBER |
|-----------------------------|----------------------|--------------------------|
| 7.1 Criminal Investigations | 7. Investigations | Page 7 of 7 03/07/17R |