



**Summary of Key Provisions of the WCEJ  
Proposed Maryland Police Accountability Bill**

1. **Creates non-government – private practice Independent Investigators**, who are community lawyers, which includes private lawyers from impacted communities, who shall be selected by the Chief from a roster on a rotating basis, unless the victims of the misconduct are from a minority group, then the independent investigator shall be selected from a roster of just lawyers from minority groups. NOTE: Thousands of “lawyers in private practice” investigate employee discipline matters for private corporations and government agencies all over the country – particularly in government “white color crime” government investigations. This practice of utilizing private practice lawyers who care about their community is not unusual and is “the best” method for creating transparency in an environment where trust is extremely low.
2. The Independent Investigators will be the **“chief” investigator in charge of Misconduct complaints** and who manages the single sworn law enforcement officer also assigned to an investigation from an agencies Internal Affairs department. Independent investigation shall be completed and a report issued regardless of whether the officer resigned prior to the completion of the investigation.
3. **All Misconduct Complaints Investigated**. All complaints by any person or anonymous person that is sworn to based on personal knowledge under penalty of perjury shall be investigated, regardless of whether the officer resigns from his position, except that the Chief shall investigate all acts of misconduct that is made known to him via video or audio recording or by verbal testimony or is informed by any other medium, regardless of whether a written report is submitted.
4. **Right to Counsel or Union Representation**. The investigated officer retains the right to obtain counsel or a union representative, but the interrogation of the office shall only be **suspended for 24 hours** to allow the officer to at least obtain a union representative for the interrogation. The representative or counsel may not object to interrogation questions in the presence of the officer, but may make objections outside the presence of the officer.
5. **Final Investigation Report** The Independent Investigator shall provide a final Investigation Report and discipline recommendations **within 90 days** of a complaint, and if discipline is recommended the **Chief shall discipline based solely on the investigation recommendation, unless** the recommendation is inconsistent with the facts and controlling law by clear and convincing evidence
6. **Investigation File Confidentiality & Disclosure**. The Investigation Report along with the entire investigation file (collectively the “Investigation File”) shall be delivered to the investigated officer or representative and simultaneously delivered to the to appropriate State Attorney and Interested Parties named in the misconduct complaint under a confidentiality agreement, which agreement shall expire on the soonest date as follows:
  - a. the day that the States Attorney files formal written charges against the investigated officer, or
  - b. the day that a judgment is filed declaring an Interested Party as a prevailing party in a civil trial, or
  - c. the day the police officer elects to disclose all or part of the Investigation File after the police officer is declared by court order as acquitted in a criminal trial or as the prevailing party in a civil trial.

This provisions strikes a balance between the needs of the citizens to gain access to information involving their claims of misconduct, the need of States Attorney's to do their job as law enforcement and the need of the individual police officer to maintain privacy of personnel records. This proposed language is consistent with what already happens to everyday citizens who are accused of crimes or misconduct.

7. **Automatic Termination- "Zero Tolerance" termination.** Currently, in the [Maryland State Personnel & Pension Statute Section 11-105](#) - permits the state to automatically terminate a state employee for a list of acts done "intentionally without justification". LEOBR did not have any "Zero Tolerance" provision at all. The proposed PAA has a Zero Tolerance Termination provision, for most of the same acts listed in the state discipline statute. However, the PAA would allow auto termination for intentional and "reckless" conduct, including when an officer is "charged" for a crime by a States Attorney. The Zero Tolerance termination shall be completed within 15 days of the misconduct and the officer notified of the termination along with written notice of the officer's appeal rights.
8. **Chief Orders After Investigation.** If misconduct does not involve Zero Tolerance conduct, then 10 days after receipt of the Investigation Report with recommendations, the Chief must issue a written order that incorporates the recommendations from the Investigation Report and include a notice of the right to an appeal, if the recommendations include discipline. If the Chief determines that the recommendation is inconsistent with law and fact by clear and convincing evidence, then the Chief shall draft a rejection report with new recommendations that shall be delivered to the Independent Investigator who within 10 days, and the Independent Investigator may update its recommendations and provided an updated recommendation report, after which the Chief shall order the final recommendation provided by the Independent Investigator and provide written notice to the law enforcement officer of the right to appeal, if applicable.
9. **Appeal Rights** An investigated officer has the right to appeal a discipline decision to the Hearing Board, after providing written notice of appeal delivered to the Chief within 60 days after the date of the Chief's order.
10. **Hearing Timing.** The Hearing Board shall provide an administrative hearings within:
  - i) within 90 days after receipt of a written report from a States Attorney declining to make criminal charges against a law enforcement officer; or
  - ii) within 90 days after the final order by a trial court exonerating a law enforcement officer of criminal charges; or
  - iii) if a law enforcement officer is not exonerated at the end of a criminal trial, the law enforcement officer shall not be entitled to a hearing, unless the officer is exonerated by the highest court of the state on appeal, then the hearing under this section shall take place within 90 days after the final order of exoneration on appeal.

11. **Hearing Board Makeup –Mandatory Public Voting Members.** The Chief shall create a standing hearing board that serves for 4 years and is compensated with the power to vote, subpoena and make the final decision of discipline, unless the boards decision is by clear and convincing evidence contrary to law or police policy. The Board shall include the following:
  - i. 3 sworn law enforcement officers – who are not on the bad cop list
  - ii. 1 academically certified public safety expert or ethical policing trainer – selected by the County Executive
  - iii. 1 plaintiff’s civil rights lawyer or community/public interest lawyer – selected by the community
  - iv. 2 public members selected by the community
  
12. **Hearing Board Recommendations & Chief’s Final Order** Makes it mandatory for the Chief to issue as a final order the recommendations of the Hearing Board (who shall have complete access to the officers personal file also), unless contrary by clearing and convincing evidence is contrary to law and the Chief can increase the Hearing Board recommended penalty if the officers personnel records demonstrates a justification for an increase.
  
13. **Investigation & Hearing Board Budget.** If a Chief creates a budget to compensate the Independent Investigators, Hearing Board and private investigators, then the budget shall be delivered to a state chartered trust company to pay for these third party community investigators and board members so that there is no burden on or undue influence by the Chief on these community workers so that they can be “truly” independent.

Note:

- 1) The Maryland Public Information Act must be amended to be consistent with the proposed language above.
- 2) Restrictions on Use of Force also proposed by WCEJ will need to be passed as legislation, see the attached, in order for the PAA to be effective in addressing police excessive use of deadly force. Because the U.S. Supreme Court Decision in Graham, instructs trial courts and appellate courts to give police officer testimony regarding the reasonableness of any “use of force” an “irrebuttable presumption of truthfulness” (i.e. the court nor the jury shall second guest what an officer states as his reason for using force), an officer can NEVER be held accountable under this standard that is viewed from a “reasonable officer” standard.

The standard must be based on a “reasonable person with experience and training in use of force” in order for the court to instruct a jury to give weight to controverting testimony about whether an officers conduct was appropriate. We want a higher standard based whether the conduct was necessary based on the totality of the circumstance and after escalation is attempted, which must be viewed from the “reasonable person with experience and training in use of force”.

If the above standard is not changed, then the discipline outlined in the proposed PAA, will never apply to any “use of force” conduct and only to all other conduct listed in the new PAA.



**Police Discipline Pursuant  
Proposed WCEJ Police Accountability Act  
with Discipline process**

**Misconduct Complaint**  
(filed or investigated w/n 2yrs of conduct)

**Independent Investigator**  
Assigned w/15 days of Complaint or date of misconduct or policy violation identified by the Chief (no formal complaint required)

**Auto Termination**  
Chief shall terminate officer within 10 day so misconduct, if misconduct includes acts for "auto termination", with right to appeal for reinstatement, backpay and attorney fees if the officer prevails.

**Investigation Report**  
**Due 90 Days**  
& provided to the officer under investigation, Chief, States Attorney & Interested Party

**States Attorney**  
Investigation Report & File given to State Attorney for Criminal Investigation

**Party of Interest**  
Investigation Report & File shall be delivered to the party of interest pursuant to a Confidentiality Agreement

**Criminal Charges**  
Filed

**Declination Report**  
Denying criminal charges

**No Hearing, Unless**  
officer is convicted of a crime, unless the officer is exonerated by the highest court on appeal, then hearing within 90 days of exoneration on appeal

**Public Hearing Board**  
Hearing shall occur only after receipt of a notice of appeal by an officer 60 days after Chief's Investigation Order and within 90 Days after either:  
1) Declination report or 2) Exoneration by trial Court or appellate court  
Hearing board can still discipline

**Note: The Investigation File & Report shall be subject to a Confidentiality Agreement that shall automatically expires and becomes subject to public records disclosure, on the date that:**

1. a State Prosecutor files formal criminal charges;
2. A civil trial court files an order determining the officer liable for civil damages, or
3. When an officer is the prevailing party in the civil trial and only when the officer elects to disclose exonerating information

**If Criminal Charges are filed, then the investigation file shall be public and subject to public records disclosure.**

**Chief's Final Order**  
Chief must adopt the Hearings Boards Final Discipline Recommendation, unless the recommendation is inconsistent with law and fact.

**No right to appeal beyond the Chief's Final Order**



## PROPOSED REPLACEMENT OF STATUTE FOR LEOBR

DRAFT – Maryland Police Accountability Act  
Attorneys Jo Saint-George and Jill Sege Last updated 10-3-2020

### § 3-101. Definitions

(a) **In general.** In this subtitle the following words have the meanings indicated.

(b) **Chief.**

- (1) "Chief" means the head of a law enforcement agency.
- (2) "Chief" includes the officer designated by the head of a law enforcement agency.

(c) **Hearing.**

- (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.

**(D) HEARING BOARD. "HEARING BOARD" MEANS A STANDING BOARD CREATED BY THE CHIEF TO HEAR AND REVIEW A LAW ENFORCEMENT OFFICER'S APPEAL TO THE DISCIPLINE RECOMMENDATIONS BY THE ASSIGNED INDEPENDENT INVESTIGATOR AND ORDERED BY THE CHIEF.**

(e) **Law enforcement officer.**

- (1) "Law enforcement officer" means an individual who:
  - (i) in an official capacity is authorized by law to make arrests; and
  - (ii) is a member of one of the following law enforcement agencies:
    1. the Department of State Police;
    2. the Police Department of Baltimore City;
    3. the Baltimore City School Police Force;
    4. the Baltimore City Watershed Police Force;

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5. the police department, bureau, or force of a county;
6. the police department, bureau, or force of a municipal corporation;
7. the office of the sheriff of a county;
8. the police department, bureau, or force of a bicounty agency;
9. the Maryland Transportation Authority Police;
10. the police forces of the Department of Transportation;
11. the police forces of the Department of Natural Resources;
12. the Field Enforcement Bureau of the Comptroller's Office;
13. the Housing Authority of Baltimore City Police Force;
14. the Crofton Police Department;
15. the police force of the Department of Health and Mental Hygiene;
16. the police force of the Maryland Capitol Police of the Department of General Services;
17. the police force of the Department of Labor, Licensing, and Regulation;
18. the police forces of the University System of Maryland;
19. the police force of Morgan State University;
20. the office of State Fire Marshal;
21. the Ocean Pines Police Department;
22. the police force of the Baltimore City Community College;
23. the police force of the Hagerstown Community College;

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24. the Internal Investigation Unit and law enforcement officer of the Department of Public Safety and Correctional Services;

25. the Warrant Apprehension Unit of the Division of Parole and Probation in the Department of Public Safety and Correctional Services; or

26. the police force of the Anne Arundel Community College.

(2) "**Law enforcement officer**" does not include:

- (i) an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
- (ii) an individual who serves at the pleasure of the appointing authority of a charter county;
- (iii) the police chief of a municipal corporation;
- (iv) an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer's duties is made;
- (v) a Montgomery County fire and explosive investigator as defined in § 2-208.1 of the Criminal Procedure Article;
- (vi) an Anne Arundel County or City of Annapolis fire and explosive investigator as defined in § 2-208.2 of the Criminal Procedure Article;
- (vii) a Prince George's County fire and explosive investigator as defined in § 2-208.3 of the Criminal Procedure Article;
- (viii) a Worcester County fire and explosive investigator as defined in § 2-208.4 of the Criminal Procedure Article; or
- (ix) a City of Hagerstown fire and explosive investigator as defined in § 2-208.5 of the Criminal Procedure Article.

(F) **INDEPENDENT INVESTIGATOR MEANS A LAWYER LICENSED IN ANY U.S. STATE, WHO IS ASSIGNED BY THE CHIEF TO BE IN CHARGE OF ALL POLICE MISCONDUCT (AS DEFINED IN SECTION 3-104 OF THIS ARTICLE) INVESTIGATIONS, AND WHO RECEIVES COMPENSATION BASED ON THE AVERAGE HOURLY RATE FOR LEGAL SERVICES IN MARYLAND REPORTED BY THE MARYLAND STATE BAR, AND WHO SHALL HAVE:**

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1) NO LESS THAN FIVE (5) YEARS PRIOR EXPERIENCE EITHER AS A:

i.) PLAINTIFFS POLICE MISCONDUCT LAWYER;

ii) A PUBLIC DEFENDER;

iii) PUBLIC INTEREST LITIGATION LAWYER WHO ADVOCATES FOR CONSUMER RIGHTS; OR

iv) A FORMER CORPORATE LAWYER; AND

2)WHO HAS SUBMITTED A QUALIFYING APPLICATION TO THE DEPARTMENT, WHICH SHALL INCLUDE THE NAME OF AT LEAST ONE MARYLAND LICENSED NON-LAWYER PRIVATE INVESTIGATOR WITH FIVE (5) YEARS OF EXPERIENCE AND WHO HAS NOT PREVIOUSLY SERVED AS A CONTRACTOR OR EMPLOYEE OF THE DEPARTMENT OR COUNTY PROSECUTORS OFFICE, (WHICH THE LAWYER MAY HIRE, IF THE FACTS OF THE MISCONDUCT CASE WARRANTS THE HIRE), WHICH APPLICATION SHALL BE INCLUDED ON A ROSTER OF AVAILABLE INDEPENDENT INVESTIGATORS (THE “INVESTIGATOR ROSTER” (IR)).

G. ALL DAYS USED IN THIS ARTICLE SHALL ONLY INCLUDE BUSINESS DAYS, MONDAY THROUGH FRIDAY.

**§ 3-102. Effect of subtitle**

- (a) **Conflicting law superseded.** --Except for the administrative hearing process under Subtitle 2 of this title that relates to the certification enforcement power of the Police Training Commission, this subtitle supersedes any other law of the State, a county, or a municipal corporation that conflicts with this subtitle.
- (b) **Preemption of local law.** --Any local law is preempted by the subject and material of this subtitle.
- (c) **Authority of chief not limited.** --This subtitle does not limit the authority of the chief to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including transfer and reassignment if:
  - (1) that action is not punitive in nature; and
  - (2) the chief determines that action to be in the best interests of the internal management of the law enforcement agency.



**§3-103. Rights of law enforcement officers generally**

**(a) Right to engage in political activity.**

- (1) Subject to paragraph (2) of this subsection, a law enforcement officer has the same rights to engage in political activity as a State employee.
- (2) This right to engage in political activity does not apply when the law enforcement officer is on duty or acting in an official capacity.

**(b) Regulation of secondary employment.** A law enforcement agency:

- (1) may not prohibit secondary employment by law enforcement officers; but
- (2) may adopt reasonable regulations that relate to secondary employment by law enforcement officers.

**(c) Disclosure of property, income, and other information.** A law enforcement officer may not be required or requested to disclose an item of the law enforcement officer's property, income, assets, source of income, debts, or personal or domestic expenditures, including those of a member of the law enforcement 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 law enforcement officer's official duties; or
- (2) the disclosure is required by federal or State law.

**§3-104. Investigation or interrogation of law enforcement officer**

(a) **In general.** The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with this section.

(b) **Interrogating or investigating officer.** For purposes of this section, the investigating officers or interrogating officers shall be:

- (1) a sworn law enforcement officer ~~or~~ **FROM A LAW ENFORCEMENT AGENCY'S INTERNAL AFFAIRS UNIT; AND**
- (2) ~~if requested by the Governor, the Attorney General or Attorney General's designee~~ **AN INDEPENDENT INVESTIGATOR, WHO SHALL BE THE CHIEF INVESTIGATOR WITH PRIMARY CONTROL OVER THE INVESTIGATION, WHICH CONTROL SHALL INCLUDE, BUT NOT LIMITED TO, DIRECTING THE COLLECTION OF AND THE REVIEW OF EVIDENCE.**

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- (3) THE CHIEF SHALL SELECT AN INDEPENDENT INVESTIGATOR FROM THE INVESTIGATION ROSTER TO BE ASSIGNED TO EACH MISCONDUCT CLAIM, WHICH SELECTION SHALL TAKE PLACE WITHIN 15-DAYS OF:
- (i) RECEIPT OF A COMPLAINT DEFINED IN SECTION (C), OR
  - (ii) RECEIPT OF AN INTERNAL COMPLAINT BY A LAW ENFORCEMENT OFFICER; OR
  - (iii) WHEN THE CHIEF RECEIVES ANY INFORMATION OF ANY ACTS OF MISCONDUCT OR VIOLATION OF ANY APPLICABLE POLICY OR DIRECTIVE OF THE LAW ENFORCEMENT AGENCY NOT CONTAINED IN ANY WRITTEN MISCONDUCT COMPLAINT DEFINED IN SECTION C.
- (4) THE SELECTION OF THE INDEPENDENT INVESTIGATOR SHALL BE BASED ON A ROTATION SYSTEM WHEREIN ALL THE NAMES ON THE INVESTIGATION ROSTER ARE SELECTED ONE TIME BEFORE ANY INDEPENDENT INVESTIGATOR CAN BE RE-SELECTED FOR ANY NEW ASSIGNMENTS, EXCEPT THAT IF THE MISCONDUCT COMPLAINT INVOLVES A PERSON(S) FROM A MINORITY GROUP DEFINED IN THE MARYLAND STATE FINANCE AND PROCUREMENT SECTION § 14-301 (I)(1), THE SELECTION OF THE INDEPENDENT INVESTIGATOR SHALL COME FROM A ROSTER OF MINORITY INDEPENDENT INVESTIGATORS WHO ARE FROM THE SAME MINORITY GROUP AS THE PERSON(S) AGAINST WHOM THE MISCONDUCT INVOLVED USING THE SAME ROTATION SYSTEM REFERENCED ABOVE.
- (5) THE INDEPENDENT INVESTIGATION PROCESS SHALL COMMENCE NO LATER THAN 10 DAYS FROM THE SELECTION OF THE INDEPENDENT INVESTIGATOR (THE COMMENCEMENT DATE).

**(c) Complaint that alleges Misconduct.**

1. A WRITTEN complaint (“MISCONDUCT COMPLAINT”) BY ANY PERSON OR BY A LAW ENFORCEMENT OFFICER AGAINST A LAW ENFORCEMENT OFFICER THAT ALLEGES THE FOLLOWING ACTS OF MISCONDUCT IN THE EXECUTION OF THE LAW ENFORCEMENT OFFICER'S DUTIES, ARE SUBJECT TO THIS ARTICLE, SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING ACTS:
- ~~(i) the aggrieved individual;~~
  - ~~(ii) a member of the aggrieved individual's immediate family;~~
  - ~~(iii) an individual with firsthand knowledge obtained because the individual:~~
    - ~~1. was present at and observed the alleged incident; or~~
    - ~~2. has a video recording of the incident that, to the best of the individual's knowledge, is unaltered; or~~

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~~(iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.~~

- (i) all violations of the use of force law, policy or directives, including law enforcement officer caused deaths;
- (ii) sexual assault;
- (iii) dishonesty,
- (iv) perjury,
- (v) false statements or false reports in an incident report
- (vi) destruction, creation, falsification or concealing evidence collected from an incident investigation or directly related to the reporting, charging, investigation,
- (vii) discrimination or bias involving a conduct or verbal engagement with the public, which shall also include, but not limited to discriminatory or bias hiring practices, promotion practices and shift scheduling in the law enforcement agency; and
- (viii) other criminal activity by a law enforcement officer

2. ALL MISCONDUCT SHALL BE INVESTIGATED, EVEN WHEN A LAW ENFORCEMENT OFFICER RESIGNS BEFORE THE INVESTIGATION BEGINS, EITHER WHEN:
  - i. A MISCONDUCT COMPLAINT IS SIGNED AND SWORN TO THE BEST OF THE PERSON’S KNOWLEDGE, UNDER PENALTY OF PERJURY BY ANY PERSON, INCLUDING LAW ENFORCEMENT OFFICERS, OR BY ANY ANONYMOUS PERSON, OR
  - ii. A CHIEF OBTAINS INFORMATION OR EVIDENCE OF A LAW ENFORCEMENT OFFICERS MISCONDUCT INCLUDING, BUT NOT LIMITED TO A VIDEO, IMAGES, AUDIO RECORDINGS OR VERBAL TESTIMONY PROVIDED DIRECTLY TO THE CHIEF.
3. UNLESS A COMPLAINT IS FILED OR AN INVESTIGATION IS COMMENCED WITHIN TWO (2) YEARS AFTER THE ALLEGED MISCONDUCT, EXCEPT FOR MISCONDUCT THAT INVOLVES A CRIME UNDER THE MARYLAND CRIMINAL CODE, IN WHICH CASE A CRIMINAL MISCONDUCT COMPLAINT MAY BE FILED WITHIN THE TIME PERIOD IN WHICH THE CRIME CAN BE PROSECUTED, AN INVESTIGATION THAT MAY LEAD TO DISCIPLINARY ACTION UNDER THIS SUBTITLE FOR MISCONDUCT MAY NOT BE INITIATED AND AN ACTION MAY NOT BE TAKEN.

~~(2) Unless a complaint is filed within 366 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken.~~

**(d) Disclosures to law enforcement officer under investigation.**

- (1) The law enforcement officer under investigation shall be informed of the name, rank (**IF APPLICABLE**), and command of:
  - (i) the law enforcement officer ~~in charge of the investigation~~ **ASSIGNED TO THE INVESTIGATION;**
  - (ii) **THE INDEPENDENT INVESTIGATOR IN CHARGE OF THE INVESTIGATION, AND IF APPLICABLE, THE PRIVATE INVESTIGATOR RETAINED BY THE INDEPENDENT INVESTIGATOR; AND**

(iii) **THE INTERROGATING INDEPENDENT INVESTIGATOR OR OTHER  
INDEPENDENT INVESTIGATOR ASSIGNED BY THE CHIEF INVESTIGATOR**

(2) Before an interrogation, the law enforcement officer under investigation shall be informed in writing of the nature of the investigation.

(e) **Disclosures to law enforcement officer under arrest.** --If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall be informed completely of all of the law enforcement officer's rights before the interrogation begins.

(f) **Time of interrogation.** 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 law enforcement officer is on duty.

(g) **Place of interrogation.**

(1) The interrogation shall take place:

(i) **AT THE OFFICE OF THE INDEPENDENT INVESTIGATOR** ~~at the office of the command of the investigating officer~~ or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the Independent Investigator; or

(ii) at another reasonable and appropriate place.

(2) The law enforcement officer under investigation may waive the right described in paragraph (1)(i) of this subsection.

(h) **Conduct of interrogation.**

(1) All questions directed to the law enforcement officer under interrogation shall be asked by and through ~~one interrogating officer~~ **THE INDEPENDENT INVESTIGATOR OR ANY OTHER LAWYER ASSIGNED BY THE INDEPENDENT INVESTIGATOR** 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) **Threat of transfer, dismissal, or disciplinary action prohibited.** --The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

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**(j) Right to counsel.**

- (1) On request, the law enforcement officer under interrogation has the right to be represented by counsel or another responsible **UNION** representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation.
- (2) The law enforcement officer may waive the right described in subparagraph (1) of this paragraph.
- (3) The interrogation shall be suspended for a period not exceeding ~~5-business days~~ **24 HOURS**, until a **LAW ENFORCEMENT UNION REPRESENTATIVE OR ANY OTHER REPRESENTATIVE IS PRESENT AND AVAILABLE FOR CONSULTATION AT ALL TIMES DURING THE INTERROGATION.**
- ~~(i) Within that 5 business day period, the chief for good cause shown may extend the period for obtaining representation~~
- (4) During the interrogation, the law enforcement officer's counsel or representative may:
  - (i) request a recess at any time to consult with the law enforcement officer; and
  - ~~(ii) object to any question posed;~~
  - (ii) state on the record outside the presence of the law enforcement officer the reason for any objection.

**(K) INVESTIGATION REPORT**

1. **UPON COMPLETION OF A MISCONDUCT INVESTIGATION, WHICH SHALL BE COMPLETED WITHIN 90 DAYS AFTER THE INVESTIGATION COMMENCEMENT DATE, (UNLESS A WRITTEN REQUEST FOR AN EXTENSION IS MADE TO THE CHIEF PROVIDING FACTS THAT SUPPORT THE GRANTING OF A REASONABLE EXTENSION OF TIME, WHICH SHALL NOT BE UNREASONABLY WITHHELD BY THE CHIEF) A WRITTEN INVESTIGATIVE REPORT SHALL BE COMPLETED WITH RECOMMENDATIONS. THE INVESTIGATION REPORT SHALL INCLUDE THE FOLLOWING:**
  - i) **FINDINGS OF FACT, INCLUDING A LIST OF A PHYSICAL EVIDENCE RELIED UPON, A LIST OF ALL TESTIMONY EVIDENCE RELIED UPON, WITH QUOTES OF SPECIFIC TESTIMONY, WITH A LIST OF PHOTOS AND VIDEOS, AND**
  - ii) **CONCLUSIONS OF LAW, THAT INCLUDES SPECIFIC CASE LAW RELIED UPON TO MAKE THE FINAL RECOMMENDATIONS, AND**

iii) A SUMMARY OF THE INDEPENDENT INVESTIGATORS REVIEW OF CRIMINAL CASES BROUGHT BY THE COUNTY'S PROSECUTORS AGAINST CIVILIANS FOR SIMILAR CONDUCT AS THE ALLEGED MISCONDUCT OF THE INVESTIGATED OFFICER, INCLUDING A REVIEW OF THE CHARGES AND OUTCOMES OF THOSE CASES COMPARED AND CONSIDERED AS A BASIS FOR THE FINAL DISCIPLINE RECOMMENDATION AGAINST A POLICE OFFICER FOR ALLEGED MISCONDUCT.

(iv) THE INDEPENDENT INVESTIGATORS MUST REVIEW AT LEAST FIVE OTHER SIMILAR PROSECUTED CASES AGAINST CIVILIANS TO ENSURE THAT THE DISCIPLINE RECOMMENDED AGAINST THE INVESTIGATED OFFICER IS COMMENSURATE WITH EITHER THE CRIMINAL OR CIVIL DISCIPLINE OF A CIVILIAN FOR COMMITTING THE SAME ACT(S) WHETHER THE ACT WAS FOR A CRIME OR FOR VIOLATIONS OF STATE EMPLOYMENT POLICIES IN A SIMILAR EMPLOYMENT DISCIPLINE CASE.

(v) AN INVESTIGATION MAY NOT BE TERMINATED DUE TO ANY FAILURE BY A COMPLAINANT TO PROVIDE ADDITIONAL REQUESTED INFORMATION. IT IS THE DUTY OF THE INDEPENDENT INVESTIGATOR TO ACTIVELY PURSUE ALL EVIDENCE AND TESTIMONY AND TO UTILIZE THE SERVICES OF A PRIVATE NON-LAWYER INVESTIGATOR WHEN NEEDED TO MEET THIS DUTY.

**(J) RECORD OF INTERROGATION- CONFIDENTIALITY.**

(1) A complete record shall be kept of the entire interrogation, including all recess periods, of the law Enforcement officer.

(2) The record ~~may~~ **SHALL** be ~~written, taped,~~ **RECORDED VIA VIDEO TAPE,** ~~or~~ **AND** transcribed.

(3) On completion of the investigation **OF A MISCONDUCT COMPLAINT, A COPY OF THE RECORD OF THE INTERROGATION, INCLUDING THE VIDEO TAPE OF THE INTERROGATION AND ALL OTHER DOCUMENTS COLLECTED BY THE INDEPENDENT INVESTIGATOR ALONG WITH THE INVESTIGATION REPORT (THE "INVESTIGATION FILE") SHALL BE MADE AVAILABLE AT LEAST 10 DAYS BEFORE A HEARING TO THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION OR THE LAW ENFORCEMENT OFFICER'S COUNSEL OR REPRESENTATIVE AND SIMULTANEOUSLY DISCLOSED TO THE APPROPRIATE STATES ATTORNEY AND PARTY WHO MADE A MISCONDUCT COMPLAINT OR PERSON ALLEGEDLY HARMED BY THE INVESTIGATED MISCONDUCT (THE "INTERESTED PARTY") PURSUANT TO A CONFIDENTIALITY AGREEMENT WHICH SHALL PERMITS THE USE OF THE INVESTIGATION FILE DURING THE HEARING DEFINED IN SECTION §3-107, DURING A CRIMINAL TRIAL OR DURING A CIVIL TRIAL BY AN INTERESTED PARTY, WHICH AGREEMENT SHALL EXPIRE ON THE EARLIEST DATE BELOW AND THE INVESTIGATION FILE SHALL BE SUBJECT TO ANY PUBLIC RECORDS REQUEST ON:**

- A. THE DATE THAT THE STATES ATTORNEY FILES FORMAL WRITTEN CHARGES AGAINST THE INVESTIGATED OFFICER, OR
- B. THE DATE THAT A JUDGMENT IS FILED DECLARING AN INTERESTED PARTY AS A PREVAILING PARTY IN A CIVIL TRIAL, OR
- C. THE DATE THE POLICE OFFICER ELECTS TO DISCLOSE ALL OR PART OF THE INVESTIGATION FILE AFTER THE POLICE OFFICER IS DECLARED BY COURT ORDER AS ACQUITTED IN A CRIMINAL TRIAL OR AS THE PREVAILING PARTY IN A CIVIL TRIAL.

~~and on request of the law enforcement officer under investigation or the law enforcement officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.~~

- (4) **RELEASE TO STATES ATTORNEY & REPORT.** IN THE EVENT CRIMINAL CHARGES ARE NOT PURSUED, THE STATE ATTORNEY SHALL PROVIDE A WRITTEN REPORT THAT PROVIDES A DETAILED EXPLANATION FOR DECLINING THE PURSUIT OF CRIMINAL CHARGES, WITH, WHICH SHALL INCLUDE, BUT NOT LIMITED TO:

- i) STATEMENT OF FACTS RELIED UPON FOR THE DECISION;
- ii) CONCLUSIONS OF LAW; AND
- iii) A SUMMARY OF AT LEAST FIVE (5) OTHER CASES, WHEREIN CRIMINAL CHARGES WERE NOT PURSUED AND A SUMMARY OF THE FACTS OF THOSE CASES.

- 5. NOTHING IN THIS SECTION SHALL PREVENT THE REQUIRED REPORTING OF THE ACTS OF A LAW ENFORCEMENT OFFICER UNDER SECTION 3-106.

**(l) Tests and examinations -- In general.**

- (1) FOR THE INVESTIGATION OF ALL MISCONDUCT COMPLAINTS, THE LAW ENFORCEMENT AGENCY AT THE DIRECTION OF THE INDEPENDENT INVESTIGATOR SHALL ORDER THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION TO SUBMIT TO BLOOD ALCOHOL TESTS, BLOOD, BREATH, OR URINE TESTS FOR CONTROLLED DANGEROUS SUBSTANCES, AND THE INDEPENDENT INVESTIGATOR MAY ORDER POLYGRAPH EXAMINATIONS OR SIMILAR MORE ADVANCED EXAMINATIONS THAT USE NEUROLOGICAL EXAMINATION TYPE TECHNOLOGY, OR INTERROGATIONS THAT SPECIFICALLY RELATE TO THE SUBJECT MATTER OF THE INVESTIGATION. ~~The law enforcement agency may order the law enforcement 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 law enforcement agency orders, **AT THE DIRECTION OF THE INDEPENDENT INVESTIGATOR**, a law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal, **INCLUDING, BUT NOT LIMITED TO, SUSPENSION WITHOUT PAY OR TERMINATION PURSANT TO SECTION 3-104.1, WHICH TERMINATION SHALL BE SUBJECT TO THE LAW ENFORCEMENT OFFICERS RIGHT TO APPEAL.**
- ~~(3) If the law enforcement agency orders the law enforcement 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 law enforcement officer.~~

**(m) Tests and examinations -- Polygraph examinations.**

- (1) **IF THE LAW ENFORCEMENT AGENCY AT THE DIRECTION OF THE INDEPENDENT INVESTIGATOR ORDERS THE LAW ENFORCEMENT OFFICER TO SUBMIT TO A POLYGRAPH EXAMINATION OR OTHER MORE ADVANCED NEUROLOGIC EXAMINATION, THE RESULTS OF ANY SUCH EXAMINATION MAY BE USED AS EVIDENCE IN AN ADMINISTRATIVE HEARING SO LONG AS THE RESULTS OF THE EXAMINATION IS PROVIDED TO THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION OR REPRESENTATIVE NO LESS THAN 10 DAYS AFTER THE EXAMINATION IS COMPLETE AND THE EXAMINATION RESULTS SHALL ONLY BE USED AS CORROBORATING EVIDENCE TO SUPPORT THE VERACITY OF OTHER EVIDENCE PRODUCED DURING THE HEARING. THE RESULTS OF AN EXAMINATION SHALL NOT BE THE SOLE BASIS UPON WHICH ANY DISCIPLINARY ACTION OR RECOMMENDATION IS MADE.** ~~If the law enforcement agency orders the law enforcement 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 law enforcement agency and the law enforcement officer agree to the admission of the results.~~
- (2) The law enforcement officer's counsel or representative need not be present during the actual administration of any examination by a certified polygraph examiner or other examiner administering any advanced neurological examination, **SO LONG AS THE COUNSEL OR REPRESENTATIVE IS ALLOWED TO SUBSEQUENTLY OBSERVE THE ADMINISTRATION OF THE EXAMINATION.**
- ~~(i) the questions to be asked are reviewed with the law enforcement officer or the counsel or representative before the administration of the examination;~~
  - ~~(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 polygraph examiner is made available to the law enforcement officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the examination.~~

**(n) Information provided on completion of investigation.**

- (1) On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be:



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- (i) notified of the name of each witness (UNLESS THE WITNESS IS ANONYMOUS IN WHICH CASE THE INDEPENDENT INVESTIGATOR MAY PROVIDE A CORROBORATING WITNESS) and of each charge and specification against the law enforcement officer; and
- (ii) provided with a copy of the Investigatory File and any exculpatory information, and the law enforcement officer's representative shall agree to:
  - 1. execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer, SUBJECT TO SECTION J(3) ; and
  - 2. pay a reasonable charge for the cost of reproducing the material.
- (2) The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer under this subsection:
  - (i) the identity of confidential sources;
  - (ii) nonexculpatory information; and
  - (ii) recommendations as to charges, disposition, or punishment.

**(o) Adverse material.**

- (1) The law enforcement agency may not insert adverse material into a file of the law enforcement officer, except the file of the internal investigation or the intelligence division, unless the law enforcement officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.
- (2) The law enforcement officer may waive the right described in paragraph (1) of this subsection.

**§3-104.1 AUTOMATIC TERMINATION (NEW SECTION)**

(A) A LAW ENFORCEMENT OFFICER SHALL BE AUTOMATICALLY TERMINATED WITH THE RIGHT TO APPEAL PURSUANT TO SECTION 3-107 AND SECTION 3-109, FOR INTENTIONAL OR RECKLESS CONDUCT THAT INCLUDES, BUT IS NOT LIMITED TO:

- 1. SERIOUS THREATS TO THE SAFETY OF THE WORKPLACE;
- 2. THEFT OF STATE PROPERTY OF A VALUE GREATER THAN \$300
- 3. THEFT OR DESTRUCTION OF EVIDENCE SEIZED BY ANY LAW ENFORCEMENT OFFICER AT THE SCENE OF A CRIMINAL INVESTIGATION;
- 4. SALE OR USE OF ILLEGAL DRUGS;
- 5. SEXUAL ASSAULT;
- 6. DISHONESTY, PERJURY, FALSE STATEMENTS, FALSE REPORTS,

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7. CREATION OF FALSIFIED OR CONCEALING EVIDENCE DIRECTLY RELATED TO THE INVESTIGATION, OR PROSECUTION OF A LAW ENFORCEMENT OFFICERS MISCONDUCT;
8. DISCRIMINATION OR BIAS AS DEFINED IN SECTION 3-104(c) AND SHALL ALSO INCLUDE. BUT NOT LIMITED TO, THE USE OF DEROGATORY WORDS USED AGAINST MINORITY GROUPS THAT IS EITHER ROOTED IN SLAVERY OR OTHER NEGATIVE STEREOTYPE ASSOCIATED WITH A MINORITY GROUP HERITAGE, WHICH MUST BE PROVEN THROUGH EITHER, AT LEAST TWO WITNESS OF THE DISCRIMINATORY OR BIAS STATEMENT, OR BY VIDEO, AUDIO RECORDINGS OR ELECTRONIC MESSAGES;
9. CRIMINAL CHARGE BY A STATE ATTORNEY;
10. ACCEPTING FOR PERSONAL USE ANY FEE, GIFT, OR OTHER VALUABLE THING IN CONNECTION WITH OR DURING THE COURSE OF STATE EMPLOYMENT IF GIVEN TO THE EMPLOYEE BY ANY PERSON WITH THE HOPE OR EXPECTATION OF RECEIVING A FAVOR OR BETTER TREATMENT THAN THAT ACCORDED TO OTHER PERSONS; AND
11. VIOLATION OF THE FAIR ELECTION PRACTICES ACT;

(c) TERMINATIONS PURSUANT TO THIS SECTION SHALL OCCUR WITHIN 15 DAYS AFTER THE MISCONDUCT, AND THE LAW ENFORCEMENT OFFICER SHALL BE ENTITLED TO A:

- (1) A HEARING PURSUANT TO SECTION 3-107, AND
- (2) IF A LAW ENFORCEMENT OFFICER IS EXONERATED BY THE HEARING BOARD, OR BY A COURT FROM AN APPEAL PURSUANT TO SECTION 3-109, THE LAW ENFORCEMENT OFFICER SHALL BE ENTITLED TO BACK PAY, REINSTATEMENT, AND REASONABLE ATTORNEY FEES INCURRED DURING THE HEARING UNDER SECTION 3-107.

**§ 3-105. Application for show cause order**

- (a) **In general.** A law enforcement officer who is denied a right granted by this subtitle may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted.
- (b) **Conditions.** The law enforcement officer may apply for the show cause order:
- (1) either individually or through the law enforcement officer's certified or recognized employee organization; and
  - (2) at any time prior to the beginning of a hearing by the hearing board.
- (d) **Relief on finding agency obtained evidence in violation of officer's rights.** On a finding that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by this subtitle, the court shall grant appropriate relief.

**§ 3-106 Limitation on administrative charges**

- (a) **In general.** Subject to subsection (b) of this section, a law enforcement agency may not bring administrative charges against a law enforcement officer unless the agency files the charges **OR COMMENCES AN INVESTIGATION WITHIN 2 YEARS AFTER THE MISCONDUCT OCCURS.**
- (b) **Exception.** The 2-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force.

**§ 3-106.1 - REMOVED FROM THIS BILL See JPR Bill #2 - Law Enforcement Officers Credibility as a Witness and Misconduct Database (To Serve as a stand alone bill)****§3-107. Hearing by hearing board****a) Right to hearing.**

- ~~(1) Except as provided in paragraph (2) of this subsection and § 3-111 of this subtitle, if the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.~~
- ~~(2) A law enforcement officer who has been convicted of a felony is not entitled to a hearing under this section.~~

**EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND § 3-111 OF THIS SUBTITLE, IF THE CHIEF'S ORDER REQUIRED UNDER § 3-108, AFTER RECEIPT OF THE INDEPENDENT INVESTIGATOR, INCLUDES A RECOMMENDATION OF DEMOTION, DISMISSAL, TRANSFER, LOSS OF PAY, REASSIGNMENT, OR SIMILAR ACTION THAT IS CONSIDERED PUNITIVE, THE LAW ENFORCEMENT OFFICER IS ENTITLED TO A HEARING ON THE ISSUES BY THE HEARING BOARD, REGARDLESS OF WHETHER THE OFFICER RESIGNS PRIOR TO THE COMPLETION OF INVESTIGATION, ONLY AFTER THE LAW ENFORCEMENT OFFICER DELIVERS A WRITTEN NOTICE OF APPEAL WITHIN 60 DAYS AFTER THE DATE OF THE CHIEF'S ORDER AND THE HEARING SHALL TAKE PLACE:**

- i) WITHIN 90 DAYS AFTER RECEIPT OF A WRITTEN REPORT FROM A STATES ATTORNEY DECLINING TO MAKE CRIMINAL CHARGES AGAINST A LAW ENFORCEMENT OFFICER; OR**
- ii) WITHIN 90 DAYS AFTER THE FINAL ORDER BY A TRIAL COURT EXONERATING A LAW ENFORCEMENT OFFICER OF CRIMINAL CHARGES; OR**
- iii) IF A LAW ENFORCEMENT OFFICER IS NOT EXONERATED AT THE END OF A CRIMINAL TRIAL, THE LAW ENFORCEMENT OFFICER SHALL NOT BE ENTITLED TO A HEARING, UNLESS THE OFFICER IS EXONERATED BY THE HIGHEST COURT OF THE STATE ON APPEAL, THEN THE HEARING UNDER THIS SECTION SHALL TAKE PLACE WITHIN 90 DAYS AFTER THE FINAL ORDER OF EXONERATION ON APPEAL.**

**(b) Notice of hearing.**

- (1) The law enforcement agency shall give notice to the law enforcement 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) Membership of hearing board**

- (1) THE CHIEF SHALL APPOINT TO THE HEARING BOARD FOR A PERIOD OF FOUR (4) YEARS AND PROVIDE CONSULTING COMPENSATION TO NON-LAW ENFORCEMENT CIVILIANS, TO THE FOLLOWING INDIVIDUALS, ALL OF WHICH SHALL HAVE VOTING RIGHTS, SUBPOENA POWERS AND THE CHIEF SHALL ENSURE ARE TRAINED BY THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION:
  - (i) THREE LAW ENFORCEMENT OFFICERS FROM THE LAW ENFORCEMENT AGENCY OR ANOTHER LAW ENFORCEMENT AGENCY THAT HAVE HAD NO PART IN THE INVESTIGATION OR INTERROGATION OF THE POLICE OFFICER WHO IS THE SUBJECT OF THE STATEMENT OF CHARGES AND AT LEAST ONE MEMBER MUST BE OF THE SAME RANK AS THE POLICE OFFICER WHO IS THE SUBJECT OF THE STATEMENT OF CHARGES, AND NONE OF THE LAW ENFORCEMENT OFFICERS SHALL BE ON THE LIST OF THE MISCONDUCT DATABASED SET FORTH IN ARTICLE \_\_\_\_\_.
  - (ii) ONE ACADEMICALLY CERTIFIED PUBLIC SAFETY EXPERT OR FORMER POLICE OFFICER WHO ACTIVELY PROVIDES POLICE MISCONDUCT AND ETHICAL POLICING TRAINING, WHO HAS NEVER BEEN CONTRACTED BY THE DEPARTMENT TO PROVIDE ANY PRIOR SERVICES, WHO SHALL BE RECOMMENDED BY THE COUNTY EXECUTIVE;
  - (iii) ONE PLAINTIFF'S CIVIL RIGHTS ATTORNEY WHO HAS NO LESS THAN FIVE-YEARS TRIAL EXPERIENCE REPRESENTING CITIZENS IN POLICE MISCONDUCT CASES AND WHO SHALL BE INTERVIEWED, VETTED BY AND NOMINATED BY LOCAL ADVOCACY GROUPS; AND
  - (iv) TWO PUBLIC MEMBERS WHO SHALL NOT BE FORMER POLICE OFFICERS AND WHO SHALL BE SELECTED BY LOCAL PUBLIC INTERESTS ADVOCACY GROUPS WHO ARE REGISTERED WITH THE COUNTY EXECUTIVE COMMUNITY OUTREACH OFFICE WHO SHALL PROVIDE THE NAMES OF THE TWO PUBLIC MEMBERS TO THE COUNTY EXECUTIVE BY SEPTEMBER 15<sup>TH</sup> IN A YEAR OF APPOINTMENT, OTHERWISE. IN THE EVENT, THE NAMES OF TWO PUBLIC MEMBERS ARE NOT PROVIDED BY SEPTEMBER 15<sup>TH</sup>, THE COUNTY EXECUTIVE SHALL SELECT THE TWO PUBLIC MEMBERS FROM THE SINGLE LIST PROVIDED BY THE REGISTERED COMMUNITY GROUPS.

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- (2) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State shall function as the law enforcement officer of the same rank on the hearing board.
- (3) If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.
- (4) If the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.
- (5) If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor, or that official's designee, shall function as the chief for purposes of this subtitle.
- ~~(1) Except as provided in paragraph (5) of this subsection and in § 3-111 of this subtitle, the hearing board authorized under this section shall consist of at least three voting members who:~~
- ~~(i) are appointed by the chief and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency; and~~
  - ~~(ii) have had no part in the investigation or interrogation of the law enforcement officer.~~
- ~~(2) At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint is filed.~~
- ~~(3)~~
- ~~(i) Subject to subparagraph (ii) of this paragraph, a chief may appoint, as a nonvoting member of the hearing board, one member of the public who has received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.~~
  - ~~(ii) If authorized by local law, a hearing board formed under paragraph (1) of this subsection may include up to two voting or nonvoting members of the public who have received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.~~
- ~~(5) (i) 1. A law enforcement agency or the agency'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.~~
- ~~2. A hearing board formed under this paragraph may include up to two voting or nonvoting members of the public, appointed by the chief, who have received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.~~
- ~~(ii) A law enforcement officer may elect the alternative method of forming a hearing board if:~~
- ~~1. the law enforcement officer works in a law enforcement agency described in subparagraph (i) of this paragraph; and~~

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~~2. — the law enforcement officer is included in the collective bargaining unit.~~

~~(iii) The law enforcement agency shall notify the law enforcement officer in writing before a hearing board is formed that the law enforcement officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.~~

~~(iv) If the law enforcement officer elects the alternative method, that method shall be used to form the hearing board.~~

~~(v) An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing board.~~

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

~~(vii) If authorized by local law, this paragraph is subject to binding arbitration~~

**(d) Subpoenas.**

- (1) In connection with a disciplinary hearing, the chief, **THE INDEPENDENT INVESTIGATOR** or hearing board shall issue subpoenas ~~upon request by the Hearing Board or the Independent Investigator~~ 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 chief, **THE INDEPENDENT INVESTIGATOR** 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 chief or hearing board 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) Conduct of hearing.**

- (1) The hearing shall be:
  - (i) conducted by a hearing board; and
  - (ii) open to the public, **AND IN THE EVENT CONFIDENTIAL INFORMANTS, UNDERCOVER OFFICERS OR A CHILD IS A NEEDED WITNESS (PROTECTED WITNESSES), THEN THOSE WITNESSES SHALL PROVIDE TESTIMONY FROM A PRIVATE ROOM WHERE THE IMAGE OF THE WITNESS HIS HIDDEN AND THE VOICE OF THE WITNESS IS SUFFICIENTLY ALTERED TO HIDE THE PERSON'S IDENTITY AND SIMULTANEOUSLY ALLOWS FOR THE TESTIMONY TO BE HEARD BY THE HEARING BOARD.** In addition, other practical measures may be utilized to further protect the Protected Witnesses identity.
- (2) The hearing board shall give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved.
- (3) The law enforcement agency and law enforcement 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) Evidence.**

- (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 **PURSUANT TO THE MARYLAND STATE OR FEDERAL RULES OF 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, **SO LONG AS SAID EVIDENCE IS AUTHENTICATED PURSUANT TO THE FEDERAL RULES OF EVIDENCE AND IN THE EVENT EVIDENCE INCLUDES COMPUTER GENERATED DATA OR DATA ELECTRONICALLY GENERATED, THEN SAID EVIDENCE SHALL BE AUTHENTICATED THROUGH COMPUTER FORENSIC EXPERT STANDARDS REQUIRED TO AUTHENTICATE ELECTRONICALLY GENERATED EVIDENCE.**

**(g) Judicial notice.**

- (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

(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) Oaths.**

(1) With respect to the subject of a hearing conducted under this subtitle, the chief shall administer oaths or affirmations and examine individuals under oath.

(2) In connection with a disciplinary hearing, the chief or a hearing board may administer oaths.

**(i) Witness fees and expenses.**

(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 law enforcement agency.

(j) **Official record.** An official record, including testimony and exhibits, shall be kept of the hearing.

**3-108. Disposition of administrative action**

**(a) In general. --**

(1) A decision, order, or action taken as a result of a hearing under § 3-107 of this subtitle **SHALL CONSIDER THE LAW ENFORCEMENT OFFICER'S PAST JOB PERFORMANCE CONTAINED IN THE EMPLOYEE FILE AND OTHER RELEVANT INFORMATION AS FACTORS BEFORE MAKING RECOMMENDATIONS TO THE CHIEF, WHICH RECOMMENDATIONS** shall be in writing and accompanied by findings of fact and conclusions of law.

(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) 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 law enforcement officer or the law enforcement officer's counsel or representative of record; and
- (ii) the chief.

~~(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 law enforcement officer's past job performance and other relevant information as factors before making recommendations to the chief.~~

**(b) Recommendation of penalty.**

- (1) After a disciplinary hearing and a finding of guilt, the hearing board shall 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 and include findings of facts and conclusions of law for the decision and penalty;

**(d) Review by chief and final order.**

- (1) WITHIN 10 DAYS AFTER RECEIPT OF THE INVESTIGATION REPORT OR AFTER THE FINAL DECISION FROM THE HEARING BOARD, THE CHIEF MUST:
  - (i) REVIEW THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS IN THE INVESTIGATION REPORT OR FROM THE HEARING BOARD; AND
  - (ii) THE CHIEF SHALL ADOPT THE RECOMMENDATION LANGUAGE IN THE INVESTIGATION REPORT OR IN THE HEARING BOARD'S RECOMMENDATION(S) INTO THE CHIEF'S FINAL ORDER, UNLESS THE CHIEF DETERMINES, BY CLEAR AND CONVINCING EVIDENCE, THAT THE RECOMMENDATIONS ARE INCONSISTENT WITH LAW OR DEPARTMENT DISCIPLINE POLICY AFTER WHICH THE CHIEF MUST PROVIDE A WRITTEN REPORT TO THE INDEPENDENT INVESTIGATOR OR THE HEARING BOARD THAT DETAILS THE FACTS AND LAW THAT THE CHIEF RELIED UPON TO REJECT THE RECOMMENDATION(S) AND SHALL INCLUDE THE CHIEF'S RECOMMENDATION AS TO DISCIPLINE OR NO DISCIPLINE; AND
  - (iii) AFTER THE INDEPENDENT INVESTIGATOR OR HEARING BOARD RECEIVES THE CHIEF'S REJECTION AND RECOMMENDATION AND THE INDEPENDENT INVESTIGATOR OR HEARING BOARD PROVIDES AN UPDATED RECOMMENDATION TO THE CHIEF WITHIN 20 DAYS AFTER THE CHIEF'S REJECTION REPORT (UNLESS A WRITTEN REQUEST FOR A REASONABLE EXTENSION IS REQUESTED, WHICH SHALL NOT BE UNREASONABLY DENIED), THEN THE CHIEF SHALL MAKE THE FINAL ORDER THAT INCORPORATES THE FINAL RECOMMENDATIONS FROM THE INVESTIGATOR OR THE HEARING BOARD, AND WITHIN 5 DAYS AFTER RECEIPT OF THE FINAL RECOMMENDATIONS, THE CHIEF MUST PROVIDE WRITTEN NOTICE TO

THE INVESTIGATED LAW ENFORCEMENT OFFICER WITH A NOTICE OF THE RIGHT TO APPEAL PURSUANT TO §3-108 , IF APPLICABLE.

~~(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 law enforcement officer's past job performance and other relevant information as factors before making recommendations to the chief.~~

(2) THE CHIEF SHALL INCREASE THE RECOMMENDED PENALTY OF THE HEARING BOARD, ONLY IF THE CHIEF PERSONALLY:

(i) REVIEWS THE ENTIRE RECORD OF THE PROCEEDINGS OF THE HEARING BOARD AND REVIEWS THE LAW ENFORCEMENT OFFICERS ENTIRE PERSONNEL FILE AND ALL PRIOR COMPLAINTS AGAINST THE OFFICER, INCLUDING COMPLAINTS CONTAINED IN THE LAW ENFORCEMENT OFFICERS PERSONAL FILE FROM ANOTHER JURISDICTION, ALL OF WHICH HAVE BEEN PREVIOUSLY DISCLOSED TO THE LAW ENFORCEMENT OFFICER IN ANY OTHER COMPLAINT PROCESS OR SHOULD HAVE BEEN PREVIOUSLY DISCLOSE TO THE LAW ENFORCEMENT OFFICER; AND

(ii) BASED ON DEPARTMENT POLICY OR DISCIPLINE STANDARDS THE INCREASED PENALTY IS JUSTIFIED, IN WHICH CASE THE CHIEF SHALL PROVIDE THE FINAL ORDER WITH INCREASED PENALTY IN A WRITTEN STATEMENT OF ADDITIONAL FACTS AND LIST OF POLICY(S) THAT JUSTIFY THE PENALTY INCREASE.

(3) THE FINAL ORDER OF THE CHIEF AFTER A HEARING UNDER §3-108 IS THE FINAL ADMINISTRATIVE DECISION FOR WHICH NO APPEAL IS AVAILABLE.

~~§ 3-109 APPEAL~~

~~(a) By circuit court. — An appeal from a CHIEF'S FINAL ORDER made under § 3-108 AND ONLY AFTER A HEARING IS COMPLETED PURSUANT TO §3-107 shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202, the conclusion of which shall be the final administrative.~~

~~(b) By Court of Special Appeals. — A party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals.~~

### §3-110 EXPUNGEMENT

(a) In general. On written request, a law enforcement officer may have expunged from **A PERSONNEL FILE** the record of a complaint or investigation made against the law enforcement officer if:

(1) the **HEARING BOARD**

—(3) at least **10 YEARS** have passed since the final disposition by the law enforcement agency or

### § 3-111. Summary punishment

(a) **Authorized.** This subtitle does not prohibit summary punishment by higher ranking law enforcement officers as designated by the chief.

(b) **Imposition.**

(1) Summary punishment may be imposed for minor violations, **WHICH SHALL ONLY INCLUDE VIOLATIONS OF LAW ENFORCEMENT AGENCY RULES AND REGULATIONS INVOLVING OR RELATED TO**, but not limited to,

(2) **ABSENTEEISM, WHICH SHALL NOT INCLUDE GROSS ABSENTEEISM, OR**

(3) **FAILURES REGARDING PRECINCT ADMINISTRATION THAT ARE UNRELATED TO THE DUTY TO PRESERVE EVIDENCE, MAKE COMPLETE INCIDENT REPORTS, INCIDENT INVESTIGATIONS OR THE HANDLING OF EQUIPMENT IF:**

(i) the facts that constitute the minor violation are not in dispute;

(ii) the law enforcement officer waives the hearing provided under this subtitle; and

(iii) the law enforcement officer accepts the punishment imposed by the highest ranking law enforcement officer, or individual acting in that capacity, of the unit to which the law enforcement officer is attached.

(2) Summary punishment imposed under this subsection may not exceed suspension of 3 days without pay or a fine of \$ 150 **FOR EACH INFRACTION AND THE FINDINGS OF FACT TO SUPPORT THE SUMMARY PUNISHMENT SHALL BE IN WRITING AND INCLUDED IN THE LAW ENFORCEMENT OFFICERS PERSONNEL FILE.**

(c) **Refusal.**

(1) IF A LAW ENFORCEMENT OFFICER IS OFFERED SUMMARY PUNISHMENT IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION AND REFUSES TO ACCEPT THE DECISION, THE CHIEF MAY INCREASE THE PENALTY ABOVE A SUMMARY PUNISHMENT, SET FORTH IN SUBSECTION (B)(2), IN WHICH CASE THE CHIEF SHALL PROVIDE THE ORDER IN WRITING WITH THE BASIS OF THE INCREASE AND PROVIDE IT TO THE LAW ENFORCEMENT OFFICER WITH WRITTEN NOTICE OF THE RIGHT TO APPEAL PURSUANT TO SECTIONS §3-107 AND §3-109.

~~(1) If a law enforcement officer is offered summary punishment in accordance with subsection (b) of this section and refuses:~~

~~(i) the chief 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 law enforcement officer; but~~

~~(ii) all other provisions of this subtitle apply.~~

### §3-112 – EMERGENCY SUSPENSION

(a) **Authorized.** -- This subtitle does not prohibit emergency suspension by the chief.

(b) **IMPOSITION -- WITHOUT PAY.** CONCURRENT WITH THE REQUIREMENTS UNDER SECTION §3-104.1 FOR AUTOMATIC TERMINATIONS OR ANY OTHER AUTHORIZED DISCIPLINE, THE CHIEF MAY AS AN ALTERNATIVE TO THE PENALTY SET FORTH IN SECTION §3-104.1 IMPOSE EMERGENCY SUSPENSION WITHOUT PAY WITHIN 15 DAYS AFTER THE INDEPENDENT INVESTIGATOR RECEIVES THE MISCONDUCT

COMPLAINT, AND THE LAW ENFORCEMENT OFFICER SHALL BE NOTIFIED OF THE SUSPENSION IN WRITING AND OF THE RIGHT TO APPEAL PURSUANT TO SECTIONS §3-107 AND §3-109. THE NOTICE OF SUSPENSION SHALL INCLUDE A SUMMARY OF THE CHIEFS PRELIMINARY FINDINGS FACTS, AND LAW OR POLICY VIOLATED.

~~b) Imposition -- With pay. --~~

- ~~(1) The chief may impose emergency suspension with pay if it appears that the action is in the best interest of the public and the law enforcement agency.~~
- ~~(2) If the law enforcement officer is suspended with pay, the chief may suspend the police powers of the law enforcement officer and reassign the law enforcement 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 law enforcement agency violation.~~~~
- ~~(3) A law enforcement officer who is suspended under this subsection is entitled to a prompt hearing.~~

~~(c) Imposition -- Without pay. --~~

- ~~(1) If a law enforcement officer is charged with a felony, the chief may impose an emergency suspension of police powers without pay.~~
- ~~(2) A law enforcement officer who is suspended under paragraph (1) of this subsection is entitled to a prompt hearing.~~

**§ 3-113 INVESTIGATOR & REVIEW BOARD BUDGET**

- (1) INDEPENDENT INVESTIGATORS, PRIVATE INVESTIGATOR AND CIVILIAN HEARING BOARD MEMBERS SHALL BE COMPENSATED FOR THEIR SERVICE. ONCE A COUNTY EXECUTIVE OR THE CHIEF CREATES A BUDGET THAT FIXES THE HOURLY COMPENSATION FOR INDEPENDENT INVESTIGATORS, LICENSED NON-LAWYER PRIVATE INVESTIGATORS AND COMPENSATION FOR CIVILIAN HEARING BOARD MEMBERS, AFTER FINAL APPROVAL BY A COUNTY EXECUTIVE AND COUNTY COUNCIL, THE BUDGET ALLOCATION SHALL BE DISBURSED TO ONE OR MORE MARYLAND STATE CHARTERED TRUST COMPANIES WHO SHALL MANAGE THE INVESTMENT OF THE FUNDS AND SHALL BE RESPONSIBLE FOR THE MONTHLY DISBURSEMENTS FOR THE COMPENSATION TO ALL INDEPENDENT INVESTIGATORS AND BOARD MEMBERS AUTHORIZED BY THIS ARTICLE SO AS TO PREVENT ANY APPEARANCE OF IMPROPRIETY.
- (2) THE DESIGNATED CHARTERED TRUST COMPANY(S) SHALL PROVIDE QUARTERLY SPEND REPORTS ALONG WITH A SUMMARY OF THE ACCOUNT INVESTMENT ACTIVITY TO THE COUNTY EXECUTIVE, WHICH SHALL

INCLUDE ANY ADDITIONAL INFORMATION COMMON FOR FIDUCIARIES TO REPORT.

**§ 3-113. False statement, report, or complaint**

(a) **Prohibited.** -- A person may not knowingly make a false statement, report, or complaint during an investigation or proceeding conducted under this subtitle.

(b) **Penalty.** -- A person who violates this section is subject to the penalties of § 9-501 of the Criminal Law Article.