

Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 04 POLICE TRAINING AND STANDARDS COMMISSION

Chapter 09 Police Accountability Boards and Administrative Charging Committees

Authority: Public Safety Article, §3-208 and §3-114; Annotated Code of Maryland

.01 Purpose.

A. This chapter establishes a civilian process to receive and process allegations of police officer misconduct involving a member of the public, review administrative investigations, and make disciplinary recommendations involving misconduct.

B. The agency head of each law enforcement agency shall develop the agency's own procedures to process complaints of misconduct that do not involve a member of the public.

.02 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative Charging Committee (ACC)" has the meaning stated in Public Safety Article, §3-104, Annotated Code of Maryland.

(2) "Agency head" has the meaning stated in COMAR, 12.04.01.01.

(3) "Agency review" means a thorough evaluation of the entire completed investigative file by the agency head.

(4) "Appointing Authority" means:

(a) A board of county commissioners;

(b) A county executive or a county executive and county council;

(c) The Mayor and City Council of Baltimore;

(d) The Governor of Maryland;

(e) The Speaker of the Maryland House of Delegates;

(f) The President of the Maryland Senate; or

(g) A county police accountability board.

(5) "Conflict of interest" means real or seeming incompatibility between an individual's private interests and the individual's official responsibilities in a position of trust.

(6) "Final Disposition" means:

(a) The officer accepts the ACC recommendation if the agency head does not increase the penalty;

(b) The officer accepts the Agency Head's increased penalty disposition;

(c) The officer accepts the Trial Board finding; or

(d) The appeal process is exhausted.

(7) "Good moral character" means an individual's behavior, habits, and actions may generally be regarded as being:

(a) Honest, ethical, candid, trustworthy, diligent, and fair;

(b) Respectful of the law and committed to the administration of justice; and

(c) Observant of the rights of other individuals.

(8) "Local governing body" has the meaning stated in Public Safety Article, §14-401, Annotated Code of Maryland.

(9) "Police Accountability Board (PAB)" has the meaning stated in Public Safety Article §3-102, Annotated Code of Maryland.

(10) "Police officer" has the meaning stated in Public Safety Article, §3-201, Annotated Code of Maryland.

(11) "Statewide Disciplinary Matrix" has the meaning stated in Public Safety Article, §3-105, Annotated Code of Maryland.

.03 Police Accountability Board.

A. A PAB shall ensure public accountability and transparency over the powers exercised by law enforcement agencies.

B. A local appointing authority shall establish a PAB consistent with the provisions established in Public Safety Article, §3-102, Annotated Code of Maryland.

C. A local appointing authority shall determine the number of individuals necessary to administer the PAB.

D. PAB Membership Eligibility.

(1) The local appointing authority may impose eligibility criteria on PAB membership such as requiring that an applicant be:

(a) At least 21 years old;

(b) A legal resident or citizen of the United States of America; and

(c) A resident of the jurisdiction the PAB serves.

(2) An individual must sign an agreement to maintain the confidentiality of PAB matters related to individual complaints until final disposition.

.04 State and Local Administrative Charging Committee.

A. Consistent with provisions established in Public Safety Article, §3-104, Annotated Code of Maryland, an appointing authority shall:

(1) Have one ACC to serve law enforcement agencies within an appointing authority's jurisdiction; and

(2) Develop written procedures for processing police officer misconduct complaints involving members of the public.

B. A law enforcement agency shall establish written procedures for handling complaints of police officer misconduct that do not involve members of the public.

C. Public Invitation to Apply for ACC.

(1) At least 30 days prior to making a selection or appointment, the local appointing authority shall publicly invite individuals to apply for an appointment to a vacancy on the ACC.

(2) The appointing authority shall publicly announce an ACC appointment prior to the initial term, successive term, or vacancy of any member.

D. ACC Membership Eligibility.

(1) To the extent permitted by law, the appointing authority may limit ACC membership eligibility, such as requiring the individuals to be:

(a) At least 21 years old;

(b) A legal resident or citizen of the United States of America;

(c) A resident of the jurisdiction the ACC serves;

(d) Of good moral character; and

(e) Free from bias that may negatively impact the integrity of the ACC.

(2) If permitted by law, the appointing authority may exclude an individual from appointment to an ACC for appropriate reasons, including, but not limited to:

(a) The individual has a demonstrable conflict of interest, as determined by the appointing authority;

(b) The individual is under criminal investigation by a law enforcement agency;

(c) The individual is charged with a crime pending before a court; or

(d) The individual has been convicted of, or has received Probation before Judgement for a felony or misdemeanor for which a sentence for one or more years could have been imposed.

E. ACC Membership Requirements.

(1) To the extent consistent with Public Safety Article, §3-104, Annotated Code of Maryland, the appointing authority may require, as a condition of membership, that an ACC applicant:

(a) Submit to a background investigation with the law enforcement agency or investigative firm chosen by the governing body;

(b) Successfully complete the Police Training and Standards Commission's required training before serving as a member of an ACC; and

(c) Sign an agreement to maintain the confidentiality of matters and information considered by the ACC until final disposition.

(2) Background Investigation.

(a) To the extent permitted by law, the appointing authority may authorize a background investigation to determine if the applicant:

(i) Is of good moral character; and

(ii) Unencumbered by conflicts of interest

(b) The appointing authority shall ensure that the background investigation includes, but is not limited to:

(i) An examination of publicly available records; and

(ii) A review of individual's presence on social media websites, applications and platforms.

(c) The law enforcement agency or firm conducting the background investigation shall report the results in writing to the requesting appointing authority.

F. Grounds for Refusal of an Appointment to the ACC. If permitted by law, an appointing authority may refuse to appoint any individual to serve on an ACC, if the individual:

(1) Does not meet the eligibility requirements under §D of this regulation.

(2) Does not agree to the membership requirement under §E(1) of this regulation;

(3) Does not successfully complete the background investigation under §E(2) of this regulation; or

(4) Is determined to be unsuitable by the appointing authority for the appointment based on the results of the background investigation.

G. Self-reporting of Adverse Events.

(1) Members have an ongoing and continuous obligation to report immediately to the chairman of the ACC any event that may harm the public trust of the ACC.

(2) Adverse events include, but are not limited to:

- (a) Conflicts of interest;
- (b) Criminal charges;
- (c) Criminal investigations; and
- (d) Criminal convictions.

H. Terms of Appointment.

- (1) Subject to §H(2) of this regulation, and to the extent such limitations are permitted by law, the term for each appointed ACC member may be limited, such as a two year term.
- (2) During the establishment of an ACC, if permitted by law, the appointing authority may set the initial terms of the ACC members to be staggered in a manner such as:
 - (a) During the initial term of a local jurisdiction's ACC:
 - (i) One member selected by the PAB shall serve a one-year term;
 - (ii) One member selected by the appointing authority shall serve a one-year term; and
 - (iii) Three members shall serve two-year terms.
 - (b) During the initial term of the Statewide ACC:
 - (i) Two members selected by the Governor shall serve a one-year term;
 - (ii) Three members selected by the Governor, President of the Senate, and Speaker of the House shall serve two-year terms.
- (3) To the extent permitted by law, the appointing authority may limit the number of terms an ACC member may serve.
- (4) Removal or Resignation of an ACC member.
 - (a) Members serve at the pleasure of the appointing authority.
 - (b) If a governing body decides to remove a member prior to the end of the member's term, the member and the chair of the ACC must be notified in writing by the appointing authority.
 - (c) A member who fails to maintain the confidentiality as established under §E of this regulation shall be immediately removed from the ACC by the appointing authority.
 - (d) Members may resign from an ACC at any time by notifying the appointing authority and the chair of the ACC in writing.

I. Election of an ACC Chairman.

- (1) The members of the ACC shall choose a chairman from their membership.
- (2) The chairman shall follow Robert's Rules of Order.
- (3) A chairman's responsibilities include:
 - (a) Establishing the meeting schedule, with a minimum of one meeting per month;
 - (b) Establishing a written agenda for each meeting for dissemination to the members in advance of each meeting;
 - (c) Calling a meeting to order;
 - (d) Coordinating the meeting in accordance with the agenda;
 - (e) Inviting discussion among members before voting;
 - (f) Inviting motions, seconds, and votes from members;
 - (g) Ensuring that a record of all business conducted by the ACC is kept; and
 - (h) Promptly reporting to the appointing authority any concerns or adverse events as established under §G(2) of this regulation.

.05 ACC Meetings.

- A. As a public body, the ACC has the ability under the Open Meetings Act to go to closed session.
- B. Subject to the provisions established in Regulation .04 of this Chapter, each ACC must establish a schedule for making determinations or asking for further review in all pending matters within 30 days of the date the law enforcement agency completes its investigation.
- C. Each ACC shall issue a final determination and disposition of every matter within one year and a day following the initial filing of a complaint with a local jurisdiction's PAB under Public Safety Article, §3-113(c), Annotated Code of Maryland and a complaint filed with a law enforcement agency.
- D. In order to maintain confidentiality, an ACC shall utilize secure methods to electronically transmit documents, files, notes, and any other materials pertaining to a complaint and subsequent investigation.
- E. Quorum and Attendance.
 - (1) Three members constitute a quorum and a quorum shall be in attendance prior to conducting any ACC business.
 - (2) ACC meetings may be conducted either in person or remotely via secure video connection.

.06 Law Enforcement Agency Investigation.

- A. Complaints Eligible for Mediation.
 - (1) Complaints from the public that meet the eligibility requirements for the mediation process established under Public Safety Article, §3-207(d), Annotated Code of Maryland, may, subject to the agreement of the complainant be handled outside of the formal PAB and ACC complaint process.
 - (2) Complaints from the public handled through mediation shall be:

- (a) Tracked with other citizen complaints; and
- (b) Reported to the PAB.

B. *Complaints Not Eligible for Mediation.* Upon receipt of a complaint of alleged police officer misconduct made to a PAB or law enforcement agency as prescribed under Public Safety Article, §3-102 and 3-103, Annotated Code of Maryland, a law enforcement agency shall complete a thorough investigation.

C. Upon completion of an investigation involving a member of the public, the law enforcement agency shall forward to the ACC, the investigative files for the matter and any agency head recommendations within three business days of the date the:

- (1) Law enforcement agency completed its investigation; or
- (2) Agency head of the law enforcement agency issues a written recommendation for the review and consideration of ACC.

D. *Recommendation by Agency Head of the Law Enforcement Agency.*

- (1) An agency head may include a written recommendation for the ACC to consider regarding the matter under investigation.
- (2) The written recommendation may include an agency head's opinion regarding:
 - (a) Whether or not the police officer should be disciplined;
 - (b) Aggravating or mitigating factors or circumstances; and
 - (c) If applicable, a recommended alternative to formal discipline.
- (3) If an agency head believes that discipline is warranted, based on the facts presented in the investigation, an agency head may make a specific recommendation for discipline in accordance with the Statewide Disciplinary Matrix, as approved by the Police Training and Standards Commission under Public Safety Article, §3-105, Annotated Code of Maryland.

.07 ACC Deliberation and Determination.

A. *Deliberation.*

- (1) When reviewing an investigative file responsive to a complaint of alleged police officer misconduct, an ACC shall:
 - (a) Conform to the procedures established in Public Safety Article, §3-104(e), Annotated Code of Maryland;
 - (b) If applicable, consider the agency head's written recommendation before making a final decision and note the ACC's consideration in written decision.
 - (2) The ACC, in the performance of its duties under Public Safety Article, §3-104(f)(1), Annotated Code of Maryland, may request additional information and investigation by the law enforcement agency that conducted the initial investigation.
 - (3) *Conflict of Interest.*
 - (a) An ACC member shall abstain from participation in the review, deliberation, voting, and determination of whether to impose administrative charges against a police officer if the ACC member has a specific conflict of interest related to either the officer under investigation or the complainant.
 - (b) An ACC member with the potential conflict of interest shall announce the existence of the potential conflict of interest prior to any receipt of the materials contained in the investigative file or any deliberations of the complaint.
 - (c) If an ACC member becomes aware of a potential conflict of interest after receiving a copy of the investigative file or beginning deliberation the ACC members shall immediately announce the existence of the potential conflict of interest to the other members of the ACC.
 - (d) ACC members shall discuss the details of the potential conflict of interest and if the majority determines that the conflict is such that the affected member should not be involved, that member shall be excused from the meeting prior to any consideration of the matter and shall return only after voting on the matter has concluded.

B. *Determinations.*

- (1) Following deliberation of the investigative file, interviews, body camera footage, and other available materials, an ACC determination shall be made by a majority vote of the members in attendance.
- (2) Each ACC member shall cast one vote and shall not abstain unless prohibited from participating in accordance with §A(3) of this regulation.
- (3) If the ACC makes a determination that administrative charges should be filed, the ACC shall make a recommendation in accordance with the Statewide Disciplinary Matrix established under Public Safety Article, §3-105, Annotated Code of Maryland.
- (4) The ACC shall not administratively charge an officer for conduct arising from an incident for which the officer has previously been disciplined or sanctioned.
- (5) Within five business days of the completed deliberations and vote, the ACC shall forward a written opinion and charging recommendation to the agency head, the officer, and the complainant.

C. *Law Enforcement Agency-Receipt of Written Opinion.*

- (1) Upon receipt of the ACC's administrative charging document and written opinion detailing the findings, determinations, and recommendations, the agency head of the law enforcement agency shall perform the duties assigned under Public Safety Article, §3-105(c), Annotated Code of Maryland.

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(2) The agency head may offer the same discipline recommended by the ACC or a higher degree of discipline within the applicable range of the disciplinary matrix but may not deviate below the ACC's recommendation.

(3) The officer may accept the discipline as originally offered by the agency head; or

(4) The officer may refuse to accept the discipline as originally offered by the agency head and have the matter referred to a trial board.

Troy D. Berry

Chair

Maryland Police Training and Standards Commission