

MAY 2022

# POLICE ACCOUNTABILITY ACT

WHAT IT MEANS FOR YOU



FRATERNAL ORDER OF POLICE, MARYLAND STATE LODGE, INC.



# POLICE ACCOUNTABILITY ACT

*Effective July 1, 2022, the LEOBR is repealed and replaced with the Police Accountability Act. The statute related to the Police Accountability Act is located in the Public Safety Article, §3-101 through §3-114.*

*Most importantly, law enforcement officers will continue to have the right to legal representation. Law enforcement officers should contact legal counsel as soon as possible prior to making any statements or submitting any written reports.*

## POLICE ACCOUNTABILITY BOARDS – PS §3-102

Each County will have a Police Accountability Board (PAB). The PAB will hold quarterly meetings with the heads of law enforcement agencies and otherwise work with law enforcement agencies and the county governments to improve matters of policing.

**The PAB will:**

- Appoint members to the Charging Committees and Trial Boards;
- Receive complaints of police misconduct filed by members of the public; and
- On a quarterly basis, review outcomes of disciplinary matters considered by the Charging Committees; and
- Identify trends in the disciplinary process of law enforcement officers in the county; and
- Make recommendations on changes to policy that would improve police accountability in the county.

**Each county will be required to:**

- Establish the membership of the PAB;
- Establish the budget of the PAB;
- Appoint a chair of the PAB who has relevant experience to the position;
- Establish a record keeping procedure;
- An active Law enforcement officer may not be a member of a PAB;
- The Membership of the PAB shall reflect the racial, gender, and cultural diversity of the county.

**A complaint of misconduct filed with the PAB shall include the following:**

- The name of the Law enforcement officer;
- A description of the facts on which the complaint is based;
- Contact information of the complainant or a person filing on behalf of the complainant for investigative follow-up;
- A complaint need not be notarized;
- A complaint of misconduct filed with a PAB shall be forwarded to the appropriate law enforcement agency within 3 days after it is received by the PAB.

An individual may file a complaint of police misconduct with the law enforcement agency that employs the law enforcement officer who is the subject of the complaint. **A complaint of police misconduct shall include:**

- The name of the accused law enforcement officer;
- A description of the facts on which the complaint is based;
- Contact information of the complainant or a person filing on behalf of the complainant for investigative follow-up
- A complainant need not be notarized.

## ADMINISTRATIVE CHARGING COMMITTEES – PS §3-104

Each county shall have one administrative charging committee (ACC).

**An ACC shall be composed of:**

- The chair of the county's PAB, or another member of the ACC designated by the chair of the PAB;
- Two civilian members selected by the PAB.

There shall be at least one statewide ACC to serve statewide and bi-county law enforcement agencies.

**The statewide ACC shall be composed of:**

- Three civilian members appointed by the Governor;
- One civilian member appointed by the President of the Senate;
- One civilian member appointed by the speaker of the House.

Before serving as a member of the ACC, an individual shall receive training on matters relating to police procedures from the MPTSC. On completion of any investigation of a complaint involving a member of the public and a law enforcement officer, the law enforcement agency shall forward to the appropriate ACC the investigative files for each complaint.

**The ACC SHALL:**

- Review the findings of a law enforcement agency's investigation;
- Make a determination as to whether the law enforcement officer who is under investigation shall be administratively charged;
- If the law enforcement officer is charged, recommend discipline in accordance with the law enforcement agency's disciplinary matrix;
- Review any BWC footage that may be relevant to the matters covered in the investigation;
- Authorize a law enforcement officer to appear before an ACC who may be accompanied by a representative/attorney;
- Issue a written opinion that describes in detail its findings, determinations, and recommendations; and
- Forward the written opinion to the chief of the law enforcement agency, the law enforcement officer, and the complainant.

**The ACC MAY:**

- Request additional information or action from the law enforcement agency that conducted the investigation, including requiring additional investigation and the issuance of subpoenas;
- If the law enforcement officer is not administratively charged, make a determination that the allegations are either unfounded or exonerated and record in writing any failure of supervision that caused or contributed to the law enforcement officer's alleged misconduct.

The ACC shall meet once per month or as needed. A member of the ACC shall maintain confidentiality of the investigation and administrative charges until final disposition of the matter. Internal complaints that do not involve a member of the public are not reviewed by the ACC. The decision to administratively charge a law enforcement officer will be determined by the law enforcement agency.

STATEWIDE DISCIPLINARY MATRIX – PS §3-105

The MPTSC will create a uniform disciplinary matrix to be used in ALL charged administrative cases regardless of whether the discipline is determined by the ACC or the law enforcement agency.

Within 15 days after an ACC issues an administrative charge(s) against a law enforcement officer, the head of the officer’s agency shall offer discipline to the officer in accordance with the disciplinary matrix.

The chief/sheriff may offer the same or a higher level of disciplinary action within the range of the disciplinary matrix but is not permitted to offer a lesser disciplinary action than that recommended by the ACC.

If the law enforcement officer accepts the chief’s/sheriff’s offer of discipline, the case is concluded.

If the law enforcement officer does not accept the chief’s offer of discipline, the matter shall be referred to a trial board.

**At least 30 days prior to the commencement of a trial board, the Law enforcement officer shall be:**

- Provided a copy of the investigatory record;
- Notified of the charges against the officer; and
- Notified of the disciplinary action being recommended.

70%

**OF MARYLAND OFFICERS**  
feel they are less effective with  
new police reform legislation  
in place

14

**NEW OFFICERS**  
graduated in Montgomery  
County in 2021—the lowest  
amount in over 20 years



## TRIAL BOARDS – PS §3-106

**In all cases (internal and external complaints) a trial board shall be composed of:**

- For law enforcement agencies other than statewide and bi-county law enforcement agencies: an actively serving or retired administrative law judge or a retired judge of the District or Circuit Court, appointed by the Chief Executive Officer of the County;
- For statewide and bi-county law enforcement agencies: an actively serving or retired administrative law judge or a retired judge appointed by the Chief Administrative Law Judge of the Maryland Office of Administrative Hearings.
- A civilian who is not a member of the ACC; and
- A law enforcement officer of equal rank to the accused officer.

Before serving as a member of a trial board, an individual shall receive training on matters relating to police procedures from MPTSC.

Within 45 days after the final hearing by a trial board, the trial board shall issue a written decision reflecting the findings, conclusions, and recommendations of a majority of the trial board.

**Within 30 days after said decision, if the accused law enforcement officer is aggrieved by the decision, he/she may file an appeal to the appropriate court as follows:**

- A law enforcement officer may file an appeal to the county, Circuit Court in which the law enforcement agency is located;
- A law enforcement officer employed in a statewide or bi-county law enforcement agency shall file an appeal to the Circuit Court for Anne Arundel County.
- If the law enforcement officer does not appeal the trial board decision, that decision is final and binding on both the law enforcement officer and the chief.
- The chief no longer has the authority to increase the discipline imposed by the trial board.

## SUSPENSION OF POLICE POWERS – PS §3-107

Pending an investigation by the ACC and the trial board process, a chief may impose a suspension with or without pay if the chief determines that such a suspension is in the best interest of the public.

**An emergency suspension without pay may not exceed 30 days:**

- A law enforcement officer who is suspended without pay under this subsection is entitled to back pay if the ACC determines not to administratively charge the law enforcement officer in connection with the matter on which the suspension was based.

**A chief or his/her designee may suspend a law enforcement officer without pay and suspend the officer's police powers on an emergency basis if the officer is charged with:**

- A disqualifying crime, as defined in §5-101 of the Public Safety Article;
  - A misdemeanor committed in the performance of duties as a law enforcement officer; or
  - A misdemeanor involving dishonesty, fraud, theft or misrepresentation.
- A law enforcement officer who is suspended without pay under this provision is entitled to receive back pay if the criminal charge or charges against the officer result in: a finding of not guilty; an acquittal; a dismissal or a nolle prosequi.

## TERMINATION WITHOUT A TRIAL BOARD – PS §3-107

The chief shall terminate the employment of a law enforcement officer who is convicted of a felony.

**The chief may also terminate the employment of a police officer who:**

- Receives a PBJ for a felony;
- Is convicted of:
  - A misdemeanor committed in the performance of duties as a police officer;
  - A misdemeanor for 2nd degree assault; or
  - A misdemeanor involving dishonesty, fraud, theft or misrepresentation.

## INTERROGATIONS, POLYGRAPHS, DRUG & ALCOHOL TESTING – PS §3-107

A law enforcement officer may be required to submit to blood alcohol tests, blood, breath or urine tests for CDS, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation.

If the law enforcement officer refuses to submit to an ordered test, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal.

A required test, examination or interrogation are not admissible or discoverable in a criminal proceeding against the officer.

A required polygraph examination is not admissible or discoverable in a criminal or civil proceeding against a law enforcement officer.

## RIGHT TO REPRESENTATION – PS - §3-109

A law enforcement officer is entitled to representation at an interrogation

The Police Accountability Act does not exclude a law enforcement officer who is on probation from the right to representation.

## AGENCY ACTIONS AGAINST A LAW ENFORCEMENT OFFICER – PS §3-110

A law enforcement officer may not be discharged, disciplined, demoted, or denied a promotion, transfer, or reassignment, or otherwise discriminated against or threatened in regard to the law enforcement officer's employment because the officer disclosed information that evidences:

- Mismanagement;
- A waste of government resources;
- A danger to public health or safety; or
- A violation of law or policy committed by another officer; or
- Lawfully exercised constitutional rights.

A law enforcement officer may not be denied the right to bring suit arising out of the officer's official duties.

A law enforcement officer has the same rights to engage in political activity as a state employee, except when on duty. A law enforcement agency may not prohibit secondary employment but may create reasonable regulations.

## COLLECTIVE BARGAINING – PS §3-111

A law enforcement agency may not negate or alter any of the requirements of this subtitle through collective bargaining.

Collective bargaining may not be used to establish or alter any aspect of the process for disciplining a law enforcement officer.

## EXPUNGEMENT OF RECORDS – PS §3-112

A record relating to an administrative or criminal investigation of misconduct including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, may not be:

- Expunged; or
- Destroyed by a law enforcement agency.

## STATUTE OF LIMITATIONS – PS §3-114

The process of review by the investigating unit through disposition by the ACC shall be completed within one year and one day after the filing of a complaint by a citizen.



## CURRENT RIGHTS THAT ARE NO LONGER GUARANTEED

- Petition to Show Cause before a Circuit Court why a right provided under the Police Accountability Act was violated by the law enforcement agency, PAB, or the ACC
- Right to a notice of the nature and scope of the internal investigation
- Five business days to obtain counsel
- The right to be interrogated by a law enforcement officer
- The right to be interrogated by just one investigator

## CURRENT RIGHTS THAT ARE STILL IN EFFECT

- The right to counsel throughout the disciplinary process
- The 5th Amendment right to remain silent in a criminal investigation (Garrity)
- Qualified Immunity

**82%**

**OF MARYLAND OFFICERS**  
don't feel supported by their  
local legislators

**40**

**DEPUTY SHERIFFS**  
down in Prince  
George's County

## OTHER PROVISIONS OF THE POLICE ACCOUNTABILITY ACT

- Law enforcement officers are required to display ID to a stopped individual and provide their name, ID number, name of agency, and reason for the stop. Failure to do so could lead to disciplinary action.
- A law enforcement officer cannot prevent a citizen from recording an interaction with law enforcement if the citizen is acting lawfully and safely.
- Provides a Loan Assistance Repayment program for law enforcement officers and those desiring to become law enforcement officers.
- Increased caps for liability of local and state governments in civil lawsuits. Caps raised from \$400,000/\$800,000 to \$890,000 for both economic and non-economic damages.
- Every law enforcement agency must designate an employee as a victim's rights advocate to act as a contact for the public for matters involving allegations of police misconduct. The employee shall explain the process of investigating and adjudicating complaints and allow the complainant to review the law enforcement officer's statement prior to the conclusion of the investigation.
- Every law enforcement agency shall create a database that enables a complainant to access the status of his/her complaint by assigning a tracking number.
- All law enforcement agencies must issue BWCs by July 1, 2023.
- All BWCs must have a minimum of a 60 second buffer prior to the activation of the BWC.
- All law enforcement agencies must develop a non-punitive, early warning system to track officers who have been accused of excessive force/misconduct.
- All law enforcement agencies shall give employees access to counseling, crisis counseling, stress management, resiliency, and peer support services.
- No-knock search and seizure warrants must be executed between the hours of 0800-1900hrs. absent exigent circumstances. Absent exigent circumstances, when executing a search and seizure warrant, the law enforcement officer must allow a minimum of 20 seconds for the occupants to respond before making entry.
- When executing a search and seizure warrant, a law enforcement officer must be clearly recognizable as a law enforcement officer.

ATTORNEY GENERAL, INDEPENDENT INVESTIGATIVE DIVISION (IID)

- The IID shall investigate any police involved incident that results in the death of a civilian or injuries that are likely to result in the death of a civilian.
- The IID will shall determine whether an incident is police-involved and whether an injury is likely to result in death.
- The IID may also investigate any other alleged crimes related to police misconduct that are discovered during an investigation pursuant to this provision.
- A law enforcement agency shall cooperate with and may not impede the IID in connection with the investigation of a police-involved death of a citizen.
- The IID may file for injunctive relief against any law enforcement agency who interferes or attempts to interfere with their investigation.
- The IID has subpoena power.
- The IID has the authority to use the Grand Jury in the county/city with jurisdiction over the investigation.
- Within 15 days after completing their investigation, the IID shall transmit a report containing detailed investigative findings to the State's Attorney of the county/city that has jurisdiction to prosecute the matter.



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