

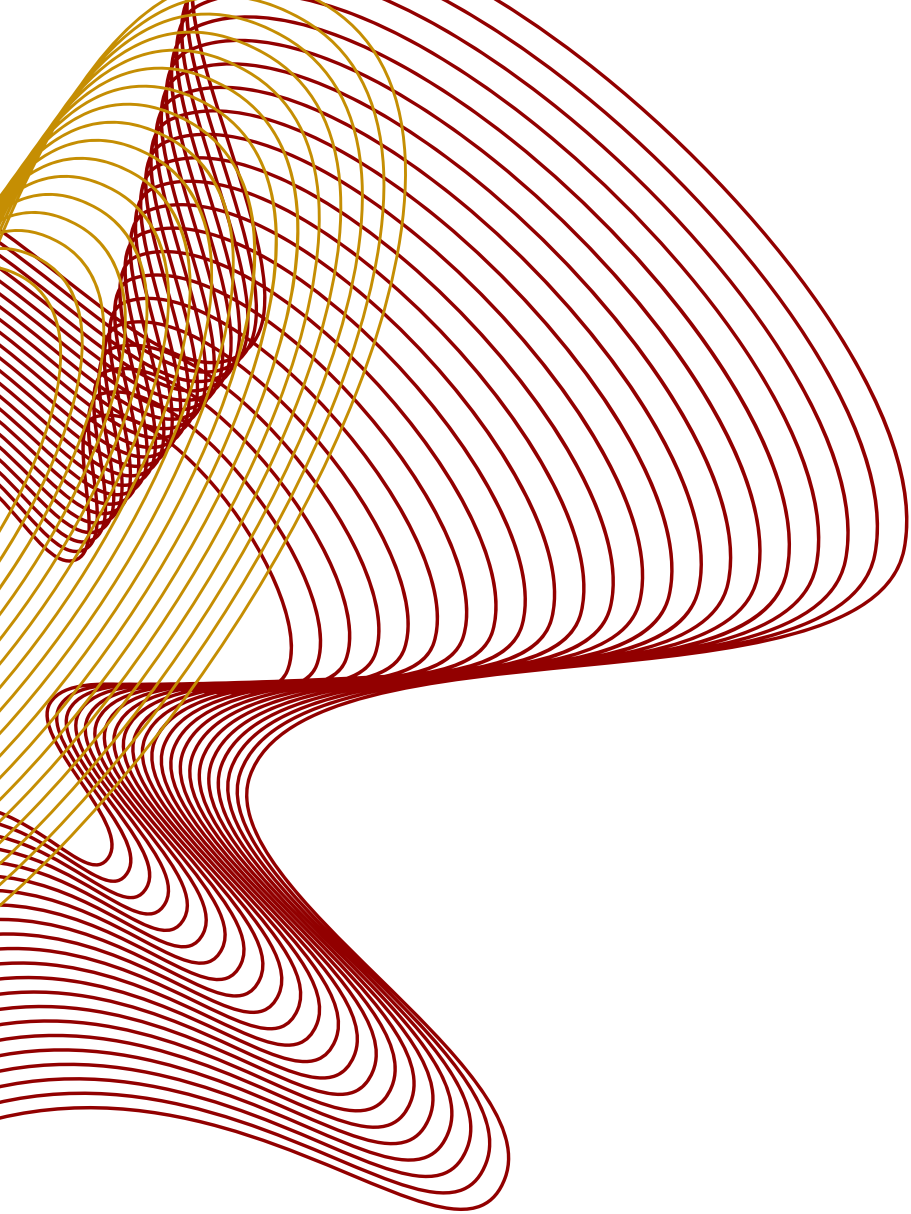


Implementation of the Maryland Police Accountability Act of 2021

JUNE 2024



POLICE EXECUTIVE
RESEARCH FORUM



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Introduction

In 1974, Maryland became the first state in the country to enact a Law Enforcement Officers' Bill of Rights (LEOBR), which outlined an internal process for police discipline. Advocates for civilian oversight long believed that LEOBR's discipline processes lacked transparency and prevented genuine accountability. However, the movement to overturn LEOBR never gained momentum until the public backlash to several high-profile incidents over the past decade.¹

In 2021, Maryland also became the first state in the country to repeal its LEOBR, replacing it with the Maryland Police Accountability Act (MPAA).² Since then, jurisdictions have implemented the MPAA to varying degrees.

In November 2023, the Maryland Governor's Office of Crime Prevention and Policy (GOCPP) awarded a grant to the Police Executive Research Forum (PERF) to review MPAA implementation across the state, identify issues, and make recommendations.

The Maryland Police Accountability Act of 2021

Among other features, the MPAA introduced new transparency measures into the police accountability process by shifting police discipline decision-making authority from sheriffs and police chiefs to civilian-led panels for cases involving members of the public.

The MPAA requires each of the state's 23 counties, and the City of Baltimore,³ to establish three civilian-led panels: Police Accountability Boards (PABs), Administrative Charging Committees (ACCs), and Trial Boards. We briefly and broadly address each panel below, as well as the role of law enforcement agencies in the new processes.

¹ Rebecca Tan. "There's a reason it's hard to discipline police. It starts with a bill of rights 47 years ago." *The Washington Post*. August 29, 2020. <https://www.washingtonpost.com/history/2020/08/29/police-bill-of-rights-officers-discipline-maryland/>; Radley Balko. "The police officers' bill of rights." *The Washington Post*. April 24, 2015. <https://www.washingtonpost.com/news/the-watch/wp/2015/04/24/the-police-officers-bill-of-rights/>; Kevin Rector. "Charges dropped, Freddie Gray case concludes with zero convictions against officers." *The Baltimore Sun*. August 21, 2019. <https://www.baltimoresun.com/2016/07/27/charges-dropped-freddie-gray-case-concludes-with-zero-convictions-against-officers/>; David McFadden. "In Baltimore, public trust in police force hard to find." *The Baltimore Sun*. June 1, 2019. <https://www.baltimoresun.com/2018/12/26/in-baltimore-public-trust-in-police-force-hard-to-find/>; Steve Eder, Michael H. Keller, and Blacki Migliozi. "As New Police Reform Laws Sweep Across the U.S., Some Ask: Are They Enough?" *The New York Times*. October 10, 2021. <https://www.nytimes.com/2021/04/18/us/police-reform-bills.html>

² Ovetta Wiggins and Erin Cox. "Maryland enacts landmark police overhaul, first state to repeal police bill of rights." *The Washington Post*. April 10, 2021. https://www.washingtonpost.com/local/md-politics/hogan-vetoes-police-accountability/2021/04/09/c0ac4096-9967-11eb-962b-78c1d8228819_story.html

³ The City of Baltimore is an independent municipality that for purposes of this report is considered a county-level entity; unless otherwise stated, all references to Maryland's counties in this report should be understood to include the City of Baltimore as a county equivalent.

Police Accountability Boards⁴

The Police Accountability Board (PAB) in each county serves as a high-level body that observes policing trends within the jurisdiction. Each local governing body⁵ determines how many people will sit on the PAB and makes staffing determinations and budget appropriations.

Duties of a Police Accountability Board [Taken from Maryland Public Safety Article § 3-102]

- (a) Each county shall have a police accountability board to:
 - (1) hold quarterly meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the county government to improve matters of policing;
 - (2) appoint civilian members to charging committees (ACCs) and trial boards;
 - (3) receive complaints of police misconduct filed by members of the public; and
 - (4) (i) on a quarterly basis, review outcomes of disciplinary matters considered by charging committees; and
(ii) on or before December 31 each year, submit a report to the governing body of the county that:
 - 1. identifies any trends in the disciplinary process of police officers in the county; and
 - 2. makes recommendations on changes to policy that would improve police accountability in the county.

Figure 1

PABs are comprised of community members with “relevant experience,” a term undefined in the MPAA and left to each local governing body to interpret. Active members of law enforcement are prohibited from serving on PABs, but many counties have retired law enforcement personnel on their PABs. The backgrounds of other PAB members vary widely – including faith leaders, engineers, veterans, researchers, attorneys, human resources professionals, and more.

PABs may receive complaints of police misconduct from members of the public and must forward those complaints to the appropriate law enforcement agency within three days. PABs review and prepare summary reports on aggregated disciplinary outcomes, but the MPAA does not authorize PABs to evaluate or issue findings on individual complaints.

⁴ Maryland Public Safety Article § 3-102 *et seq.*

⁵ E.g. city or county council, or equivalent.

Administrative Charging Committees⁶

Unlike PABs, Administrative Charging Committees (ACCs), are authorized by law to review individual allegations of police misconduct involving a member of the public and make charging decisions and disciplinary recommendations pursuant to the Uniform State Disciplinary Matrix (USDm).⁷ Each county has one ACC; one statewide ACC reviews cases from state law enforcement agencies and agencies with bi-county jurisdiction.

By statute, all ACCs consist of five members. One member must be the PAB chair or the chair's designee. Two members are appointed by the chief executive officer of the county, and two members are appointed by the PAB. ACCs conduct confidential police misconduct reviews and must meet *at least* once each month.

Duties of an Administrative Charging Committee [Taken from Maryland Public Safety Article § 3-104]

- (e) An administrative charging committee shall:
 - (1) review the findings of a law enforcement agency's investigation conducted and forwarded in accordance with subsection (d) of this section;
 - (2) make a determination that the police officer who is subject to investigation shall be:
 - (i) administratively charged; or
 - (ii) not administratively charged;
 - (3) if the police officer is charged, recommend discipline in accordance with the law enforcement agency's disciplinary matrix established in accordance with § 3-105 of this subtitle;
 - (4) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct;
 - (5) authorize a police officer called to appear before an administrative charging committee to be accompanied by a representative;
 - (6) issue a written opinion that describes in detail its findings, determinations, and recommendations; and
 - (7) forward the written opinion to the chief of the law enforcement agency, the police officer, and the complainant.

Figure 2

Notably, the MPAA also requires that the Maryland Police Training and Standards Commission (MPTSC) develop and implement training for ACC members. All ACC members must complete the

⁶ Maryland Public Safety Article § 3-104 *et seq.*

⁷ The Uniform State Disciplinary Matrix (USDm) is outlined by COMAR 12.04.10; see https://mdle.net/regs/PTSC_Uniform_State_Disciplinary_Matrix.pdf

40-hour MPTSC training program prior to reviewing cases; however, the state does not compensate ACC members for their time during the required training.⁸

After reviewing police misconduct investigations, and, if necessary, directing further law enforcement investigation, ACCs provide their charging determinations and punishment recommendations to the agency head.⁹ If the ACC administratively charges an officer, the agency head's only option is to impose the penalty recommended by the ACC or a greater penalty within the USDM; the agency head cannot impose a penalty less than that recommended by the ACC. If the affected officer does not accept the charges and/or penalty, the matter is referred to a Trial Board.

Trial Boards¹⁰

Pursuant to the MPAA, Trial Boards adjudicate certain police disciplinary charges when an officer does not accept the discipline offered by the agency head. Trial Boards are comprised of three members: one civilian who is not a member of the ACC (appointed by the PAB); one 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); and one police officer of equal rank to the one accused of misconduct (appointed by the law enforcement agency head).

Similar to ACCs, Trial Board members are required to complete an uncompensated¹¹ training requirement with MPTSC before reviewing cases, but the Trial Board training is sixteen, rather than forty hours.

Unlike PABs and ACCs, Trial Boards do not meet regularly, but are instead activated as needed (i.e. they meet when an officer does not accept discipline and seeks a hearing before a Trial Board). By statute, Trial Boards can administer oaths and issue subpoenas.

The law enforcement agency is responsible for establishing the Trial Board processes and presenting the evidence before them. Officers may only be disciplined for "cause" demonstrated by a preponderance of evidence, and officers may appeal Trial Board decisions to circuit court.

⁸Individual counties may pay ACC members a stipend, but it is not required by law.

⁹ "Agency head" has the meaning defined in COMAR 12.04.01.01B(3), to include a police chief, sheriff, or other chief executive officer of a law enforcement organization.

¹⁰ Maryland Public Safety Article § 3-106 *et seq.*

¹¹ Individual agencies or counties may pay Trial Board members a stipend during training, but it is not required by law.

Duties of a Trial Board
[Taken from Maryland Public Safety Article § 3-106]

- (c) The actively serving or retired administrative law judge or the retired judge of the District Court or a circuit court shall:
 - (1) be the chair of the trial board;
 - (2) be responsible for ruling on all motions before the trial board; and
 - (3) prepare the written decision of the trial board, including the findings, conclusions, and recommendations of the trial board.
- (e) Proceedings of a trial board shall be open to the public, except to protect: (1) a victim's identity; (2) the personal privacy of an individual; (3) a child witness; (4) medical records; (5) the identity of a confidential source; (6) an investigative technique or procedure; or (7) the life or physical safety of an individual.
- (f) A trial board may administer oaths and issue subpoenas as necessary to complete its work.
- (j) 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.

Figure 3

Law Enforcement Agencies

Under the MPAA, law enforcement's role in the disciplinary process has changed but is still significant. The law enforcement agency (LEA) investigates all complaints of police misconduct. For complaints involving a member of the public, the investigation must then be referred to the ACC for review and decision. The law enforcement agency may include written recommendations on findings and discipline, and while the ACC must consider the agency's recommendation as a part of its review, it is empowered to make an independent determination about whether charges are issued, and if so, what discipline is appropriate (within the range set by the USDM).

Within 15 days of receipt of administrative charges and recommended discipline from an ACC, the head of the agency must offer discipline to the officer. While the agency head can offer discipline *greater* than that recommended by the ACC (within the parameters of the USDM), the discipline *cannot be less* than that recommended by the ACC. Similarly, an agency head *cannot* discipline an officer if the ACC does not administratively charge, even if the agency concluded that administrative charges were warranted.¹² The inverse is also true; if an ACC administratively charges, the agency is not empowered to overrule that determination.

¹²Maryland Public Safety Article § 3-104(c)(2)

Same Law, Different Implementation and Impacts

The MPAA covers every LEA in Maryland, but it impacts agencies and oversight bodies differently. For example, Prince George's County has a population of nearly 1,000,000 and 28 law enforcement agencies; Kent County has a population of 19,000 and three law enforcement agencies. Yet both counties have, by law, one five-person ACC to review their misconduct complaints. In 2023, the Prince George's County ACC reviewed more than 100 misconduct complaints, while Kent County's ACC reviewed two, and in one of those cases, the deputy resigned during the process.¹³

The Prince George's County / Kent County disparity in ACC workload underscores the practical implications of applying the same process to twenty-four distinct jurisdictions (twenty-three counties and the City of Baltimore). MPAA implementation has therefore been uneven across jurisdictions. Moreover, different jurisdictions have interpreted provisions of the MPAA differently. This is not surprising when a new law with wholly different processes replaces a 50-year precedent.

PERF Review of MPAA Implementation Statewide

Since the MPAA went into effect, jurisdictions across the state have implemented its requirements differently. Some faced initial challenges efficiently starting their PABs and ACCs; some have faced challenges with clearly defining the respective roles of the PAB, ACC, and professional staff; all have had varying levels of collaboration between PABs and law enforcement agencies. However, there has not yet been any comprehensive review to identify the full breadth and scope of implementation challenges experienced by stakeholders throughout the state.

To address this gap in information, the Maryland Governor's Office of Crime Prevention and Policy (GOCPP) awarded a grant to the Police Executive Research Forum (PERF) to conduct a review. PERF's three goals were: (1) Identify existing PAB and LEA engagement practices in Maryland; (2) Recommend ways to improve the consistency of PAB practices throughout the state; and (3) Recommend ways to improve PAB and LEA compliance with the MPAA's requirements.

To achieve these goals, PERF collected information about how different jurisdictions process complaints of police misconduct, evaluated the strengths and weaknesses of each jurisdiction's practices, and identified best practices. Below we present the data collection, analysis, and review process, followed by a discussion of findings and recommendations.

¹³ Prince George's County Police Accountability Board, 2023 Annual Report. <https://www.princegeorgescountymd.gov/departments-offices/integrity-compliance-and-police-accountability/police-accountability-board/reports-recommendations>; Kent County Police Accountability Board, 2023 Annual Report. <https://www.kentcounty.com/committees/police-accountability-board>

Methodology

The PERF team sought to fully understand the legal requirements of the MPAA (including gaps in the law) and then identify challenges to and best practices in MPAA implementation. The PERF team:

- reviewed the MPAA as codified in Maryland Public Safety Article §§ 3-101, *et seq.*, related Code of Maryland Regulations (COMAR) chapters and local ordinances, and annual PAB reports from throughout the state;
- surveyed law enforcement agency heads (or their designees), PAB chairs, and PAB administrative staff;
- interviewed more than 40 stakeholders in law enforcement and PAB leadership; and
- observed several live and recorded PAB meetings.

This work culminated in an implementation summit held on March 7, 2024, in Annapolis, Maryland, that brought together about 150 law enforcement agency heads, PAB chairs, and PAB administrative staff.

Stakeholder Survey Results

On December 20, 2023, PERF circulated a survey to key stakeholders, including senior leadership from all Maryland law enforcement agencies, the chair of each PAB, and PAB support staff for each county. However, the survey results do not equally represent each constituent group (law enforcement, PAB staff, PAB members). The survey was sent to 204 recipients, but some recipients shared it with others. For example, some PAB chairs shared the survey link with other members of their PAB, and some heads of law enforcement agencies opted to delegate their survey response to a member of their command staff with more direct experience with the MPAA. As shown in Figure 4, the survey generated 130 responses: 77 law enforcement respondents (59%), 39 PAB members (30%), and 14 PAB staff members (11%).

Although 59% of responses were from members of law enforcement and 41% of responses were from PAB-related respondents, this somewhat *under*-represents law enforcement and *over*-represents PAB members and staff in this survey sample. The survey was sent to a primary point of contact for each LEA, PAB, and PAB staff office in the state.¹⁴ But there are only 24 PABs in the state, compared with nearly 150 LEAs. Seventy-two percent of survey recipients were LEA heads, but they represented 59% of respondents. Twelve percent of survey recipients were PAB members, but they represented 30% of respondents.

¹⁴ To the extent available, based on contact information provided to PERF by GOCPP and the Maryland Police Training & Standards Commission.

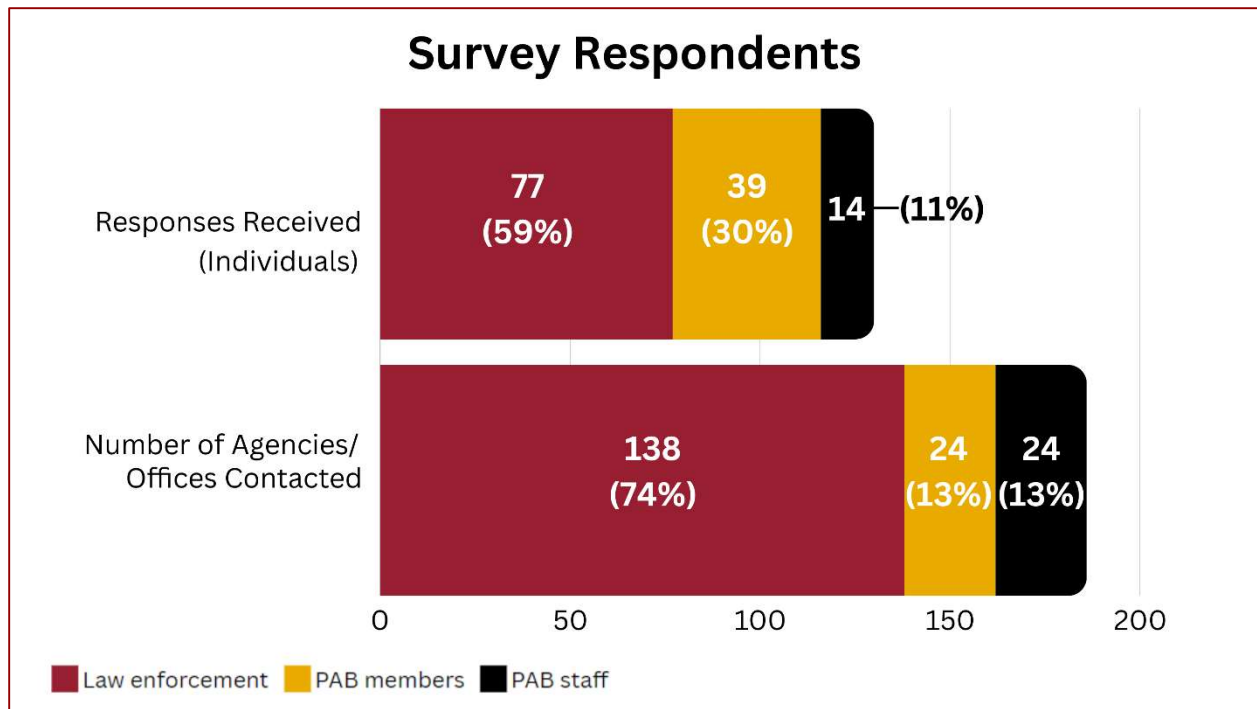


Figure 4

Survey questions were designed to elicit information about MPAA challenges and ideas for improving its implementation. **We received concerns about aspects of the MPAA and its implementation but, overall, we received very few “doom and gloom” sentiments condemning the MPAA altogether.**

One of the questions we asked respondents was, *“What aspects of the Police Accountability Board work well in your jurisdiction?”* The PERF team reviewed responses and grouped them into themes to assess trends in respondents’ answers. The most frequently mentioned themes are shown in Figure 5. Respondents most often mentioned communication and said that information sharing worked well; that having the opportunity to meet and talk face to face with one another was helpful; and that they found their counterparts to be fair and collaborative. Several respondents also touched on the value of PAB meetings as opportunities to build relationships between citizen board members and law enforcement leaders to build trust. Increased transparency and the helpfulness of regular meetings were also among the most common themes.

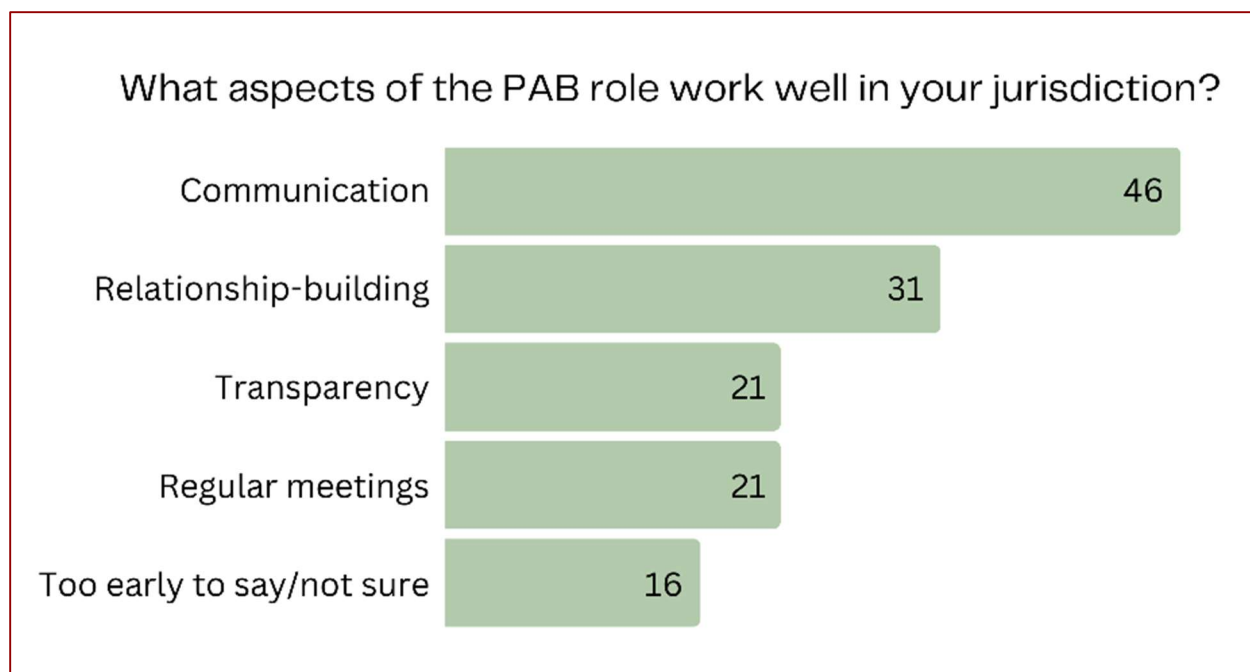


Figure 5

We also asked respondents, “*What aspects of the PAB did not work well in [their] jurisdiction?*” (Figure 6). The most frequent response was that no issues had been identified yet. The second most frequent response was that there weren’t issues with the PAB itself, but rather with the MPAA legislation. For example, one respondent stated, “So far, there have not been any glaring problems except with the legislation itself”; another wrote, “At no fault of our [PAB] members, it appears that much refining is needed in order to make this process efficient. In my opinion, the legislation was hastily completed with weaknesses.” Issues with the legislation raised by respondents included frustration with how the process prevents agency heads from being able to act with urgency; a lack of reasonable options for handling minor issues; and the number of unresolved legal questions created by the combination of the new statute and nullification of previous LEOBR-based case law.

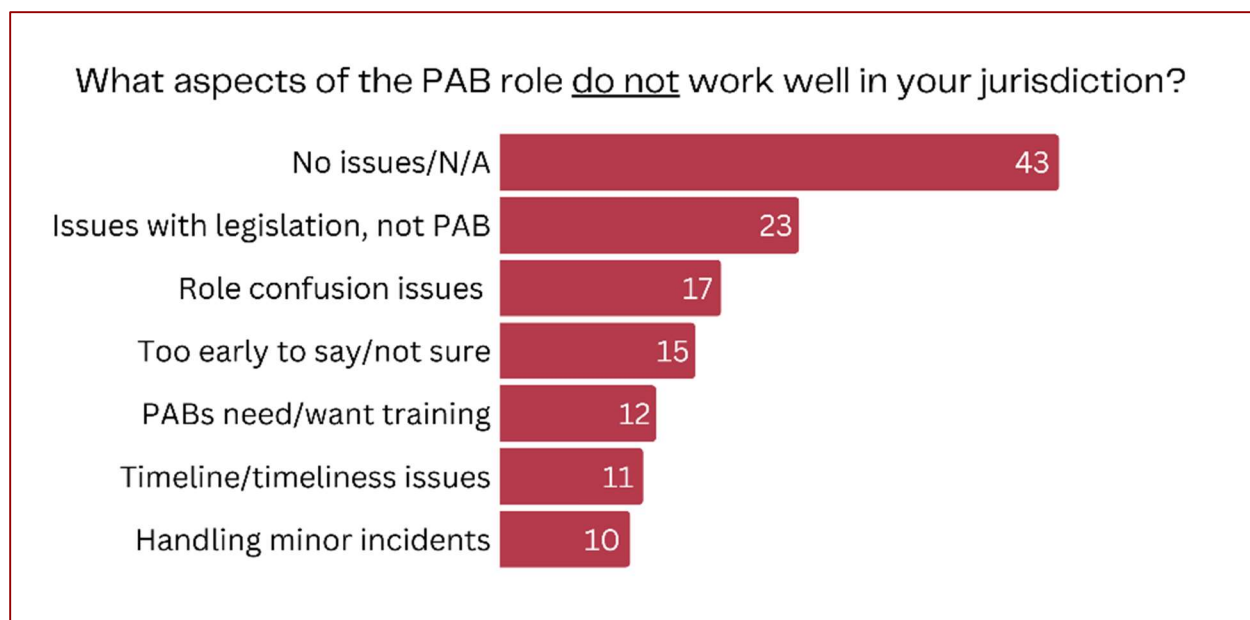


Figure 6

Another section of the survey asked respondents to rate their level of agreement with a series of statements on a scale ranging from Strongly Disagree to Strongly Agree. One of those statements was, “*The PAB has a clear and well-defined role in the accountability system.*” While the majority of respondents in each group agreed with the statement, nearly a quarter of PAB member respondents did not.

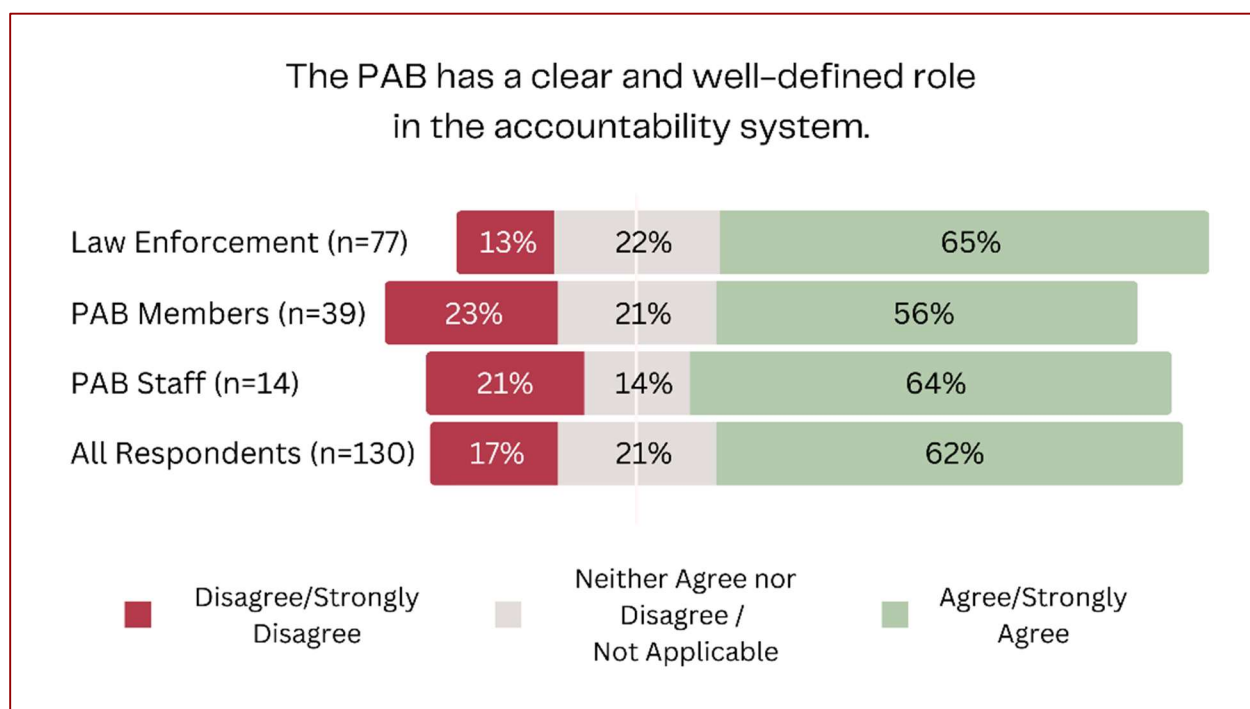


Figure 7

There is not enough information available to draw conclusions about why respondents answered this way, but answers from open-ended questions, interviews, and PAB meetings provide some potential insight. Several PAB members expressed frustration about the limited role the PAB plays in their jurisdiction, especially when compared with the ACC. For example, responses from PAB members about what does not work well about their PAB included statements such as:

- “I believe that the [PAB] should be given the same evidence that the ACC is given in making, reviewing and voting on ACC actions. For example, body-worn camera footage (which is not provided to the Board) seems to play a major role in ACC determinations.”
- “Not sure, we [the PAB] have not done much yet.”
- “It appears to me that the PAB is working well, and I really don’t have any suggestions for improvement, other than perhaps clarification as to what, exactly, is our role.”
- “The review process is being handled by another team [i.e. the ACC] with little insight from PAB.”
- “To date, the PAB is not as involved in the real work being done by the ACC.”
- “Not receiving misconduct cases to review.”¹⁵

However, we also asked respondents to react to the statement *“The amount of information shared with the PAB by LEAs is adequate to meet the applicable state and city/county requirements.”* The PERF team heard early on in our project that information sharing was a point of contention in some jurisdictions. Specifically, members of some PABs felt that they received too little information from their LEAs to be able to effectively fulfill their role of identifying trends and making policy recommendations to improve police accountability. We found that less than 10% of PAB member respondents felt that the amount of information they received from their relevant LEAs was inadequate (see Figure 8).

¹⁵ PERF heard similar sentiments at PAB meetings and at the implementation summit. Some PAB members felt frustration and disappointment that after volunteering to serve under the belief that their role would involve reviewing and making decisions on misconduct cases, their role was largely one of broad oversight.

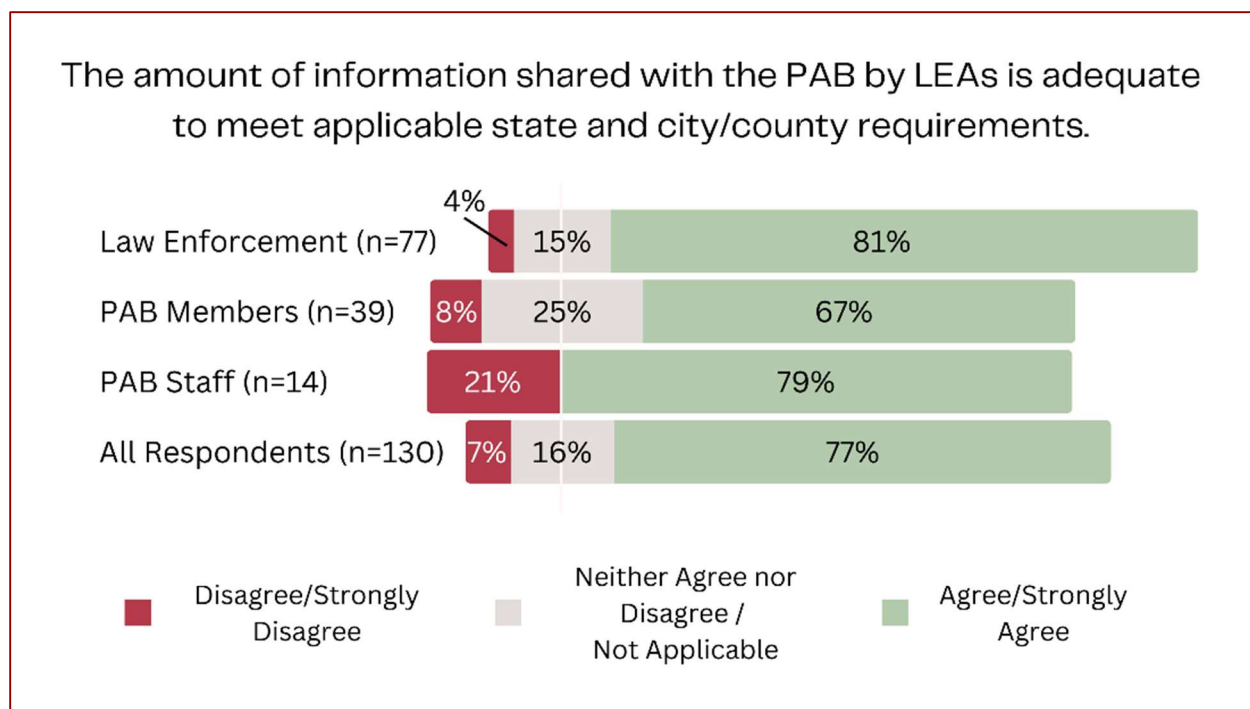


Figure 8

More than two-thirds of PAB-member respondents felt that the amount of information received was appropriate for their needs. It should be noted that the type of information and level of detail each law enforcement agency shares with their respective PAB is not presently known but is likely inconsistent, so the amount of information one PAB deems sufficient may be regarded as insufficient by another. Regardless, these results indicate that for most PAB respondents, their information-sharing expectations (however defined) are being met.

We also posed questions to respondents related to the policy recommendation role of PABs. One was “Law enforcement administrators are receptive to policy recommendations from the PAB.” Most respondents from each group agreed with this statement (see Figure 9). Another policy-related statement was “PAB members have adequate training to make appropriate policy recommendations.” A quarter of all respondents disagreed; even among PAB members, less than half agreed (see Figure 10).

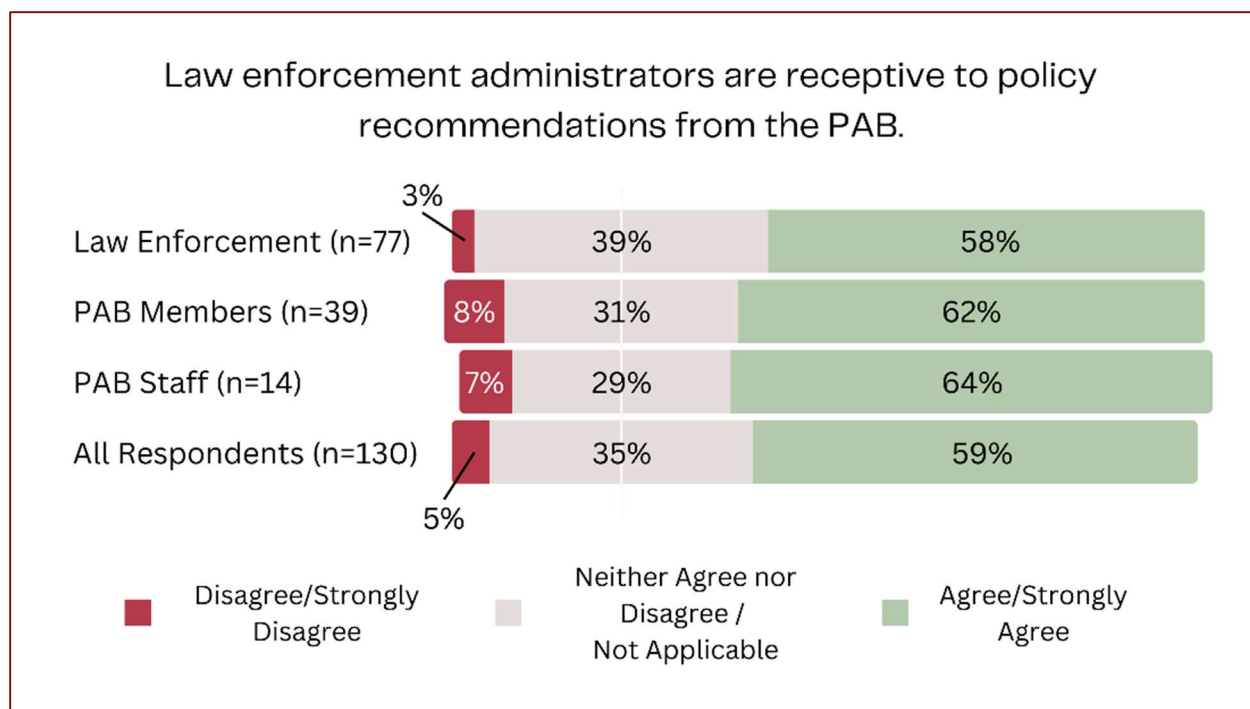


Figure 9

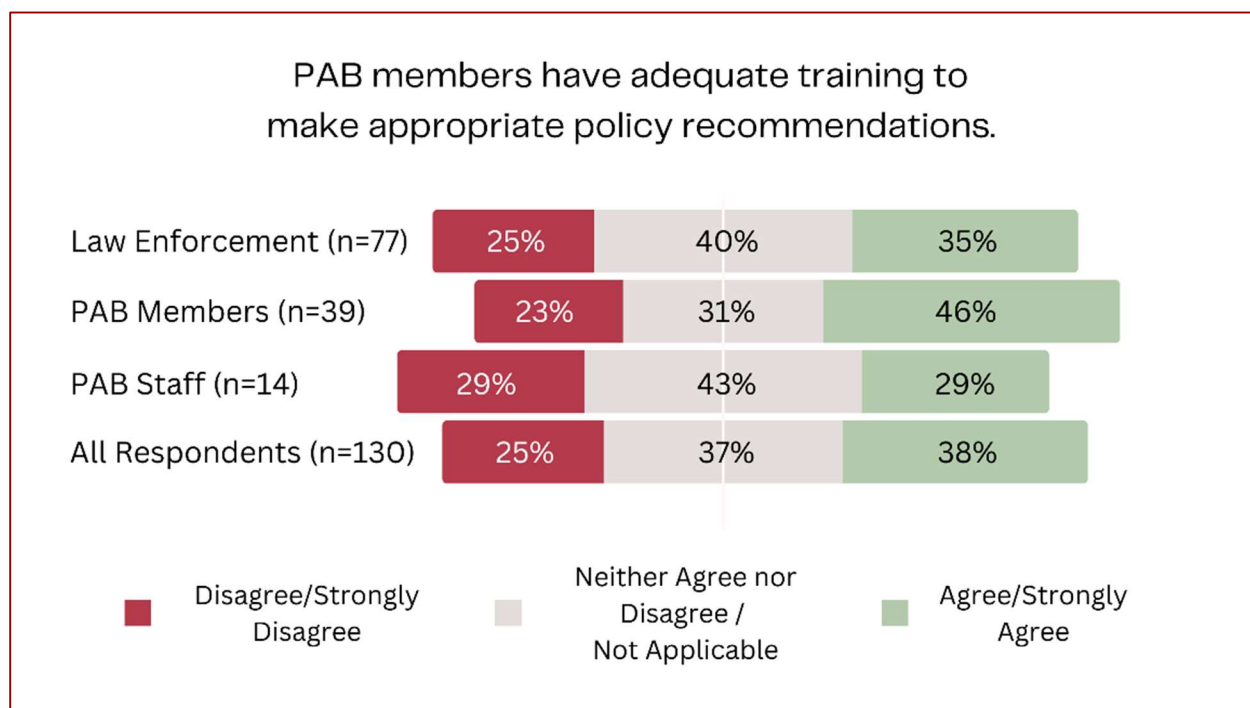


Figure 10

Training and Administration

While many sections of this report will examine individual phases of the officer misconduct complaint and investigation process, there are also issues that sit outside of – but adjacent to – that process: training, administration, and management.

Training

In addition to creating PABs, ACCs, and Trial Boards, the MPAA also tasked the Maryland Police Training & Standards Commission (MPTSC) with establishing certain training programs.¹⁶ To meet the training mandate, MPTSC created a 40-hour program for ACC members and a 16-hour program for Trial Board members. Members of those panels must meet their full training requirement before they are able to review misconduct cases. The MPAA did not create any similar training requirements for PABs, though it is worth noting that per Public Safety Article §3-104, one member of the PAB (chair or designee) also sits on the ACC, and therefore receives the ACC training and training materials (resource guide).

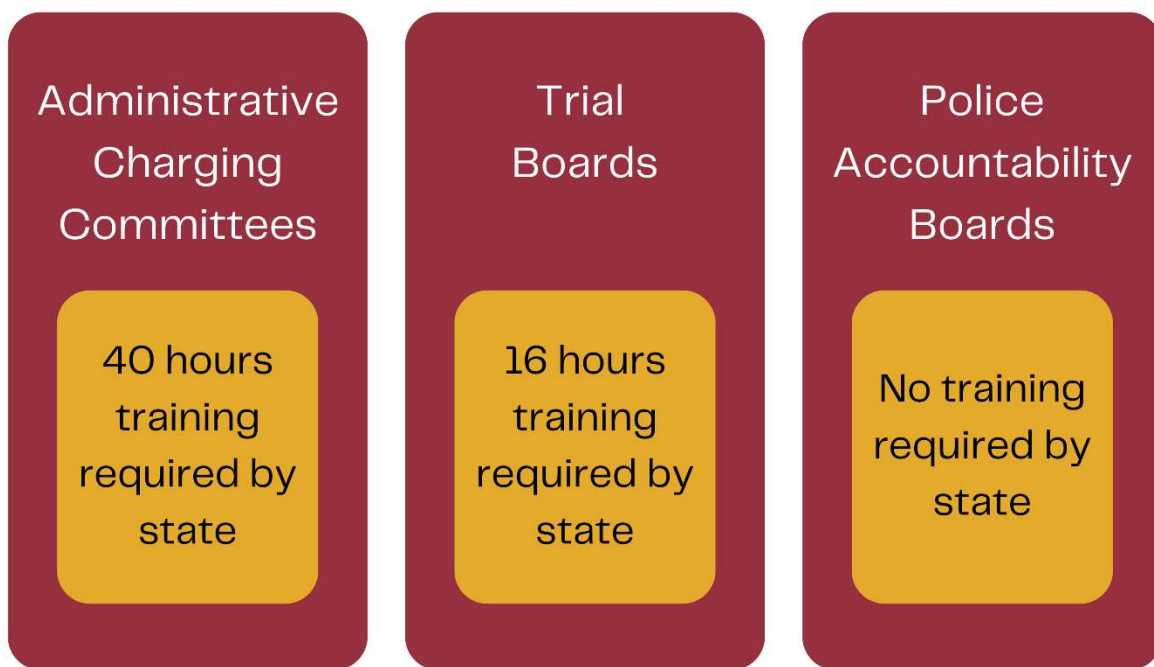


Figure 11

Training for PAB Members

The lack of required training for PABs came up many times in our survey responses, interviews, PAB reports, and during the March 7, 2024, implementation summit. **This does not mean that existing PAB members are ill-suited to their roles.** PAB members bring diverse experiences to

¹⁶ Maryland Public Safety Article §3-104(c) and §3-106(d).

their service including careers as attorneys, educators, healthcare workers, human resource professionals, faith leaders, legislators, and veterans. There are PAB representatives from private industry, non-profit organizations, and civil service; many also have previous experience in law enforcement as sworn officers or non-sworn professional staff. This rich diversity of knowledge and experience can complement that of law enforcement leaders and personnel.

Many law enforcement stakeholders said that PAB input was welcome and valued. But we also heard frustration by some that the lack of any PAB training can leave some PAB members with little knowledge of policing or the agencies they are responsible for overseeing, leading them to make uninformed policy and practice recommendations.¹⁷

In fact, many PAB members expressed their desire for training at our implementation summit, as well as in interviews.

Some law enforcement agencies, municipalities, and counties have tried to compensate for the lack of required PAB training by conducting their own formal or informal training. In Anne Arundel County, members of the PAB undergo County-mandated ethics training and participate in ride-alongs with officers. Similarly, the Frederick Police Department has invited members of the PAB to the police department for ride-alongs and training on subjects such as officer health and wellness programs.

“The PAB and ACC must receive more training, education, and awareness regarding law enforcement operations, procedures, rank structure, policy, attention to orders, etc. In order to make informed decisions, take disciplinary action, suggest policy changes, and effect change, these boards must be more informed. The questions we receive on a regular basis are still generic, broad, and pedestrian. The questions do not come from a place that appear well thought-out or well educated about an officer’s empirical knowledge or experience. This is NOT their fault and we would like to help them; we respect their positions, appreciate their input, and want to collaborate. However, under previous LEOBR law, Chiefs relied on an executive command staff and subject matter experts to determine outcomes and make disciplinary recommendations. Those individuals, most likely, had decades of training knowledge and experience, coupled with the ability to utilize guidance from the county office of law at their request. This new process does not incorporate expertise in the same way, and we are seeing these shortcomings manifest themselves already.”

- Law enforcement survey response

¹⁷ We also found during our interviews and at the implementation summit that some PAB members held beliefs about their role that lay outside the plain language of the MPAA; this also may reflect lack of training.

These types of activities are mutually beneficial. For PAB members, directly observing the work of the law enforcement officers in their communities improves their knowledge of the agency and its policies and practices; it also allows PAB members to get to know officers one-on-one. ACC and Trial Board members – though they do receive formal training from MPTSC – can also benefit from hands-on learning experiences with agencies, which cultivates a more nuanced understanding of the differences in policies, training, standards, and practices among different agencies. For law enforcement personnel, providing training to PAB and ACC members may help de-mystify the oversight process and instill confidence that those involved in making disciplinary decisions and recommendations to the agencies do so from a place of informed knowledge.

Law enforcement agencies should not, however, be the exclusive provider of training for PAB members. While each agency is well-suited to educate about their own policies and practices, it would be inappropriate for law enforcement personnel to train PABs about the PAB's role and responsibilities. PABs may also find training provided by professional organizations, such as the National Association for Civilian Oversight of Law Enforcement (NACOLE), to be useful.¹⁸

Local Expansion of ACC and Trial Board Training

ACC and Trial Board members would similarly benefit from educational opportunities with law enforcement agencies. By law, MPTSC trains ACC and Trial Board members; that training is thorough, but understandably geared toward a statewide audience and deals with the processes for which each body is responsible.

Training Logistics

Implementation summit participants and interviewees agreed that the MPTSC's training for ACCs and Trial Boards is thorough and informative, but some expressed issues with logistics.

Presently, ACC members are required to receive 40 hours of training — an entire workweek for most people — that must be conducted entirely in-person. This comprehensive training is crucial to the ACC's role, but the time commitment is a prohibitive barrier to some potential ACC members. Some people cannot leave family and work commitments aside for 40 hours or otherwise arrange their schedules to accommodate the significant time commitment. Adding to the burden, not all ACC members are compensated for their time or reimbursed for expenses.

Additionally, MPTSC is located in central Maryland, in the city of Sykesville. After passage of the MPAA, MPTSC staff provided some regional ACC and Trial Board training. But since that time, training has been held at MPTSC headquarters. This can present additional challenges, since some attendees may need to drive for hours to attend the training—time during which they are not automatically reimbursed for time, lodging, and meals.

Members of the MPTSC note that many aspects of the ACC and Trial Board trainings are not conducive to on-line or video learning because they are highly interactive, and the ACC training

¹⁸ See <https://www.nacole.org/training> for more information.

includes a case study activity where the participants work in groups to conduct a mock case review and determination. However, there may be portions of the training that are adaptable to alternate methods of delivery, which would make them more accessible to all PAB, ACC, and Trial Board members. For example, MPTSC currently has videos available online that cover the Trial Board process and the USDM as a part of its Trial Board Training for Police Officers curriculum.¹⁹ Both topics are also modules of the ACC member training syllabus,²⁰ so allowing ACC members to view these online at their own convenience might reduce the amount of required in-classroom time. Additional, straightforward topics such as instruction on COMAR regulations (related to MPAA) and the internal affairs process could also be delivered online. A period of in-classroom time will always be needed to cover case-study group exercises and Q&A with instructors, but shortening that period of time (where possible) would reduce the burdens of volunteering for an ACC.

Training Takeaways and Recommendations

Based on the information gathered in this project, four key takeaways on training topics emerged:

- PAB members want and need formal training to effectively carry out their duties.
 - *Note: This topic was discussed extensively during the MPAA Implementation Summit in Annapolis on March 7, 2024. Following the summit, MPTSC announced that it would begin providing a ten-hour training course for PAB members. Details of the training will be forthcoming, from MPTSC.*
- Law enforcement agencies should be a source, but not the only source, of information about their agencies and policies for PAB members.
- In addition to the training provided by the MPTSC, ACCs and Trial Board members could also benefit from learning opportunities provided by local law enforcement agencies, such as ride-alongs, and attending appropriate in-service trainings
- The 40-hour training requirement for ACC members, currently taught in-person, is especially burdensome and may be lessened by alternative delivery methods.

¹⁹ See <https://www.youtube.com/watch?v=FRml-R7TaXU> and <https://www.youtube.com/watch?v=FjDhc0AfS7I>.

²⁰ Available at https://mdle.net/pdf/ACC_Training_Syllabus.pdf.

Recommendation 1:

Law enforcement Agencies should make efforts to provide supplemental, agency-specific learning opportunities to their PAB, ACC, and Trial Board members. This will help to acquaint them with the nuances of the agencies they oversee and better understand policy application (for ACC and Trial Board members) and how to provide meaningful policy recommendations (for PAB members). This might include ride-alongs, tours, allowing them to experience training simulators, sitting in with officers/deputies at in-service, rollcall, or academy training sessions.

Recommendation 2:

The MPTSC should consider expanding training delivery options to increase access and reduce the burdens of training, especially the required 40-hour ACC training. Additional training methods could include self-paced online modules; synchronous, instructor-led online modules; and training broken up over several weeks. MPTSC should also consider organizing annual or semi-annual in-service training conferences for the various volunteer boards (PAB, ACC, Trial Boards) across the state.

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²¹ MPTSC has started offering a 1-day refresher course for ACC members.

Administration of PABs and ACCs

The MPAA requires each local governing body (i.e., each county and the City of Baltimore) to:

1. Establish the membership of its PAB;
2. Establish the budget and staff for the PAB;
3. Appoint a chair of the PAB who has experience relevant to the position; and
4. Establish procedures for record keeping by the PAB.²²

Staffing

Although these requirements are uniform, we learned that vast differences exist in the way they are administered across the state – especially how ACCs and PABs are financed and staffed.

Some governing bodies, like Prince George’s County and the City of Baltimore, have teams of dedicated government employees who support the board’s administrative needs. Smaller, less populated counties are less likely to have full-time dedicated staff. For example, in St. Mary’s County, one staff member dedicates about one half of their time supporting the PAB and ACC, and in Harford County, the PAB and ACC have no dedicated staff.

PAB and ACC staff also vary greatly in their level of involvement with the boards. For some boards, staff members primarily act in a supportive role, such as handling meeting logistics, taking notes, and maintaining records. For others, PAB/ACC staff work closely with their boards and are directly involved in the work by providing legal advice or subject matter expertise, training newly appointed members, conducting community outreach and case management, helping to analyze findings and generate reports, and issuing correspondence.

One challenge noted by some PABs was how to clearly define the roles and responsibilities of PAB members and PAB staff. In many instances PAB staff were hired or assigned prior to the appointment of the first PAB members, and once PAB members began onboarding and collecting their bearings, some found they were in conflict over the responsibilities of board members and staff.

Budgeting and Equipment

Because the MPAA leaves budgetary decisions in the hands of local governing bodies, there is a great deal of variation in funding and resources available to PABs and ACCs. For example, the Prince George’s County PAB budget for Fiscal Year 2024 is about \$1.2 million,²³ while Montgomery

²² Maryland Public Safety Article §3-102(b)(1)(i) *et. seq.*

²³ Prince George’s County Police Accountability Board, *2023 Annual Report*.

https://www.princegeorgescountymd.gov/sites/default/files/media-document/PAB%202023%20Annual%20Report_Combined%20Document%20PUBLISHED.pdf

County's budget is \$509,000.²⁴ Though Montgomery County is home to about 100,000 more residents than Prince George's County, more than twice the number of complaints were filed in Prince George's County than in Montgomery County in 2023.²⁵

Local Government Entity	Compensates PAB Members?	Reimburses PAB member expenses?
Allegany County	Yes	No
Anne Arundel County	Yes	Yes
Baltimore City	Yes	Yes
Baltimore County	Yes	Yes
Calvert County	Yes	No
Caroline County	No	No
Carroll County	Yes	No
Cecil County	Yes	No
Charles County	Not known	Not known
Dorchester County	Yes	Not known
Frederick County	Yes	No
Garrett County	Not known	Yes
Harford County	No	Yes
Howard County	No	No
Kent County	No	Yes
Montgomery County	Yes	Yes
Prince George's County	Yes	Yes
Queen Anne's County	Yes	No
St. Mary's County	Yes	No
Somerset County	Not known	Not known
Talbot County	Yes	Yes
Washington County	No	Yes
Wicomico County	No	No
Worcester County	Yes	No

Figure 12

Some jurisdictions provide stipends to PAB and/or ACC members as compensation for their service to the community, but these can range widely. For ACC members, some jurisdictions pay a flat amount annually, while others pay a set amount per case reviewed. For example, the Baltimore City Office of Equity and Civil Rights pays PAB members approximately \$10,000 annually

²⁴ Montgomery County Police Accountability Board memorandum on proposed FY 2025 budget.

https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=16130&meta_id=176205

²⁵ Prince George's County Police Accountability Board, Annual Report 2023.

<https://www.princegeorgescountymd.gov/sites/default/files/media-document/PAB%202023%20Annual%20Report%20Addendum-Revised%20Final.pdf>; Montgomery County Police Accountability Board, Annual Report 2023.
https://www.montgomerycountymd.gov/pab/Resources/Files/reports/PAB%20Final%20Annual%20Report_2023.pdf

and ACC members \$38,000 annually;²⁶ in Frederick County, ACC members make a set dollar amount per meeting attended.²⁷

Of the 24 PABs in Maryland, fifteen compensate PAB members and ten reimburse PAB members for expenses incurred related to board duties (see **Error! Reference source not found.**).

Promising practice in action: Software implementation in Caroline

In Caroline County, the PAB identified standardization as a priority when considering options for how the county's law enforcement agencies would share case information with the ACC. PAB/ACC staff members vetted options and worked with each of the county's law enforcement agencies to implement the software package that was selected. Purchase of the software for four of the county's five law enforcement agencies was covered by a Police Accountability, Community, and Transparency (PACT) grant from GOCPP (software for the fifth agency was purchase through alternative grant funding).

While citizens can file a complaint through the software's online portal from any device connected to the internet, PACT grant funding also enabled the county's Office of Law to purchase iPads for each department. Having these devices in each agency allows for convenient, private access to the online reporting portal for citizens who come directly into the respective department to file a complaint.

Each department's licensing for the complaint management software is separate, but the standardized use of a single platform has several benefits, including ease of reporting for citizen complainants; ease of information-sharing between each agency and the PAB and ACC; and uniformity in records used for data analysis and annual reports.

One resource need that came up consistently across jurisdictions was the need for secure hardware and software to enable PAB and ACC members to perform their duties. For ACC members, this means devices and programs that allow them to securely access and review information like investigative reports, attachments, and videos, and to securely compose and transmit findings reports. For PAB members, secure equipment is needed to receive misconduct complaints from the public and share them with relevant law enforcement agencies. Data security measures should also be in place to adequately protect against malware attacks and ensure that confidential materials cannot be downloaded and shared externally. Use of virtual private

²⁶ Dana Peterson Moore, Chief Equity Officer, Baltimore City Office of Equity and Civil Rights. *Summit on Implementation of the Maryland Police Accountability Act* (Conference discussion). March 7, 2024, Annapolis, MD.

²⁷ Interview with Dawn Oram, Frederick County PAB Chair, January 29, 2024.

networks (VPNs) can add an additional layer of security, since much PAB and ACC work is conducted remotely - away from government buildings and networks.

In several jurisdictions, the local governing body provides laptops and county/city email addresses for PAB and ACC members to use for their official duties, which makes it possible for county/city IT administrators to manage access controls, anti-malware protection, and other security measures. For access to investigation reports and related materials, one common method is to provide ACC members with limited access to internal evidence platforms like IAPro and evidence.com.²⁸

Not all agencies/jurisdictions have implemented these sorts of practices. For example, in Frederick County, ACC members do not receive secure devices or software access. Therefore, they can only review case information at the County Law Office, during business hours on weekdays – an inconvenient process for busy professionals who perform these duties outside of their regular day jobs.

Administration Takeaways and Recommendations

Based on the information gathered in this project, three key takeaways on administrative issues associated with MPAA-created boards emerged:

- Dedicated administrative support staff are critical for PABs and ACCs to effectively carry out their duties.
- PABs and ACCs need budgets that enable them to carry out the requirements of the MPAA, including keeping information confidential, convening meetings (and making them accessible to the public, when allowable), receiving complaints, and efficiently reviewing and investigating complaints.
- Not all PAB and ACC members in Maryland are compensated for their time or reimbursed for expenses related to their board role; those who do compensate PAB/ACC members do so at widely varying rates.

²⁸ Neither PERF nor GOCPP endorse any particular software programs or packages for complaint/investigation management; this information is provided for informational purposes only.

Recommendation 3:

Every PAB/ACC should be supported by professional staff employed by its local governing body, in accordance with MPAA. Needs will vary from jurisdiction to jurisdiction based on caseloads, frequency of meetings, number of law enforcement agencies, and other factors, but *minimally*, at least one employee of the local governing body, should be assigned part-time to these duties.

Recommendation 4:

ACC members (and potentially PAB members) should have government-issued equipment (such as laptops) and accounts (such as government email addresses) for accessing documents and other materials related to their duties. Because these materials may be sensitive and confidential, use of county-issued devices would provide additional security and encryption to protect against malware and unauthorized redisclosure.

Recommendation 5:

PAB, ACC, and Trial Board members should be compensated for their work. The MPAA does not require that PAB, ACC, and Trial Board members serve as uncompensated volunteers. As depicted in Figure 12, most, but not all, governing bodies compensate ACC members, some of whom review hundreds of cases annually, nearly amounting to an entire full-time job itself; realistic compensation should cover this work. [For more detail, see “Administrative Charging Committees” on page 36.]

Procedural Issues

Complaint Intake and Information Sharing

The MPAA changed the reporting options available to people with complaints of police misconduct against officers; previously, those complaints were filed with the law enforcement agency (LEA). Under the MPAA, people can still file complaints with the LEA, but they can also choose to file them with the PAB.²⁹ Regardless of where the complaint is filed, it “shall include: (i) the name of the police officer accused of misconduct; (ii) a description of the facts on which the complaint is based; and (iii) contact information of the complainant or a person filing on behalf of the complainant for investigative follow-up.”³⁰

Requirements for Sharing New Complaints Received

The MPAA requires that when complaints are filed with the PAB, within three days the PAB must forward it to the appropriate LEA. There is no reciprocal requirement under the law that requires LEAs to notify their PAB when they receive a complaint of police misconduct. However, at least one county (Anne Arundel) requires LEAs to share new complaints with their PAB through its county legislation.³¹ In other jurisdictions, such as Howard County, agencies voluntarily share information about new complaints with their PABs.

While not required by law, reciprocal complaint sharing appears to be an emerging practice; and doing so seems to carry few (if any) adverse consequences. PABs are authorized to receive complaints themselves and will ultimately learn of the complaints after the ACC and/or Trial Board process concludes. Taking the initiative to share new complaints with PABs – even if not required by law – is a simple way for agencies to demonstrate their commitment to transparency.³²

Defining a “Complaint of Police Misconduct”

The MPAA requires that after investigating “complaint[s] of police misconduct,”³³ law enforcement agencies must forward those complaints to the ACC. The term “police misconduct” is deceptively simple on its face but has been challenging to interpret at a practical level.

Maryland Public Safety Article §3-101(g) defines police misconduct as “a pattern, a practice, or conduct by a police officer or law enforcement agency that includes:

- (1) depriving persons of rights protected by the constitution or laws of the State or the United States;

²⁹ Maryland Public Safety Article §3-102.

³⁰ Maryland Public Safety Article §3-102 and §3-103.

³¹ Anne Arundel County Code, §3-7A-110(C)(6). See <https://www.aacounty.org/sites/default/files/2023-04/BILL%20NO.%2016-22%20FINAL.pdf>

³² When sharing complaints with PBAs, law enforcement agencies might consider the same confidentiality parameters as those that govern Trial Boards (see Maryland Public Safety Article §3-106(e)).

³³ Maryland Public Safety Article §3-104(d).

- (2) a violation of a criminal statute; and
- (3) a violation of law enforcement agency standards and policies.”

After passage of the MPAA, there was debate across the state about how to interpret the word “and” in §3-101(g)(2)(emphasized above).

Read literally, a finding of police misconduct requires all three components – a civil rights violation plus a criminal violation plus a policy violation (i.e., a, b, and c). Adopting this narrow definition, however, would mean that very few acts qualify as police misconduct and trigger the MPAA’s provisions.

The other possible interpretation of “and” considers it more akin to “or.” Under this view, only one of the three subparts must be true for conduct to qualify as “police misconduct” (i.e., a, or b, or c.). This interpretation is extremely broad and encompasses any violation of an agency’s standards and policies, however minor, including those that are extremely unlikely to impact public safety (e.g. non-compliance with grooming or uniform standards - if the officer is visible to members of the public).

In April 2023, the Office of the Attorney General of Maryland (OAG) issued an opinion letter recommending the latter interpretation – that “conduct fall[s] within the scope of the definition if it meets any one of the three subparts.”³⁴ Though highly persuasive, OAG opinions are non-binding authority, and, as of this publication, no case law exists to clarify the issue.

Not all agencies follow the OAG guidance. For instance, one attendee noted at the March 7 summit that his jurisdiction feels that “the legislature was very particular in putting ‘and’ instead of ‘or’” in the MPAA text; that jurisdiction has opted to take the definition of “police misconduct” at literal face-value. Based on the discussion at the summit, most agencies are following the statutory interpretation of the OAG, but until a court of law weighs in or the statute is amended, the issue will remain, legally, unresolved.

Scope of the Term “Police Officer”

Additionally, for behavior to be considered “police misconduct” under the MPAA, it must also be committed by a police officer. Maryland state law defines “police officer” in Public Safety Article §3-201(f),³⁵ but that term does not encompass everyone with police authority in the state. Chiefs of Police, Assistant Chiefs of Police, Sheriffs, and Chief Deputy Sheriffs are explicitly excluded from §3-201(f)’s definition of police officer. And others are excluded by omission, such as special police employed by non-governmental entities.³⁶ Some PAB members have expressed concern about

³⁴ Sandra Benson Brantley. Letter to the Honorable Michael A. Jackson, Senator, Maryland General Assembly. April 18, 2023. See “Appendix A: April 18, 2023 OAG letter on the definition of “police misconduct”” for the full text of this letter.

³⁵ See “Appendix B: Maryland Public Safety Article § 3-201(f)” for full text of this definition.

³⁶ Importantly, this was also the definition of “police officer” applicable to the LEOBR; the MPAA maintained the status quo.

this potential gap in accountability to the ACC; however, this was also the paradigm under LEOBR, and is therefore *not* a novel issue under the MPAA.

The definition also omits non-sworn agency personnel, who do not have police powers but often have enough access to information and systems that their misconduct could violate citizen rights, constitute criminal conduct, and severely impact the reputation of the agency. While non-sworn personnel are still subject to agency discipline, they are not subject to the same level of independent accountability as police officers.

Misconduct “Involving a Member of the Public”

Finally, for an incident of police misconduct to be eligible for review by the ACC pursuant to the MPAA, it must also involve a member of the public. Public Safety Article §3-104(d) requires that, “[o]n completion of an investigation of a complaint of police misconduct **involving a member of the public and a police officer**,³⁷ regardless of whether the complaint originated from within the law enforcement agency or from an external source, the law enforcement agency shall forward to the appropriate [ACC] the investigatory files for the matter.”

However, the MPAA provides no clarification about when an officer’s conduct “involve[s]” a member of the public. For example, if an individual is standing at their front door and observes an officer’s cruiser speed past without lights and siren, and calls in a complaint – is it an incident “involving” the public?³⁸ What if an officer is observed on a security camera stealing property from a business? A theft would clearly violate criminal code and agency policy, but a business itself is not a “member of the public,” though its owners (if not a corporate conglomerate) would be.

Not all “police misconduct” under Public Safety Article §3-101(g) necessarily involves a member of the public. In such a case, any discipline charges or sanctions imposed on the officer would fall to the agency head, not the ACC.³⁹ As with other identified gaps in MPAA provisions, there has been no case law to clarify what “involvement of a member of the public” means. In the absence of that clarification, agencies are left to make individual decisions, leading to predictable inconsistency.

³⁷ Emphasis added.

³⁸ Additional details would presumably make an impact on the answer, such as the distance between the person in the doorway and the road, the speed of the vehicle relative to the speed limit, and whether any other vehicles were in the vicinity.

³⁹ See COMAR 12.04.09.01B *et seq.* https://mdle.net/regs/PTSC_PABs_and_ACCs.pdf

Are Minor Vehicle Collisions “Police Misconduct” Subject to MPAA’s Review Process?

No issue illustrates the problems with the MPAA’s broad definition of “police misconduct” (as interpreted by the OAG) better than minor vehicle collisions.

According to the Uniform State Disciplinary Matrix, vehicle collisions involving “minor damage to a police vehicle” are Category 1 violations (see COMAR 12.04.10D(8)(c)) and can include very minor incidents, such as lightly tapping an object like a mailbox with a department-owned vehicle and generating minimal damage. Yet under the MPAA, that violation of policy, however minor, would be subject to the MPAA’s review provisions, since it would also involve a member of the public (i.e. the mailbox or other property belongs to a member of the public.)

Most ACCs and law enforcement agencies agree that Category 1 vehicle collisions are low-level violations that do not warrant ACC review. A point of consensus across most stakeholders was that most viewed Category 1 incidents as human error and not “police misconduct.” Yet the MPAA defines police misconduct in such a way that these minor incidents are included in the definition and trigger the MPAA.

For law enforcement agencies, conducting a formal investigation and referring a case to the ACC feels needlessly bureaucratic and convoluted for a simple matter that supervisors should likely be empowered to efficiently and appropriately resolve. For ACCs, reviewing Category 1 collisions can feel like a poor use of their time as volunteers and an unnecessary burden to their often already stressed caseloads.

The Uniform State Disciplinary Matrix gives law enforcement agencies latitude to use dollar amounts as a guides for determining the level of severity (Category 1 vs Category 2), but the severity of damage is not a factor in the definition of “police misconduct.” Even if a member of the public does not make a complaint about the minor damage, if agency policy requires the officer to report the incident and it involves a citizen’s property, the agency must still refer the case to the ACC (assuming that the agency follow’s the OAG’s interpretation of the “police misconduct” definition).

To help reduce the burden of these cases on the ACC, the Charles County Sheriff’s Office (CCSO) created a standardized cover sheet to help streamline the review process. This may be an emerging practice for agencies to consider, in the absence of any further clarifying guidance from the State. A copy of the CCSO form is included in **“Appendix C: Charles County Sheriff’s Office Collision Committee Report Form.”**

Complaint Intake and Information-Sharing Takeaways and Recommendations

Based on the information gathered in this project, three key takeaways on complaint intake and information-sharing topics emerged:

- Making options for filing complaints of misconduct more accessible (for example, making forms easier to complete and available in several languages) may increase public trust in an agency's transparency.
- Law enforcement agencies are not required to notify PABs when they receive new complaints of misconduct involving members of the public (except where mandated by local ordinance). However, doing so appears to be an emerging practice with benefits that outweigh potential negative consequences.
- Analysis of what qualifies as "complaints of misconduct involving a member of the public" is complicated. In the absence of clarifying case law or statutory modification, agencies have been left to make their own good faith determinations.

Recommendation 6:

Law enforcement agencies should share new complaints of officer misconduct involving members of the public with their PAB. PABs are already authorized recipients of misconduct complaints and are bound by confidentiality requirements. New complaints that are shared with PABs should include all details provided in the initial complaint (or a comparable level of detail, if the complaint is internally-generated), subject, perhaps, to the exceptions outlined in Public Safety Article § 3-106(e) relative to Trial Board privacy.

Recommendation 7:

The definition of “police misconduct” provided in Public Safety Article § 3-101(g) should be understood to mean that conduct falls within the scope of the definition if it meets any one of the three subparts: (1) depriving persons of rights protected by the constitution or laws of the State or the United States; (2) a violation of a criminal statute; and (3) a violation of law enforcement agency standards and policies. The Maryland OAG opinion on this matter is not legally binding, but in the absence of case law, the OAG’s legal conclusion is reasonable and sound.

Recommendation 8:

Until there is further clarification that establishes a threshold of severity under which case outcomes are determined by the agency head, agencies should err on the side of caution in whether to refer cases to the ACC for review. For example, Category 1 departmental vehicle collisions and Category A violations involving a member of the public should likely be referred for ACC review, because the MPAA did not create an exemption from ACC review based on severity of an incident.

Recommendation 9:

In the absence of clarifying case law or statutory modification, agencies should employ a reasonable person standard to determine whether a complaint of misconduct “*involv[es] a member of the public.*” That is, would a reasonable person, knowing the facts of the reported conduct, believe that a member of the public was directly involved or impacted by the event.

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Investigations

Each Maryland law enforcement agency (LEA) is generally responsible for conducting administrative and criminal investigations of its own employees’ misconduct.⁴¹ Maryland Public Safety Article §3-104(d) requires that after the agency completes an investigation of police misconduct involving a member of the public, it must forward the investigatory files for the matter to the ACC. Pursuant to §3-104(f)(1), upon reviewing the referred investigation, the ACC can “request information or action from the law enforcement agency that conducted the investigation, including requiring additional investigation and the issuance of subpoenas.”

Jurisdiction Over Investigations

The MPAA also established the Independent Investigations Division (IID) within the Maryland OAG, which has primary jurisdiction over criminal investigations of “police-involved incidents that result in the death of an individual or injuries that are likely to result in the death of an individual.”⁴² And as of October 1, 2023, the OAG IID has prosecutorial authority over these cases as well.⁴³ There is no language in the MPAA authorizing any other entities aside from LEAs to conduct administrative investigations of misconduct complaints.

There have been attempts to pass legislation authorizing PABs to conduct their own investigations of misconduct, but as of this writing, those bills have been unsuccessful.⁴⁴ Proponents of these

⁴⁰ For instance, using the hypothetical example from page 26, a reasonable person could conclude that seeing an officer speeding with no other traffic or people around does not “involve a member of the public.” However, a reasonable person could conclude that an officer stealing from a business does involve at least one member of the public, even if the business is owned by a conglomerate.

⁴¹ COMAR 12.04.09.06B

⁴² Maryland Office of the Attorney General, Independent Investigations Division.
<https://www.marylandattorneygeneral.gov/Pages/IID/IID.aspx>

⁴³ Maryland Office of the Attorney General, Independent Investigations Division.
<https://www.marylandattorneygeneral.gov/Pages/IID/IID.aspx>

⁴⁴ See, for example, Maryland 2023 Regular Session [SB0285](#), 2024 Regular Session [SB0621](#)/[HB0533](#), and Prince George’s County Council [CB-081-2023](#).

bills have argued that “the main function of Police Accountability Boards is to assess the quality of internal investigations into police misconduct,” and that they are unable to meet that responsibility without independent investigatory and subpoena powers.⁴⁵ But there is no language in the MPAA charging PABs with “assessing the quality of internal investigations.” As outlined in Figure 1 on page 2 of this report, the PAB’s mandates are clearly defined and assessing quality of investigations is not one of them.⁴⁶

Moreover, independent oversight of law enforcement’s internal investigations *already* exists - through the ACCs, each of which includes one member *of* the PAB, and two additional members appointed *by* the PAB. ACCs independently review investigations and have the legal authority to issue subpoenas and require additional investigation.⁴⁷ And while LEAs can advise ACCs of their findings, the ultimate decisions about charging and minimum punishment are made by the ACC – *not* the LEAs.⁴⁸ Giving PABs investigatory power could blur the distinction between ACCs and PABs, which, according to the MPAA, have separate oversight responsibilities.

Withdrawal of Complaints

In some circumstances, a member of the public who has filed a complaint of police misconduct later seeks to withdraw it; however, the MPAA does not address whether complaints may be withdrawn, and if so by what process. In the absence of clear guidance, some PABs and LEAs have allowed for withdrawal of complaints, based on information gleaned from annual reports.

In May 2024, the Maryland OAG issued an opinion about the issue. The OAG found that “as the law currently stands, the desire of a complainant to withdraw does not, for any category of complaint of police misconduct involving a member of the public, relieve the LEA of its obligation to investigate the complaint and forward it to the ACC for a charging determination.”⁴⁹

Some agency heads feel that investigating withdrawn complaints is a poor use of time and resources, especially if the complainant is unwilling to proceed and there is little or no additional evidence. However, the law is clear that an investigation and referral to the ACC must go forward “regardless of whether the complaint originated from within the law enforcement agency or from an external source.”⁵⁰ In other words, it doesn’t matter how an agency becomes aware of alleged misconduct involving a member of the public – once it’s aware, the ACC process is triggered. As

⁴⁵ Maryland Coalition for Justice and Police Accountability, “Ensure Independent Investigatory Power for Police Accountability Boards” (fact sheet).

https://static1.squarespace.com/static/5fda2be4f588013f51b022f1/t/63d83e8c678355610f7d9d3d/1675116172868/MCJPA_InvPwrPAB_MDGA23_OnePager_2.pdf

⁴⁶ Maryland Public Safety Article §3-102(b)

⁴⁷ Maryland Public Safety Article §3-104(f)

⁴⁸ As noted previously, the law enforcement agency can increase, but not decrease, the discipline issued by the ACC (within the USDM category).

⁴⁹ Anthony G. Brown, Ben Harrington, and Patrick B. Hughes. Letter to The Honorable J. Travis Breeding, President, County Commissioners of Caroline County. May 10, 2024. See attached copy in “Appendix D: May 10, 2024 OAG letter on complaint withdrawal requests.”

⁵⁰ Maryland Public Safety Article §3-104(d)

the OAG guidance points out though, “although the regulations require a ‘thorough investigation,’ they do not require a wasteful or useless one... [and] where an agency believes that it would not be productive to carry the investigation of a withdrawn complaint beyond a certain point – say, after interviewing the officer involved – the regulations do not bar the agency from forwarding the matter to the ACC at that juncture...**The essential requirement is only that the decision to dispose of a withdrawn complaint without discipline must rest with the ACC, not the agency.**”⁵¹

Mediation of Complaints

The May 2024 OAG opinion also notes that the only other method by which a LEA can process a complaint (aside from investigation and referral to the ACC) is through mediation. COMAR 12.04.11 establishes mediation as “an alternative method to address minor, nonviolent police misconduct complaints outside of the standard complaint process...subject to the agreement of the complainant and the involved police officer.”⁵² Any LEA wishing to establish a complaint mediation program must execute a memorandum of understanding (MOU) with a MPTSC-approved⁵³ mediator, who will conduct mediation sessions independent of the agency.⁵⁴

For complaints to be eligible for mediation, the alleged misconduct must be nonviolent and minor in nature, and fall within Category A or B of the USDM.⁵⁵ The complainant and the accused officer must both voluntarily agree to mediate, but even if a complaint is otherwise eligible for mediation, “the agency head or designee has the authority to decide, for any reason, that a case may not be assigned for mediation.”⁵⁶ Those agencies that use mediation programs must still track and report the complaints to the PAB, consistent with other citizen complaints that follow the standard complaint resolution process.⁵⁷

Many PAB/ACC leaders and LEA heads believe that the MPAA process is an unnecessarily complex way to resolve minor complaints. Mediation provides a means to at least partially address this concern, but as of this writing, few agencies have established mediation programs.

Complainant Rights During an Investigation

Public Safety Article §3-108(a) requires each LEA in the state to “designate an employee as a victims’ rights advocate to act as the contact for the public within the agency on matters related to police misconduct.” The law does not indicate what qualifications the victims’ rights advocate should have, but outlines the following duties:

- (i) explain to a complainant:

⁵¹ Brown, Harrington, and Hughes; emphasis added.

⁵² COMAR 12.04.11.01A et seq. https://www.mdle.net/regs/PTSC_Police_Complaint_Mediation_Program.pdf

⁵³ Agencies may contact MPTSC for a list of approved mediation providers.

⁵⁴ COMAR 12.04.11.04.

⁵⁵ See https://mdle.net/pdf/Commission_Approved_Uniform_Disciplinary_Matrix.pdf

⁵⁶ COMAR 12.04.11.06A(3).

⁵⁷ COMAR 12.04.09.06A(2). https://mdle.net/regs/PTSC_PABs_and_ACCs.pdf

1. the complaint, investigation, administrative charging committee, and Trial Board process;
 2. any decision to terminate an investigation;
 3. an administrative charging committee's decision of administratively charged, not administratively charged, unfounded, or exonerated; and
 4. a Trial Board's decision;
- (ii) provide a complainant with an opportunity to review a police officer's statement, if any, before completion of an investigation by a law enforcement agency's investigative unit;
 - (iii) notify a complainant of the status of the case at every stage of the process; and
 - (iv) provide a case summary to a complainant within 30 days after final disposition of the case.⁵⁸

This requirement is easier for agencies that already employ victims' rights advocates; for agencies that do not, care should be given to identify an appropriate point of contact to serve in this role.

Of note, a complainant or involved member of the public does not have rights to request Trial Board review of an ACC's findings, or to appeal a Trial Board's findings.

Each LEA is also required by MPAA to create a database that allows a complainant to follow the status of their case, by case number, through each phase of the investigation and adjudication proceedings.⁵⁹ In a review of 134 Maryland LEA websites, PERF staff were only able to locate such a database for 38 agencies. Additionally, at least 33 agency websites contained information that referenced out-of-date LEOBR-based standards and policies.

Officer Rights During an Investigation

While the MPAA repealed the LEOBR, it still reserves many rights to law enforcement officers when they are the subject of a misconduct inquiry. Like complainants, officers subject to a misconduct complaint may have the assistance of a representative.⁶⁰ They also maintain the rights to be free from retaliation by their agency, to sue, to engage in political activity, and to secure secondary employment.⁶¹

Pending investigation of officer misconduct complaints, the agency head may suspend an officer under certain circumstances:

1. **Pending investigatory, ACC, and Trial Board processes.** If there is a pending investigation or ACC/Trial Board review process for an officer that includes **administrative charges only**, the agency head may impose an emergency suspension – with or without pay – if the agency head deems it in the best interest

⁵⁸ Maryland Public Safety Article §3-108(a)(2).

⁵⁹ Maryland Public Safety Article §3-108(b).

⁶⁰ Maryland Public Safety Article §3-109.

⁶¹ Maryland Public Safety Article §3-110.

of the public.⁶² However, an emergency suspension *without pay* may not last more than 30 days.⁶³

2. **Pending criminal charges or misdemeanors against a police officer.** If an officer has been charged with certain crimes, the agency head or designee is authorized to suspend the officer – with or without pay⁶⁴ – and the officer’s police powers. There is no defined time limit for this type of suspension. Charges for which this rule applies include:
 - crimes of violence;
 - felonies;
 - misdemeanors that carry a statutory penalty of more than 2 years;
 - misdemeanors committed in the performance of duties as a police officer; and
 - misdemeanors involving dishonesty, fraud, theft, or misrepresentation.⁶⁵

As stated above, an emergency suspension without pay (for an officer with administrative charges only) may not last for longer than 30 days (i.e. an officer can be suspended for more than 30 days, but after 30 days, the officer will be paid). However, for any case of misconduct involving a member of the public, law enforcement agency executives do *not* have the authority to take permanent, administrative disciplinary action against an officer without a sustained finding from an ACC or Trial Board.⁶⁶

Investigations Takeaways and Recommendations

Based on the information gathered in this project, three key takeaways on investigations topics emerged:

- There has been much debate about which entities are best suited to conduct investigations of police misconduct. The MPAA specifies that law enforcement is responsible for conducting misconduct investigations, and ACCs and Trial Boards may direct additional fact-finding and issue subpoenas. Oversight is baked into the current system, and during our review, we found no evidence to suggest that the oversight is not working.
- The May 10, 2024, OAG opinion on complaint withdrawal found that a complainant’s desire to withdraw does not relieve a law enforcement agency of its obligation to investigate and refer cases involving a member of the public to the ACC. While not binding, the OAG opinion has persuasive authority, and makes sense.

⁶² Maryland Public Safety Article §3-107 (a)(1)

⁶³ Maryland Public Safety Article §3-107 (a)(2)

⁶⁴ If an officer is suspended without pay in either circumstance (administrative or criminal charges) and is later cleared of those charges, the officer is entitled to back pay for the period of suspension. See MD Public Safety Article §3-107 (a)(3) and §3-107 (b)(2).

⁶⁵ Maryland Public Safety Article §3-107 (b)

⁶⁶ Maryland Public Safety Article § 3-104(c)(2)

- Nonviolent, minor Category A and B complaints may be mediated if the agency has established an MPTSC-approved mediation program, the involved parties voluntarily agree to participate, and the agency head agrees that mediation is appropriate. However, few agencies seem to have taken advantage of the opportunity to establish a mediation program since the adoption of the applicable COMAR regulations in March 2023.

Recommendation 10:

A complaint of police misconduct should not be treated as “resolved” based only on the desire of the complainant to withdraw it. The codified law and implementing regulations relating to the MPAA require law enforcement agencies to thoroughly investigate and refer to the ACC all complaints of police misconduct involving a member of the public, with no exceptions made for withdrawn complaints. However, these requirements do not preclude law enforcement agencies and ACCs from conducting a streamlined and efficient process for adjudicating such cases.

Recommendation 11:

Law enforcement agencies should establish complaint mediation programs in compliance with COMAR 12.04.11, under the guidance of the MPTSC. Many law enforcement and PAB/ACC leaders have expressed concern and frustration about the unnecessary caseload burden resulting from minor complaints, but the mediation process offers a viable alternative for handling qualifying cases.

Adjudication and Disposition

As noted above, completed investigations of police misconduct involving a member of the public must be forwarded by the investigating agency to the ACC, which is then responsible for reviewing the investigation; making a determination regarding charges; and, for charges, making a determination about discipline.⁶⁷

Law Enforcement Agency Referrals to Administrative Charging Committees

Within three business days of the completion of a LEA's investigation and agency review, the agency must forward investigative files to the ACC.⁶⁸ The agency head may include written recommendations for the ACC to consider that include: an opinion about whether the officer should be disciplined, explanation of mitigating or aggravating circumstances, and recommended discipline to be imposed (or remedial measures, if the ACC determines not to charge the officer).⁶⁹

At the implementation summit, we learned that practices differ. Some agencies consistently provide recommendations to the ACC about findings and discipline; some make recommendations about findings, but not discipline; and some send only the investigative files without recommendations. A representative from MPTSC encouraged agencies to consider including recommendations going forward, noting that the data generated would make it possible to analyze any patterns or trends in agency recommendations compared with ACC findings.

In Caroline County, the ACC developed a checklist of items that should be provided by the law enforcement agency for every misconduct report referred:

1. Complaint form
2. All relevant video and audio recordings
3. Witness statements
4. Interview statements taken regarding the complaint
5. Relevant policies and procedures
6. Disciplinary records and commendations for the officer(s) involved (or a statement that no disciplinary record was found)
7. Officer training record
8. Findings and recommendations from the law enforcement agency head

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⁶⁷ Public Safety Article § 3-104(e)

⁶⁸ COMAR 12.04.09.06C.

⁶⁹ COMAR 12.04.09.06D.

⁷⁰ See Appendix E for a copy of this checklist.

Administrative Charging Committees

The MPAA requires that every jurisdiction (generally speaking - every county) “shall have one”⁷¹ [ACC]” comprised of five members – regardless of the size of the jurisdiction. In other words, a large county like Prince George’s has one five-person ACC, as does a far less populated county like Wicomico. This leads to significant statewide disparity in ACC workloads; and by virtue of having larger populations and more police officers, larger/denser counties will have more police misconduct complaints. Yet, the MPAA does not permit counties to increase the number of ACCs or ACC members commensurate with the increased complaint volume.

This limitation on ACCs (one per county) and the limitation of five members on each county’s ACC, is particularly noteworthy considering that there is no restriction on the number of members that may sit on a county’s PAB. The duties of ACC members, some of whom review dozens of cases at any point in time, can far exceed those of PAB members. Yet the local governing body can expand the number of people sitting on its PAB as it sees fit,⁷² while the MPAA provides no similar opportunity for local governing bodies to expand the number of ACC members.

This is especially problematic because of the time requirements the MPAA imposes on ACCs. Once an ACC receives a case file, they are required to review the matter and make a determination (or request further investigative action) within 30 days.⁷³ Some ACCs constantly juggle many case files, while others receive only a handful of investigations each year. For each case, ACC members may spend several hours reviewing all associated documentation and video, plus additional time for group deliberation and drafting a written opinion. ACC members often perform this role outside of their primary, full-time employment, so even for those who are compensated, giving up that much free time outside of work and other responsibilities is a significant ask. For this reason, representatives from several PABs and ACCs expressed concerns that the unexpectedly high caseloads in some counties have made it difficult to attract or retain ACC members.

Further, the MPAA does not impose the same constraint for the ACC that reviews cases involving state and bi-county LEAs; it only requires that “there shall be at least one”⁷⁴ statewide ACC. This difference in language seems to recognize the potential disparity in case volume between county-specific and statewide ACCs but stops short at recognizing that these disparities can also exist between counties of various sizes, population densities, and number of LEAs.

Trial Boards

Public Safety Article § 3-106 outlines the structure and requirements for Trial Boards. Membership, duties, and training requirements of Trial Boards are prescribed by the MPAA, but each LEA has responsibility for establishing its own Trial Board process.⁷⁵

⁷¹ Emphasis added.

⁷² Maryland Public Safety Article § 3-102(b)(1)(i)

⁷³ Maryland Public Safety Article § 3-113(b)

Pursuant to the MPAA, the LEA is responsible for presenting cases to Trial Boards and establishing violations by a “preponderance of evidence.”⁷⁶ This legal dynamic can create friction in cases in which the LEA does not agree with the ACC’s determination that the accused officer committed a violation. In these circumstances, the system pressures the LEA to justify charges it does not believe the officer committed. It also forces the ACC, which has independent decision-making authority, to trust that its determinations will not be frustrated by the LEA’s Trial Board process.

This conflict is not hypothetical; it has played out in at least a handful of cases. These cases have brought to light several key points that should be considered by all stakeholders in the police accountability process.

1. The purpose of a Trial Board

A Trial Board is only convened if an officer has been charged by an ACC, offered the determined level of discipline by their agency head, and has refused the offer. The MPAA does not afford the LEA, the complainant, or any other party the right to challenge the findings of an ACC to a Trial Board; the law reserves this right *only* to the accused officer.

2. What the law requires of LEAs in a Trial Board

The MPAA requires the LEA to establish the Trial Board process; it also establishes the burden of proof. The law does not require the LEA to adopt the ACC’s determinations as its own, defend them, or present them to the Trial Board. It appears that each agency has significant autonomy in creating and carrying out its own processes, and as such, there may be as many different Trial Board processes across the state as there are LEAs.

Yet considering that the intent of the MPAA was to increase transparency and citizen oversight in the system, the interests of the MPAA are best served by the creation of Trial Board processes that support and reinforce transparency and citizen oversight. While the law does not require a LEA to present and defend an ACC opinion as its own, it is obviously in the best interest of transparency and trust for it to provide the Trial Board with the information the ACC reviewed, to enable the Trial Board to draw its own conclusion, including all investigative files, the recommendations of the LEA, and the ACC’s determinations.

⁷⁴ Emphasis added.

⁷⁵ Maryland Public Safety Article § 3-106; “Small” law enforcement agencies may use another agency’s process, by mutual agreement – see Public Safety Article § 3-106(a)(2). However, the law does not define what qualifies an agency as “small.”

⁷⁶ Maryland Public Safety Article § 3-106(h)

3. The Trial Board is a part of a broader system of checks and balances

Each part of the MPAA's investigation and adjudication process has checks and balances.

- The LEA is responsible for investigations and can provide recommendations to the ACC, but the ACC makes decisions on charges and discipline and can direct the agency to conduct further investigation.
- The ACC's decisions must be guided by the USDM and accused officers can reject ACC determinations by seeking a Trial Board.
- The Trial Board is given wide latitude by law to administer oaths and issue subpoenas, which empowers it to conduct its own fact-finding as needed, but the accused officer can appeal Trial Board findings to Circuit Court.

4. There is a "Trial Board Loophole"

Public Safety Article § 3-106(2) states that an agency head may offer the same discipline that was recommended by the ACC or higher (within the applicable range of the USDM), but not lower. However, as Trial Boards across the state have begun to review cases, a loophole has appeared in cases where an agency believes ACC discipline to be too harsh or altogether unwarranted.

In these cases, the agency offers the ACC's recommended discipline to an officer as well as the agency's lesser recommendation; the officer invariably rejects the ACC's recommended discipline and requests a Trial Board. At this stage, the officer and LEA essentially negotiate a disposition and present it to the Trial Board members. If this happens and the Trial Board accepts the agreement between the agency and officer, in effect the agency has offered a lower level of discipline than what the ACC recommended – contrary to, but not necessarily in violation of, § 3-106(2); this is the loophole. PERF has heard from at least one agency that this has been the outcome of every Trial Board case it has had thus far; not one has resulted in a Trial Board hearing beyond the Board's review and acceptance of the negotiated disposition.

Significantly, the ACC, whose determination is circumvented in the process, does not appear to have recourse in this situation since the MPAA only provides officers with the legal right to challenge the outcome of a Trial Board.

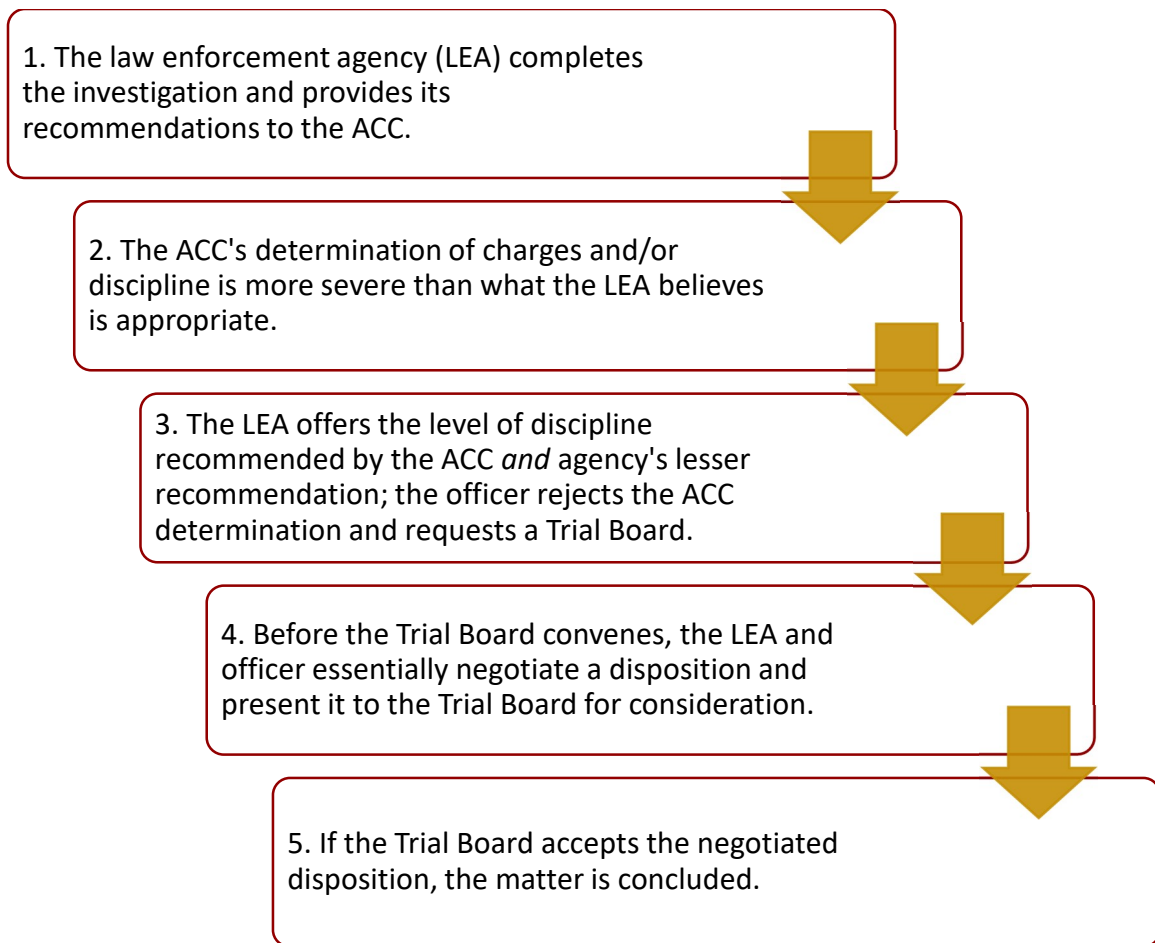


Figure 13

Timeline of Investigation and Adjudication

The Public Safety Article subtitle on Police Accountability and Discipline defines a number of specific time frames throughout the investigation and adjudication process, the most contentious of which is the requirement that “the process of review by the investigating unit through disposition by the administrative charging committee shall be completed within 1 year and 1 day after the filing of a complaint by a citizen.”⁷⁷ LEAs, PABs, and ACCs have all raised concerns with this timeline, primarily centered on two main points:

1. Criminal investigations and *Garrity* rights

Unlike the LEOBR, the MPAA contains no tolling provision for the time during which a criminal determination is pending. Holding an administrative case in abeyance during the criminal investigation is, according to the U.S. Department of Justice, a common practice, often done because of the prosecution’s concern that compelled statements from an

⁷⁷ Maryland Public Safety Article § 3-113(c)

administrative investigation may fatally taint the criminal investigation, due to *Garrity* issues.⁷⁸

But the practice of holding administrative investigations in complete abeyance while waiting for criminal determinations is shifting, because of the growing realization that doing so has significant negative consequences. Waiting to conduct the administrative investigation can negatively impact witness memory and availability, make eventual administrative corrective action less effective, and undermine public trust and confidence in the agency to hold its own members accountable for misconduct.⁷⁹ For these reasons, a growing number of agencies are choosing to conduct concurrent criminal and administrative investigations.

Conducting criminal and administrative investigations concurrently requires that if an officer's compelled statement exists, the statement and any evidence derived from the statement must be carefully separated and completely walled off from everyone other than administrative investigators. **But, whether administrative investigators compel a statement and wall it off or do not take one at all, there is nothing prohibiting them from conducting nearly every other aspect of the investigation while the criminal determination proceeds;** this includes reviewing evidence such as body-worn camera footage and facts gathered in the criminal investigation.

Therefore, while the MPAA does not contain a tolling provision, agencies need not wait for the completion of a criminal investigation to begin the administrative investigation. Doing so can unnecessarily delay the agency's discharge of an employee where an administrative investigation will likely result in termination. In these cases, the agency should make every attempt to move the administrative investigation forward as the criminal investigation and determination proceeds.

2. Length of time an investigation requires, especially with a high case load

Some agencies also raised concerns about the year-and-a-day timeframe in the context of high case volume. At the state's largest agencies, investigators may handle hundreds of cases each year, and will likely struggle to process all investigations within the MPAA's timeline. This challenge is compounded given that both the investigation *and* review by the ACC must be completed within one year and one day; as a practical matter, this means the investigation must be completed in a shorter period of time, with enough time left for the ACC to review and decide on the case – and possibly remand the case back to the agency for further investigation, if necessary.

⁷⁸ U.S. Department of Justice, Office of Community Oriented Policing Services. "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice." <https://portal.cops.usdoj.gov/resourcecenter/ric/Publications/cops-p164-pub.pdf>; *Garrity v New Jersey*, 385 US 493 (1967). <https://www.oyez.org/cases/1966/13>

⁷⁹ Ibid.

Because the MPAA is so new, very little is known about the extent to which the year-and-a-day rule will impact administrative investigations. There is not yet any measurable data on the number or nature of cases with overlapping criminal investigations, or the number of cases that exceed the 366-day timeframe. This data is necessary to understand the scope of the issue and develop data-driven policy recommendations.

Adjudication and Disposition Takeaways and Recommendations

Based on the information gathered in this project, five key takeaways on adjudication and disposition topics emerged:

- MPAA-associated COMAR regulations allow for LEA heads to provide written recommendations on findings and discipline for any case referred to the ACC, but agency practices are inconsistent.
- The restriction that the MPAA places on the number and size of ACCs creates great disparities between counties.
- The “Trial Board Loophole” allows LEAs to avoid the requirement that an agency head must offer discipline equal to or greater than that recommended by the ACC; in cases where the LEA and ACC are not in agreement about charging and/or discipline, if the Trial Board permits a negotiated settlement between the officer and agency, the ACC’s determination is effectively nullified.
- The MPAA’s “year-and-a-day” time constraint presents challenges for investigating agencies in cases wherein both administrative and criminal charges are being considered, but also encourages concurrent – rather than consecutive – investigations. Concurrent investigations require careful information management practices but allow proceedings to move forward without needless delay.
- More data is needed to understand the challenges created by the “year-and-a-day” timeline for investigation and ACC review imposed by the MPAA.

Recommendation 12:

LEA heads should consider including a written recommendation to the ACC with each case referred for review. COMAR 12.04.09.06(D) allows agency heads to provide recommendations and input to ACCs about whether an officer should be disciplined and what the discipline should be. COMAR 12.04.09.07A(1)(b) requires that if that information is provided, the ACC must read and consider it before making a determination about the case. This provides an excellent opportunity for the agency to include its input and for the ACC to consider relevant expert insight from the agency head, while still retaining decision-making authority. And until agencies begin to do this, it will be impossible to know how often ACCs and agency heads disagree about charging and discipline.

Recommendation 13:

In the absence of legislation or legal clarification regarding the “Trial Board Loophole,” agencies should facilitate a full Trial Board hearing in each case where one is requested. While exploitation of this loophole appears to be perfectly legal within the existing framework of the MPAA, it undermines the intent of the law to establish both the ACC and Trial Board as independent decision-making bodies.

Recommendation 14:

Agencies should consider moving forward with an administrative investigation, even while a connected criminal investigation is in progress. Particularly in cases where the misconduct is so egregious that it would likely result in termination of the officer, this allows the agency to complete the administrative process and, if termination is warranted, act on the recommendation within the year-and-a-day timeline.

Recommendation 15:

The State of Maryland should collect and analyze data to understand the scope of the issue(s) presented by the “year-and-a-day” timeline imposed by the MPAA. While we heard several agencies and PABs express concern about the challenges the timeline creates, there is very little data available from which to make evidence-based policy recommendations.

Data and Reporting

The MPAA requires PABs to review the outcomes of disciplinary matters considered by ACCs, and submit a report to the governing body of the county that:

1. identifies any trends in the disciplinary process of police officers in the county, and
2. makes recommendations on changes to policy that would improve police accountability in the county.⁸⁰

There are no statewide standards (mandated or voluntary) about how misconduct complaint data should be tracked and publicly reported. Each of the 24 PABs in the state produce annual reports that present their case data in a unique format and with varying levels of detail; even within the same county, the data format and level of detail may vary from agency to agency. This makes it

⁸⁰ Maryland Public Safety Article §3-102(a)(4) *et. seq.*

difficult for practitioners, citizens, and policymakers to comprehensively review misconduct data across the state, observe trends, and draw comparisons.

Perhaps the most significant inconsistency in how police misconduct data is presented is how types of allegations or charges are coded. For example, a citizen complaint about excessive force might be coded as “excessive force” at one agency, “use of force” at another, and “response to resistance/aggression” at another. Even if the behavior described is the same, its coding is largely dependent on the policies and practices of each agency, which makes analysis difficult.

Additionally, it is difficult to determine how the new systems are impacting police misconduct and discipline, because there are no identified performance metrics. Data is not collected or reported on the length of time each investigative/adjudicative phase takes, number and nature of cases in which ACCs request additional investigation, or whether ACC decisions align with the recommendations provided by the investigating LEA.

Data and Reporting Takeaways and Recommendations

Based on the information gathered in this project, two key takeaways on data and reporting topics emerged:

- Little statewide data is available from which to draw conclusions, comparisons, or inferences about outcomes of misconduct reports.
- Such data is needed to answer important questions about whether the MPAA is achieving its aims and to inform evidence-based policy and practices.

Recommendation 16:

The State of Maryland should collect and analyze data to understand what information is currently being reported by PABs and develop a set of recommended standardized metrics for public reports.

Summary of Recommendations

Training

1. Law enforcement agencies should make efforts to provide supplemental, agency-specific learning opportunities to their PAB, ACC, and Trial Board members.
2. The MPTSC should consider expanding training delivery options to increase access and reduce the burdens of training, especially the required 40-hour ACC training.

Administration

3. Every PAB/ACC should be supported by professional staff employed by its local governing body, in accordance with MPAA.
4. ACC members (and potentially PAB members) should have government-issued equipment (such as laptops) and accounts (such as government email addresses) for accessing documents and other materials related to their duties.
5. PAB, ACC, and Trial Board members should be compensated for their work.

Complaint Intake & Information-Sharing

6. Law enforcement agencies should share new complaints of officer misconduct involving members of the public with their PAB.
7. The definition of “police misconduct” provided in Public Safety Article § 3-101(g) should be understood to mean that conduct falls within the scope of the definition if it meets any one of the three subparts.
8. Until there is further clarification that establishes a threshold of severity under which case outcomes are determined by the agency head, agencies should err on the side of caution in referring cases to the ACC for review.
9. In the absence of clarifying case law or statutory modification, agencies should employ a reasonable person standard to determine whether a complaint of misconduct “involv[es] a member of the public.”

Investigations

10. A complaint of police misconduct should not be treated as “resolved” based only on the desire of the complainant to withdraw it.
11. Law enforcement agencies should establish complaint mediation programs in compliance with COMAR 12.04.11, under the guidance of the MPTSC.

Adjudication & Disposition

12. Law enforcement agency heads should consider including a written recommendation to the ACC with each case referred for review.

13. In the absence of legislation or legal clarification regarding the “Trial Board Loophole,” agencies should facilitate a full Trial Board hearing in each case where one is requested.
14. Agencies should consider moving forward with an administrative investigation, even while a connected criminal investigation is in progress.
15. The State of Maryland should collect and analyze data to understand the scope of the issue(s) presented by the “year-and-a-day” timeline imposed by the MPAA.

Data & Reporting

16. The State of Maryland should collect and analyze data to understand what information is currently being reported by PABs and develop a set of recommended standardized metrics for public reports.



APPENDICES

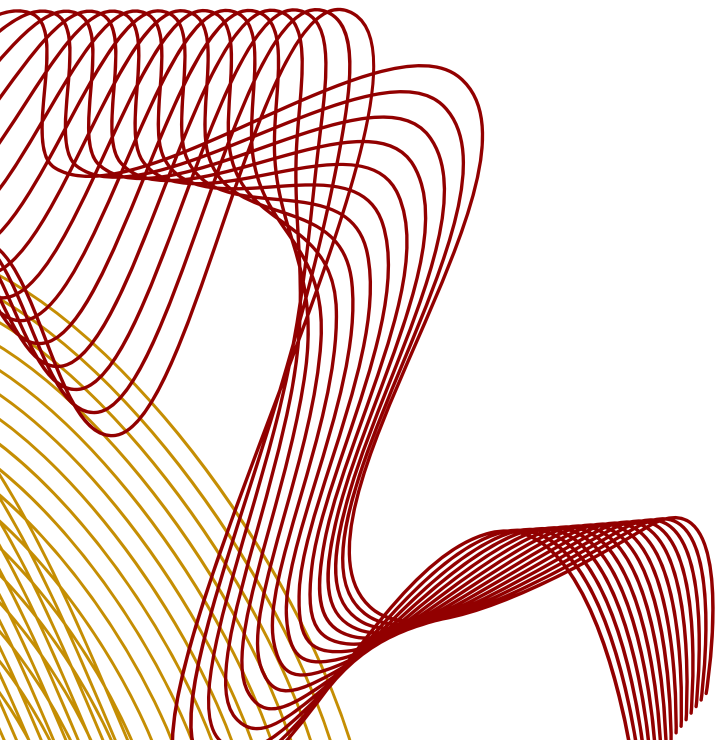
A. April 18, 2023 OAG letter

B. Public Safety Article § 3-201(f)

C. CCSO Collision Report Form

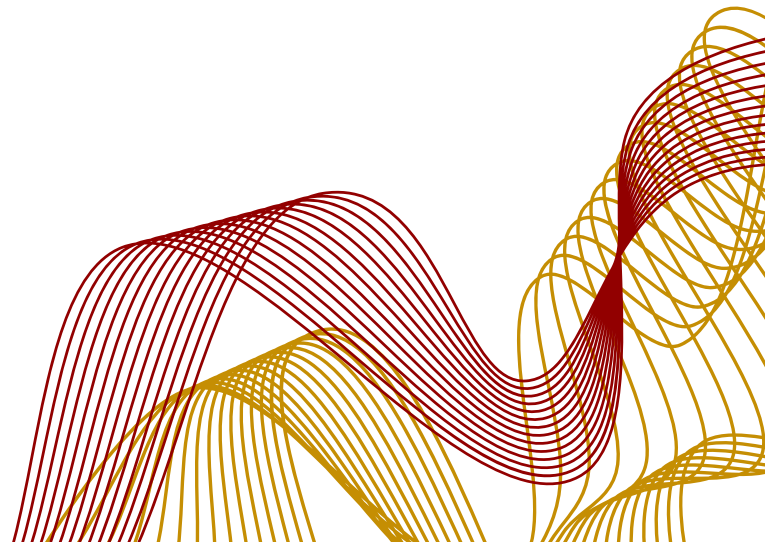
D. May 10, 2024 OAG letter

E. Caroline County checklist for investigation reports
referred to the ACC



APPENDIX A:

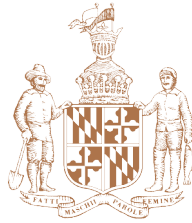
**April 18, 2023 OAG letter
on the definition of “police
misconduct”**



ANTHONY G. BROWN
ATTORNEY GENERAL

CANDACE McLAREN LANHAM
CHIEF OF STAFF

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

DAVID W. STAMPER
DEPUTY COUNSEL

SHAUNEE L. HARRISON
ASSISTANT ATTORNEY GENERAL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 18, 2023

The Honorable Michael A. Jackson
Maryland General Assembly
3 West Miller Senate Office Building
Annapolis, Maryland 21401

Dear Senator Jackson:

You have requested advice about the definition of “police misconduct” in Public Safety Article (“PS”), 3-101(g) which reads as follows:

“Police misconduct” means a pattern, a practice, or conduct by a police officer or law enforcement agency that includes:

- (1) depriving persons of rights protected by the constitution or laws of the State or the United States;
- (2) a violation of a criminal statute; and
- (3) a violation of law enforcement agency standards and policies.

You ask whether this definition is conjunctive or disjunctive. That is, must an officer’s or agency’s conduct meet all three subparts to constitute “police misconduct,” or does conduct fall within the scope of the definition if it meets any one of the three subparts? In my view, the latter interpretation is correct. Even though the word “and” links the three subparts, the General Assembly clearly intended the definition to set out three independent categories of police misconduct.

Generally, “[o]r” has a *disjunctive* meaning while ‘and’ has a *conjunctive* meaning.” *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 642 (2018) (emphasis in original). However, “[t]his rule is not absolute.” *Id.* at 643. “[A]nd’ and ‘or’ may be used interchangeably when it is reasonable and logical to do so.” *Id.* (quoting *Little Store, Inc. v. State*, 295 Md. 158, 163 (1983)).

More specifically, where used in a statute, “and” must be interpreted to mean “or” when such interpretation is “necessary to effectuate the obvious intention of the legislature.” *Comptroller v. Fairchild Indus., Inc.*, 303 Md. 280, 286 (1985); see

Wheeling v. Selene Finance LP, 473 Md. 356, 385 (2021) (interpreting “and” to have a disjunctive meaning in a section of the Real Property Article). When analyzing whether “and” has a conjunctive or disjunctive meaning under this doctrine, courts employ the familiar tools of statutory interpretation, including consideration of the plain language, the surrounding context, and the purpose and legislative history of the statute. *See Fairchild Indus., Inc.*, 303 Md. at 286; *Wheeling*, 473 Md. at 385.

Consideration of these factors makes clear that the General Assembly intended PS § 3-101(g) to set out three alternative categories of police misconduct, not a list of three required elements. First, the word “includes” introduces the list of three subparts. It is a standard practice of the General Assembly to link a definitional list of alternatives with “and” where the list is introduced by “includes.” Department of Legislative Services, Maryland Style Manual for Statutory Law, at 36 (2018) (“DLS Manual”) (instructing that “[i]n a definition, if the conjunctions ‘and’ and ‘or’ seem equally appropriate, use ‘or’ following ‘means’ and ‘and’ following ‘includes,’” and providing an example of a list of alternatives joined by “and”);¹ *see, e.g.*, Commercial Law Article, § 14-901(e)(2) (linking alternative categories of food products with “and” after “includes”); Criminal Procedure Article, § 1-101(c)(2) (similar, for types of “charging documents”); Insurance Article, § 20-504(a)(2) (similar, for examples of add-on automobile insurance); Criminal Law Article, § 3-602(a)(4)(ii) (similar, for examples of sexual abuse). When a definitional list is structured this way, the typical conjunctive/disjunctive distinction between “and” and “or” does not apply; rather, both words are “equally appropriate” for linking the alternatives. DLS Manual at 36.²

Indeed, when the General Assembly uses this structure for a definitional list, it would often defy logic to read “and” to create a conjoined set of elements, because listed categories generally do not fit together as a scheme of requirements. *See, e.g.*, Com. Law § 14-901(e)(2) (using “and” to link “meat,” “milk,” “poultry,” and “beverage” in a list to define “food” or “food product”). This holds true for PS § 3-101(g). The three subparts do not address different aspects of prohibited conduct, such as the mental state and act or omission that typically make up the definition of a crime. Instead, they list three separate sources of law that, when violated, may give rise to police misconduct. To

¹ Available at <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/024900/024943/20210087e.pdf>. The DLS Style Manual sheds light the General Assembly’s drafting practices. *See, e.g., Elsberry v. Stanley Martin Co., LLC*, 482 Md. 159, 184 (2022) (relying on the manual in interpreting a statute); *Clark v. State*, 473 Md. 607, 620 (2021) (same).

² In contrast, to create a set of additive elements in a definition, the standard legislative drafting practice is to employ “and” without “includes.” *See* DLS Manual at 19; *e.g.*, Alcoholic Beverages Article, § 1-101(b)(1) (“‘Alcoholic beverage’ means a spirituous, vinous, malt, or fermented liquor, liquid, or compound that: (i) contains at least one-half of 1% of alcohol by volume; and (ii) is suitable for beverage purposes.”); PS § 1-101(c)(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 . . .”).

read the list as three independent predicates for misconduct is natural; to read them together as conjoined elements strains common sense.

Moreover, the legislative purpose and history of § 3-101(g) confirm that it must be read to set out alternative types of misconduct. If interpreted as a restrictive set of three required elements, the definition would cover criminal conduct only (because “violation of a criminal statute” would be a required element). But the Legislature obviously did not intend this result. Section § 3-101(g) was enacted in 2021 as part of the Maryland Police Accountability Act, 2021 Md. Laws, ch. 59. The purpose of that Act, in relevant part, was to repeal the Law Enforcement Officers’ Bill of Rights (“LEOBR”)—which previously governed procedure for police misconduct matters—and replace it with a Statewide system of police discipline that would improve accountability to the public. *Id.* at 1, 4; Fiscal & Policy Note, H.B. 670 at 1 (“Fiscal Note”) (explaining that the bill “repeals [LEOBR] and establishes provisions that relate to a statewide accountability and discipline process for police officers”); *id.* at 4-6 (discussing creation of Police Accountability Boards, Administrative Charging Committees, and Trial Boards with civilian members). LEOBR itself governed charges of police misconduct that were not criminal in nature. *Maryland-National Capital Park & Planning Comm’n v. Anderson*, 395 Md. 172, 183-84 (2006) (explaining that LEOBR applied to “any inquiry into [a police officer’s] conduct which could lead to the imposition of a disciplinary sanction”) (internal quotation marks and citation omitted); *see, e.g., id.* at 178-80 (concerning a noncriminal misconduct case involving the violation of a vehicle pursuit policy); *Baltimore City Police Dep’t v. Robinson*, 247 Md. App. 652, 658-59 (2020) (concerning a noncriminal misconduct case for violation of an evidence control policy). Nowhere in the Maryland Police Accountability Act or its legislative history is any indication that the General Assembly intended to replace LEOBR with a sharply curtailed mechanism for police discipline that would apply to criminal misconduct only.

Instead, the legislation and its history indicate the opposite. The new statewide disciplinary system focuses largely on noncriminal forms of misconduct. In fact, in many cases where criminal charges are filed or where a criminal conviction results, the Act authorizes the chief of the law enforcement agency to impose discipline directly, without going through the charging committee or trial board process. PS § 3-107(b)-(c); *see* Final Report of the Workgroup to Address Police Reform and Accountability in Maryland, at 6 (Dec. 2020) (recommending that “[o]fficers convicted of a misdemeanor or who received a probation before judgment do not receive a trial board hearing. The chief decides punishment in this instance.”);³ Fiscal Note at 13 (explaining that the Act addresses the Workgroup’s recommendations). To interpret PS § 3-101(g) as covering only criminal misconduct would frustrate the legislative purposes of replacing LEOBR with a statewide accountability system and of standing up new procedural mechanisms clearly designed to cover noncriminal forms of misconduct. Such a conjunctive

³ Available at https://dlslibrary.state.md.us/publications/OPA/TF/WAPRA_2020.pdf.

The Honorable Michael A. Jackson

April 18, 2023

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interpretation would therefore be improper. *See Wheeling*, 473 Md. at 385-86 (reading “and” disjunctively where a conjunctive reading would frustrate statutory purpose).

In summary, PS § 3-101(g) must be interpreted to set forth a disjunctive list of categories of police misconduct in order “to effectuate the obvious intention of the legislature.” *Comptroller v. Fairchild Indus., Inc.*, 303 Md. 280, 286 (1985).

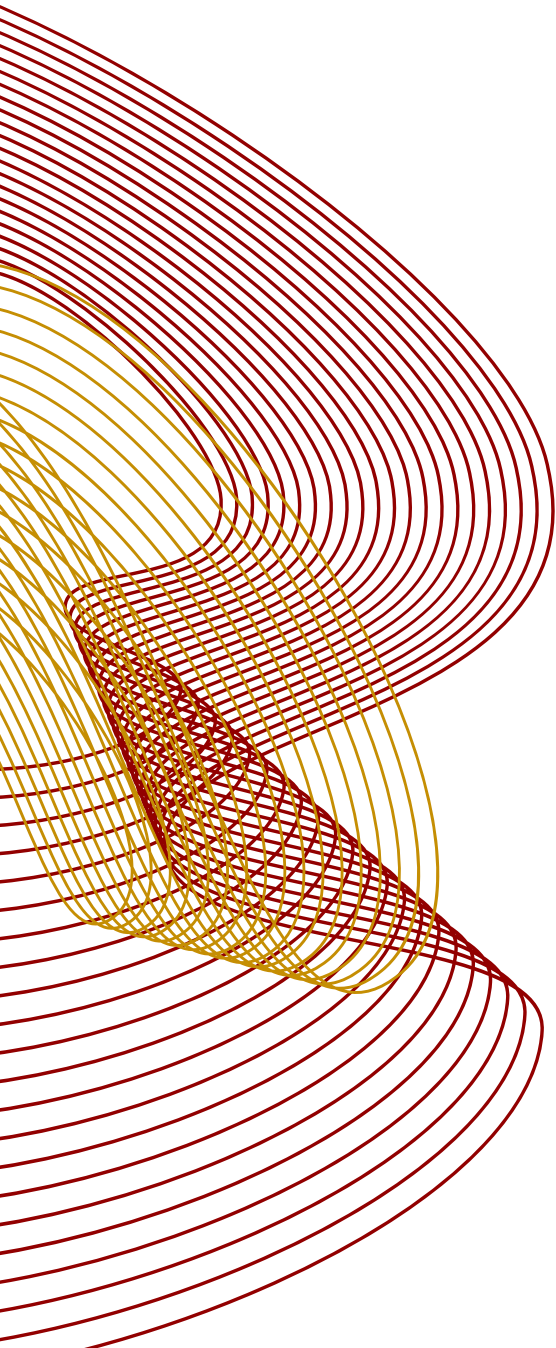
Sincerely,

A handwritten signature in dark ink, appearing to read "Sandra Benson Brantley", with a stylized flourish at the end.

Sandra Benson Brantley
Counsel to the General Assembly

APPENDIX B:

Maryland Public Safety Article § 3-201(f)



Maryland Public Safety Article § 3-201(f)

(f)(1) “Police officer” means an individual who:

- (i) is authorized to enforce the general criminal laws of the State; 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 police department, bureau, or force of a county;
 - 4. the police department, bureau, or force of a municipal corporation;
 - 5. the Maryland Transit Administration police force;
 - 6. the Maryland Transportation Authority Police;
 - 7. the police forces of the University System of Maryland;
 - 8. the police force of Morgan State University;
 - 9. the office of the sheriff of a county;
 - 10. the police forces of the Department of Natural Resources;
 - 11. the police force of the Maryland Capitol Police of the Department of General Services;
 - 12. the police force of a State, county, or municipal corporation if the special police officers are appointed under Subtitle 3 of this title;
 - 13. the Housing Authority of Baltimore City Police Force;
 - 14. the Baltimore City School Police Force;
 - 15. the Crofton Police Department;
 - 16. the Washington Suburban Sanitary Commission Police Force;
 - 17. the Ocean Pines Police Department;
 - 18. the police force of the Baltimore City Community College;
 - 19. the police force of the Hagerstown Community College;
 - 20. the Warrant Apprehension Unit of the Intelligence and Investigative Division in the Department;
 - 21. the police force of the Anne Arundel Community College; or
 - 22. the police department of the Johns Hopkins University established in accordance with Title 24, Subtitle 12 of the Education Article.

(2) “Police officer” includes:

- (i) a member of the Field Enforcement Bureau of the Comptroller’s Office;
- (ii) a member of the Field Enforcement Division of the Alcohol and Tobacco Commission;
- (iii) the State Fire Marshal or a deputy State fire marshal;
- (iv) an investigator of the Intelligence and Investigative Division of the Department;
- (v) a Montgomery County fire and explosive investigator as defined in § 2–208.1 of the Criminal Procedure Article;

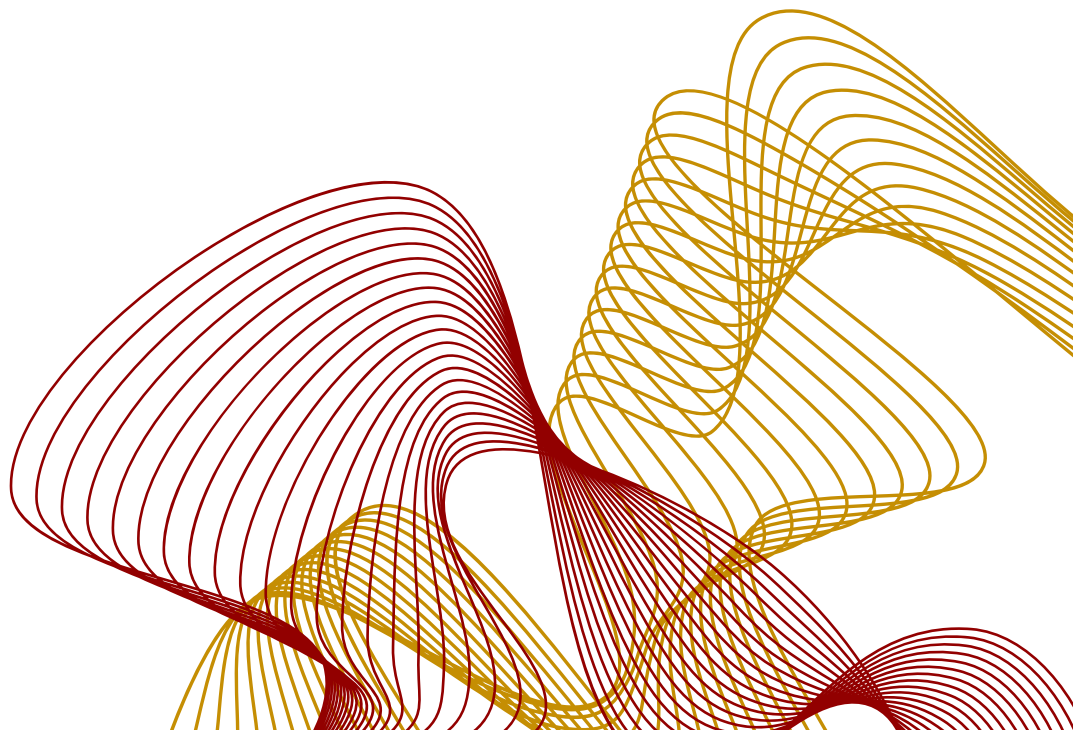
- (vi) an Anne Arundel County or City of Annapolis fire and explosive investigator as defined in § 2–208.2 of the Criminal Procedure Article;
- (vii) a Prince George’s County fire and explosive investigator as defined in § 2–208.3 of the Criminal Procedure Article;
- (viii) a Worcester County fire and explosive investigator as defined in § 2–208.4 of the Criminal Procedure Article;
- (ix) a City of Hagerstown fire and explosive investigator as defined in § 2–208.5 of the Criminal Procedure Article; and
- (x) a Howard County fire and explosive investigator as defined in § 2–208.6 of the Criminal Procedure Article.

(3) “Police officer” does not include:

- (i) an individual who serves as a police officer only because the individual occupies another office or position;
- (ii) a sheriff, the Secretary of State Police, a commissioner of police, a deputy or assistant commissioner of police, a chief of police, a deputy or assistant chief of police, or another individual with an equivalent title who is appointed or employed by a government to exercise equivalent supervisory authority; or
- (iii) a member of the Maryland National Guard who:
 - 1. is under the control and jurisdiction of the Military Department;
 - 2. is assigned to the military property designated as the Martin State Airport; and
 - 3. is charged with exercising police powers in and for the Martin State Airport.

APPENDIX C:

Charles County Sheriff's Office Collision Committee Report Form





CHARLES COUNTY SHERIFF'S OFFICE

COLLISION COMMITTEE REPORT



From: Agency Collision Committee

To Officer's Name: ID:

Date:

Ref. Incident #:

On the above date, the Agency Collision Committee met and reviewed this case. After reviewing the facts in this case, the Committee finds the collision to be:

☐ Non-Preventable ☐ Preventable ☐ Excusable

POINTS ASSESSED BY THE COLLISION COMMITTEE: _____

Approved by: _____
Collision Committee Chairman (or designee)

State Disciplinary Matrix for Departmental Collisions:

Category 1 (minor damage) _____

Category 2 (major damage) _____

Category 3 (injury) _____

Previous Collision History and Points Assessed: _____

Referred to Administrative Charging Committee: ☐ Yes ☐ No

After Review the ACC Confirms the Agency's Findings: ☐ Yes ☐ No

Approved by: _____
Chairman of ACC

Sheriff Offers ACC Findings ☐ Yes ☐ No

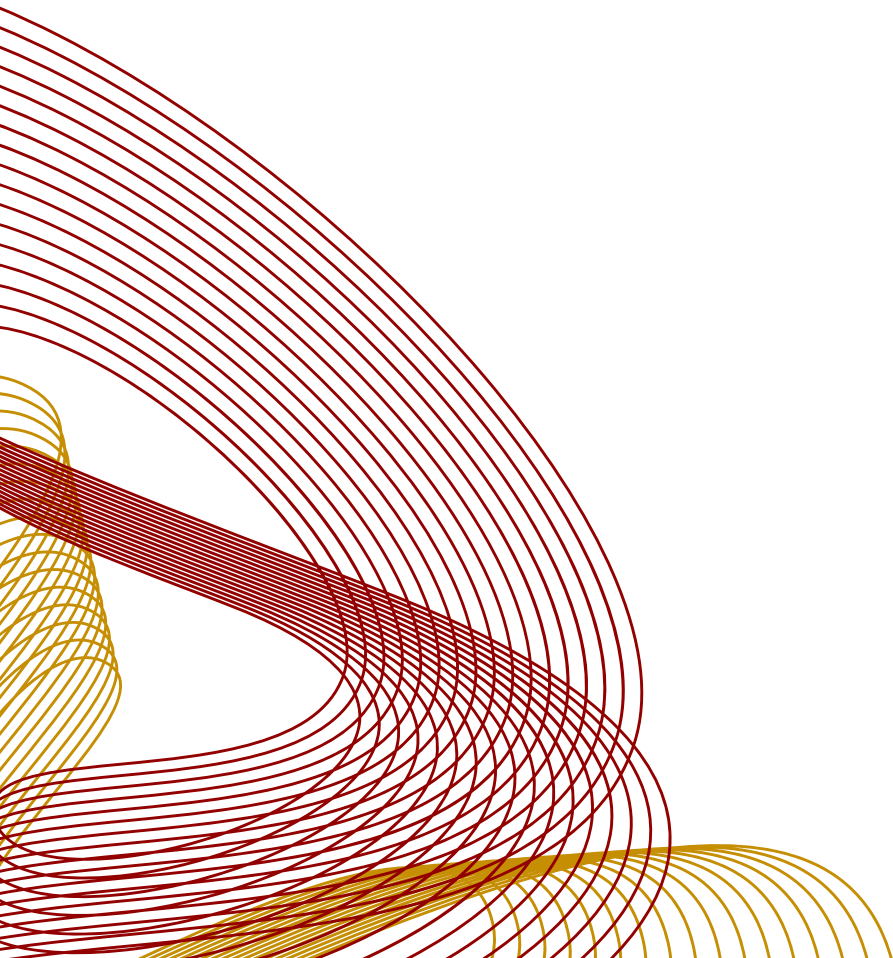
Sheriff Requires Increase in Penalty ☐ Yes ☐ No

Sheriff's Signature: _____ Date: _____

Employee Signature: _____ ID#: _____ Date: _____

APPENDIX D:

May 10, 2024 OAG letter on complaint withdrawal requests



CANDACE McLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General



ANTHONY G. BROWN
Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

(410) 576-6327
phughes@oag.state.md.us

May 10, 2024

The Honorable J. Travis Breeding, President
County Commissioners of Caroline County
109 Market Street, Room 123
Denton, Maryland 21629

Dear President Breeding:

You have asked whether a complaint of police misconduct involving a member of the public may be withdrawn after it is filed with a law enforcement agency pursuant to § 3-102 or § 3-103 of the Public Safety Article. We conclude that, while a complainant may seek to withdraw such a complaint, the withdrawal does not alter the obligations that the Public Safety Article and its implementing regulations place upon the law enforcement agency to investigate the complaint and forward it to the appropriate civilian charging committee, called an Administrative Charging Committee (“ACC”), for a charging determination.

The relevant implementing regulations, adopted by the Maryland Police Training and Standards Commission (the “Commission”), divide complaints of misconduct involving a member of the public into two broad categories: those that are not eligible for

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mediation, and those that are (due to their minor and nonviolent nature). As for the first category, the plain language of the regulations, their purpose, and the purpose of the underlying statute all lead us to the conclusion that a law enforcement agency is prohibited from treating a complaint as resolved when the complainant seeks to withdraw it. As for the second category, the answer is less clear because the plain language and purpose of the regulations are not necessarily inconsistent with the concept of resolution by withdrawal in mediation-eligible cases. Still, the overall framework of procedures that the Commission has adopted for complaints of police misconduct does not currently permit a mediation-eligible complaint to be resolved via withdrawal. To authorize that result, the Commission would need to amend its regulations. Thus, as the law currently stands, the desire of a complainant to withdraw does not, for any category of complaint of police misconduct involving a member of the public, relieve the law enforcement agency of its obligation to investigate the complaint and forward it to the ACC for a charging determination.

I Background

In the Maryland Police Accountability Act of 2021, the General Assembly repealed the Law Enforcement Officers' Bill of Rights, which governed disciplinary proceedings for police officers, and replaced it with a new administrative system that subjects police discipline to substantial civilian oversight. 2021 Md. Laws, ch. 59; *see* Revised Fiscal & Policy Note, H.B. 670, 2021 Leg., Reg. Sess. at 4-6, 21-25. That system is codified at Title 3, Subtitle 1 of the Public Safety Article. Among its other features, the statutory scheme assigns responsibility for determining whether to charge an officer with misconduct involving a member of the public to a new type of civilian committee called an Administrative Charging Committee. Md. Code Ann., Pub. Safety ("PS") § 3-104. Each county must establish an ACC to serve its law enforcement agencies, and there is also a statewide ACC for State and bi-county law enforcement agencies. PS § 3-104(a), (b); COMAR 12.04.09.04. Each ACC consists of five members, all civilians. PS §§ 3-104(a)(2), (b)(2), 3-102(b)(1)(ii).

Under the statutory scheme, the disciplinary process begins when an individual files a complaint of misconduct against a police officer. The complaint may be filed directly with the law enforcement agency that employs the officer or with a Police Accountability Board ("PAB"), which must forward the complaint to the law enforcement agency. PS §§ 3-103(a), 3-102(d).¹ Although the PAB is only required to accept complaints from

¹ The PAB is an oversight board for policy matters related to police discipline. Each county must have one, and active police officers may not serve on it. PS § 3-102. Among its other

members of the public, PS § 3-102(a)(3), any individual—whether a member of the public or a person within the law enforcement agency—may file a complaint with the law enforcement agency. PS §§ 3-103(a), 3-104(d). The statutory charging process applies so long as the alleged misconduct involves a member of the public, regardless of whether a member of the public files it. PS § 3-104(d).

After a complaint is filed, the statute provides that the law enforcement agency must, upon completing an investigation, forward the investigatory files to the appropriate ACC. PS § 3-104(d). The ACC must then decide whether to charge the officer with misconduct and, if so, what level of discipline to recommend. PS § 3-104(e). When making these determinations, the ACC may require the law enforcement agency to investigate the matter further. PS § 3-104(f). If the officer is charged, the chief of the law enforcement agency offers the police officer a level of discipline that must be at least as severe as the ACC recommendation. PS § 3-105(c). If the officer accepts the offer of discipline, the matter concludes; otherwise, it goes to a trial board for adjudication. *Id.*

The Commission has adopted regulations to implement this portion of the statute. COMAR tit. 12, subtit. 4, ch. 9; *see* PS § 3-114 (requiring the Commission to adopt implementing regulations). These regulations provide that a “law enforcement agency shall complete a thorough investigation upon receipt of a complaint of alleged police officer misconduct,” unless the complaint is eligible for mediation. COMAR 12.04.09.06B. After completing this investigation, the agency forwards the matter to the ACC if it involves a member of the public. COMAR 12.04.09.06C; *see* PS § 3-104(d). The head of the agency may offer the ACC an opinion about whether discipline is warranted. COMAR 12.04.09.06D(2)(a).

The regulations also detail how the ACC charging process fits together with the Commission’s mediation program. On this point, the regulations take up an issue that the 2021 legislation left unaddressed. In 2016, the General Assembly required the Commission to create a mediation program for complaints of nonviolent misconduct. 2016 Md. Laws, ch. 519; *see* PS § 3-207(d) (requiring the Commission to establish a mediation program “to which a law enforcement agency may refer a nonviolent complaint made against a police officer out of the standard complaint process” and to create eligibility criteria for the program by regulation). The 2021 legislation, however, did not speak to the role of the mediation program in the new system for police discipline, perhaps because the Commission had yet to set up the program. *See* 50:5 Md. Reg. 182 (Mar. 20, 2023) (establishing the mediation program).

responsibilities, the PAB appoints some ACC members and makes recommendations to the county government “on changes to policy that would improve police accountability.” *Id.*

The Commission adopted regulations to set up the mediation program in March 2023, *id.*, two months after it adopted the final regulations to implement the standard ACC charging process, *see* COMAR 12.04.09.9999 (administrative history of Chapter 9 reflecting its adoption on January 9, 2023). Together, the two sets of regulations clarify the intersection between the mediation program and the standard charging process. *See id.*; COMAR tit. 12, subtit. 4, ch. 11; COMAR 12.04.09.06. They provide that a complaint of misconduct filed by a member of the public is eligible for mediation if no use of force is alleged and if the allegations fall within the two lowest categories of misconduct on the six-category scale contained in the Commission’s statewide disciplinary matrix. COMAR 12.04.11.06A, B(1).² If a complaint is eligible for mediation, at the outset it is not covered by the investigation requirement that the regulations impose on the agency. COMAR 12.04.09.06B (requiring an investigation of a complaint “which is not eligible for mediation”). Instead, the regulations set up a different process for mediation-eligible complaints. *See* COMAR 12.04.09.06A(1) (providing that such complaints “may, subject to the agreement of the complainant, be handled outside of the formal PAB and ACC complaint process”).

As a threshold matter, to refer complaints to mediation, a law enforcement agency must first establish its own mediation program by entering into a memorandum of understanding with an approved mediation provider, developing program guidelines, and forwarding the guidelines to the Commission for review. COMAR 12.04.11.04.³ For an agency that has complied with these threshold requirements, its first step when receiving a complaint that is eligible for mediation under the Commission’s regulations is to decide whether mediation is appropriate. COMAR 12.04.11.06A(2). Even if the complaint is eligible, the agency may opt against mediation and handle the matter instead through the

² The two eligible categories are Category A, which covers “[c]onduct that has or may have a minimal negative impact on operations or professional image of the law enforcement agency,” and Category B, covering “[c]onduct that has or may have a negative impact on the operations or professional image of law enforcement agency; or that negatively impacts relationships with other officers, agencies, or the public.” COMAR 12.04.11.06A, 12.04.10.04D(2), (3).

³ We understand that, thus far, only a few law enforcement agencies have complied with the threshold requirements for setting up mediation programs. Although the regulations do not spell out this point, we interpret them to mean that an agency that has not set up a mediation program must handle complaints that would otherwise be eligible for mediation (i.e., Category A and B complaints not involving use of force) through the standard ACC charging process. *See* COMAR 12.04.11.08B (providing that a complaint that is not successfully resolved through mediation must be referred back to the standard ACC process).

standard ACC charging process. *See* 12.04.11.06A(3), C.⁴ Next, if the law enforcement agency decides that mediation is appropriate, it asks the complainant and the police officer if they wish to participate. If either party declines, the matter goes back to the standard ACC charging process. COMAR 12.04.11.07B, C. Finally, where the parties agree to mediation, the agency refers the matter to its approved mediation provider. COMAR 12.04.11.07D. If the mediation results in an impasse, the agency must refer the matter back to the standard ACC charging process. COMAR 12.04.11.08B. If the mediation produces a satisfactory resolution, the agency reports that result to the PAB but does not forward the matter to the ACC for any type of determination or approval. COMAR 12.04.09.06A(2), COMAR 12.04.11.08E.

In summary, the provisions on police discipline in the Public Safety Article, as implemented by the Commission's regulations, require law enforcement agencies to (1) investigate a complaint of police misconduct involving a member of the public and (2) forward the results of the investigation to the ACC for a charging determination. This is the standard charging process. However, if an agency has set up a mediation program with an approved provider, the agency may, in its discretion and with the consent of the parties, divert an eligible complaint of minor misconduct to mediation instead of investigating it and forwarding it to the ACC. The agency must refer the complaint back to the standard charging process unless mediation produces a successful resolution.

II Analysis

Because the regulations distinguish mediation-eligible complaints from other complaints of misconduct involving a member of the public, we address your question in two parts. First, we consider whether the withdrawal of a complaint that is not eligible for mediation alters the agency's obligation to investigate the complaint and forward it to the ACC. Second, we consider what actions the agency must take when a complainant seeks to withdraw a mediation-eligible complaint.

A. Complaints Not Eligible for Mediation

In our opinion, if a complainant seeks to withdraw a complaint of misconduct that is not eligible for mediation under the Commission regulations, the agency must nonetheless investigate the complaint and forward it to the ACC for a charging

⁴ Again, even though the regulations do not spell out this point, we interpret them to mean that if an agency opts against mediation, it must refer the complaint back to the standard charging process. *See* COMAR 12.04.11.08B; *supra* note 3.

determination. The Commission's regulations expressly state that the law enforcement agency "shall complete a thorough investigation upon receipt of a complaint of alleged police officer misconduct," provided that the complaint is not eligible for mediation. COMAR 12.04.09.06B. It is true that the statutory provisions, standing alone, do not impose an investigation requirement as clearly as this regulation does. The statutory provisions do strongly imply that the law enforcement agency must investigate all complaints involving members of the public, *see* PS § 3-104(d) ("On completion of an investigation of a complaint of police misconduct involving a member of the public and a police officer . . . the law enforcement agency shall forward to the appropriate administrative charging committee the investigatory files for the matter."), PS § 3-104(f)(1) (noting that the ACC may request information from the agency that "conducted the investigation" and may "requir[e] additional investigation"), and they expressly require the law enforcement agency to "immediately review" complaints that are *filed by* a member of the public, PS § 3-113(a). But, unlike the regulations, the statute does not *expressly* require the law enforcement agency to investigate all misconduct complaints that *involve* a member of the public and that must, for that reason, go to the ACC for charging determinations. Nonetheless, even assuming that the statute itself would not compel the same result as the regulation, the General Assembly has delegated broad authority to the Commission to adopt implementing regulations for the police discipline process. *See* PS § 3-114. As such, the regulation requiring the law enforcement agency to investigate all complaints that are not eligible for mediation is valid and must be followed given that it does "not contradict the statutory language or purpose." *Lussier v. Maryland Racing Comm'n*, 343 Md. 681, 688 (1996).

We do not think that a complainant's desire to withdraw a complaint alters the clear investigation requirement that this regulation imposes. The Supreme Court of Maryland confronted a similar issue in the context of attorney discipline. A Maryland Rule required Bar Counsel to "make an appropriate investigation of every complaint [of attorney misconduct] that is not facially frivolous or unfounded." *Attorney Grievance Comm'n v. Lee*, 393 Md. 546, 561 (2006) (quoting former Md. Rule 16-731(b)). The Court interpreted the plain language of this rule to mean that Bar Counsel "should not dismiss [a] complaint merely upon the Complainant's subsequent request to withdraw, unless [Bar Counsel] found the substantive complaint to be frivolous or unfounded." *Id.* at 562. The Court further reasoned that the purpose of the investigation requirement supported this conclusion:

Indeed, if the Rule were construed otherwise, it would allow an attorney under investigation to avoid disciplinary actions by offering the complainant incentives to withdraw the complaint. Even though an individual complainant may believe that he or she was recompensed adequately as a result of the attorney's

post-complaint gestures, allowing an attorney to avoid a pending investigation and potential disciplinary actions in such a manner would be contrary and detrimental to the purpose of the Maryland Rules of Professional Conduct “to protect the public and the public’s confidence in the legal profession.”

Id. (footnote omitted) (quoting *Attorney Grievance Comm’n v. Gore*, 380 Md. 455, 471 (2004)). If the withdrawal of a complaint nullified the investigation requirement, in other words, the subject of the investigation would be incentivized to take up the matter directly with the complainant, leaving the public’s interest in ensuring adequate enforcement of the underlying conduct rules unaddressed. *See id.*

Although the context here is different, we think similar reasoning applies. Not only does the plain language of the Commission regulation require the law enforcement agency to investigate every complaint that is not eligible for mediation, it states that the agency’s *receipt* of the complaint triggers this obligation. COMAR 12.04.09.06B. This language indicates that withdrawal does not change the investigation requirement, as the language ties the requirement to the information that the agency learns rather than to the wishes of the complainant. *See id.*; *Attorney Grievance Comm’n v. Ruddy*, 411 Md. 30, 68 (2009) (reiterating the holding of *Lee* and reasoning that “a complaint is simply the mechanism by which Bar Counsel becomes aware of possibly questionable attorney conduct”).

Further, this interpretation advances the purpose of the regulation and its authorizing statute. In creating new procedures for matters of police discipline where an allegation of misconduct involves a member of the public, the General Assembly sought to entrust charging determinations to a civilian committee—the ACC. *See* PS § 3-104(d); Revised Fiscal & Policy Note, H.B. 670, 2021 Leg., Reg. Sess. at 5 (explaining the framework of the ACC process). It would undermine this legislative purpose to allow the law enforcement agency to terminate the investigation and charging process, without giving the ACC the opportunity to consider the matter, simply because the complainant decides to withdraw. Although withdrawal may indicate in some cases that the matter does not warrant discipline, in others withdrawal may occur even though the allegation of misconduct is well-founded and even where the public has an interest in addressing the matter. *See Lee*, 393 Md. at 562. We think that, under the statutory scheme, it naturally rests with the ACC rather than the law enforcement agency to parse these considerations. *See* PS § 3-104(d), (e). In addition, interpreting the regulation to mean that withdrawal does not cut off the investigation and charging process avoids creating an incentive for the police officer to prevail upon the complainant to withdraw. *See Lee*, 393 Md. at 562.

Although we have not found any discussion of withdrawn complaints in the history of the legislation creating the ACC charging process, we think that the legislative history, in a broader sense, supports our reading of the regulation. As originally enacted in 2021, the ACC charging process applied to any “complaint made by a member of the public against a police officer.” 2021 Md. Laws, ch. 59 (codified at PS § 3-104(d)). The process did not govern internal complaints. *Id.* The next year, the General Assembly revised this provision to its current form, so that the charging process now covers any complaint “*involving* a member of the public . . . regardless of whether the complaint originated from within the law enforcement agency or from an external source.” 2022 Md. Laws, ch. 141 (amending PS § 3-104(d)). The process therefore governs internal complaints so long as they allege misconduct towards the public. PS § 3-104(d). This change shows that the General Assembly was concerned not with the source of a misconduct allegation, but instead with ensuring that the ACC would assess all allegations of misconduct so long as they involve actions toward the public. *See* Revised Fiscal & Policy Note, S.B. 389, 2022 Leg., Reg. Sess. at 1 (explaining that the change, ultimately enacted as part of S.B. 763, aimed to require “all complaints of police misconduct involving a member of the public to be forwarded to the appropriate [ACC]” (emphasis omitted)). The General Assembly has made plain, in other words, that it is the nature of the alleged misconduct that matters, not the source. We think this point tends to suggest that a decision by the source—the complainant—to withdraw does not alter the applicability of the ACC charging process. *See Ruddy*, 411 Md. at 68.

We recognize that, in some cases, the withdrawal of a complaint will suggest that it was unfounded or will leave the law enforcement agency with limited avenues of investigation, especially where the complainant chooses not to participate in the process.⁵ Law enforcement agencies might reasonably question whether they should be required to allocate resources to the investigation of such complaints. We think, however, that the regulations accommodate this concern. First, although the regulations require a “thorough investigation,” they do not require a wasteful or useless one. *See* COMAR 12.04.09.06B. The agency may still calibrate the investigation to the circumstances. Where an agency believes that it would not be productive to carry the investigation of a withdrawn complaint beyond a certain point—say, after interviewing the officer involved—the regulations do not bar the agency from forwarding the matter to the ACC at that juncture. The ACC may

⁵ The agency does not have any authority to require the complainant to participate in an investigation. The ACC, unlike the agency, has subpoena power and could presumably subpoena a complainant, although we imagine that it would reserve this power for matters where there is a significant public interest in obtaining the complainant’s evidence. *See* PS § 3-104(f). And the ACC, unlike the agency, also has authority to dispose of a withdrawn complaint by determining that no discipline is warranted. *See* PS § 3-104(e)(2). The point, once again, is that the statute assigns these essential decisions to the ACC—not the law enforcement agency.

always request additional investigation if it disagrees with the agency's approach. COMAR 12.04.09.07A(2). The regulations even allow the agency chief to influence the ensuing process by opining to the ACC that the matter does not warrant discipline. COMAR 12.04.09.06D. In other words, investigations and charging determinations for withdrawn complaints may sometimes be more streamlined than for other complaints. The essential requirement is only that the decision to dispose of a withdrawn complaint without discipline must rest with the ACC, not the agency.

B. Complaints Eligible for Mediation

The answer is less clear as to complaints that are eligible for mediation. The regulation discussed above that expressly requires other complaints to be investigated upon receipt does not, by its plain terms, apply to mediation-eligible complaints. COMAR 12.04.09.06B (providing that “[a] law enforcement agency shall complete a thorough investigation upon receipt of a complaint of alleged police officer misconduct, *which is not eligible for mediation*” (emphasis added)). We thus consider whether a law enforcement agency must investigate a complaint that is eligible for mediation when the complainant purports to withdraw the complaint.

We note, at the outset, that this issue about the withdrawal of mediation-eligible complaints is largely academic at this point. The Commission promulgated its mediation regulations only recently, in March 2023. *See supra* Part I. The Commission informs us that, thus far, only a few of Maryland's law enforcement agencies have set up mediation programs. Under the regulations, as explained earlier, an agency that does not have a mediation program must address all complaints involving a member of the public—even those that allege minor and nonviolent misconduct—through the standard ACC charging process, which begins with an investigation by the agency. *See supra* note 3.

In any event, we discuss the mediation issue briefly to provide guidance to the Commission and the agencies. As noted above, the plain language of the regulation that we have found controlling for other complaints does not control this issue because it does not directly apply the investigation requirement to mediation-eligible complaints. COMAR 12.04.09.06B. And in a general sense, the proposition that an agency should have discretion to consider a mediation-eligible complaint resolved if it is withdrawn could comport with the purpose of the regulatory scheme and its underlying statute. Mediation seeks to work through the stated concerns of the complainant. *See* COMAR 12.04.11.03B(6), 12.04.10.03B(8) (defining “mediation” to mean “a process in which parties in a dispute work with one or more impartial mediators who assist the parties in reaching a voluntary agreement for the resolution of a nonviolent dispute or conflict”). By granting the agency discretion to steer an eligible complaint to mediation instead of

investigating it, the regulations empower the agency to treat the private concerns of the complainant as paramount where the alleged misconduct is minor and nonviolent. *See* COMAR 12.04.11.06A(2). This grant of discretion stands in contrast to the charging process for complaints that are not eligible for mediation, where the public interest in addressing the allegation of misconduct prevails over the complainant's private concerns. *See Lee*, 393 Md. at 562; *supra* Part II.A.

As such, there is an argument that allowing the agency to treat a mediation-eligible matter as resolved if the complainant withdraws would not conflict with the purpose of the mediation regulations or the underlying statute. Nor do we think that granting the agency this discretion would create a substantial incentive for the police officer to pressure the complainant to withdraw, because the mediation option allows the officer to pursue similar ends (informal resolution of the complainant's concerns) through legitimate means. *See* COMAR 12.04.10.03B(8). The fact that only minor complaints are eligible for mediation further reduces the risk of improper pressure. *See* COMAR 12.04.11.06A, B(1).

Nonetheless, the Commission's existing regulations cannot, in our view, be interpreted to grant a law enforcement agency this discretion. Under the regulations, withdrawal is not a method by which any type of complaint, including a mediation-eligible complaint, may be resolved. Instead, the regulations identify only one way in which a complaint of misconduct involving a member of the public may be resolved outside of the ACC charging process: through a *successful* mediation. *See* COMAR 12.04.11.08. And the regulations attach careful protocols to this form of resolution: The agency must track and report each such resolution to the PAB. COMAR 12.04.09.06A(2), 12.04.11.08E. Also, the mediator must document a successful resolution in a written statement that memorializes the parties' understanding. COMAR 12.04.11.08C. Both the complainant and the officer must sign this statement. *Id.* In this way, the regulations safeguard against any misunderstanding about whether either party wishes to send the matter through the ACC process or any other misconstruction of their positions. *See id.*

In our opinion, the fact that the regulations attach such protocols to the only form of alternative resolution that they recognize means that they cannot be interpreted to allow an agency to treat a mediation-eligible complaint as resolved if it is withdrawn. *See Kor-Ko Ltd. v. Maryland Dep't of the Env't*, 451 Md. 401, 417 (2017) (reasoning that a regulation must be read "within the context of the [regulatory] scheme to which it belongs, considering the purpose, aim, or policy of the [agency] in enacting the [regulation]" (alterations in original) (quoting *Lockshin v. Semsker*, 412 Md. 257, 276 (2010))). If the Commission had intended to allow an agency to consider the matter resolved when the complainant withdraws a meditation-eligible complaint, we think the regulations would more specifically address that situation.

Thus, in our view, if the Commission wishes to authorize resolution by withdrawal for mediation-eligible complaints, it would need to do so by regulation. To be clear, this choice rests with the Commission; the statute does not require it to grant agencies this authority. *See supra* Part I (explaining that the statute does not address the intersection between the mediation program and the ACC charging process). As we read the existing regulations, unless the complainant and the officer sign a resolution statement and the mediator reports that result in writing to the agency, the agency must send the complaint through the standard investigation and charging process—even if withdrawal cuts off the mediation process. *See* COMAR 12.04.11.08. Although the regulations do not expressly impose this requirement on law enforcement agencies when a mediation-eligible complaint is withdrawn, they imply it by providing a mechanism for a mediation-eligible complaint to avoid the ACC charging process altogether only where a mediator documents that the complaint has been successfully resolved. *See id.* Where mediation does not deliver this result, the ACC charging process provides the only avenue for handling a mediation-eligible complaint. *See* COMAR 12.04.09.06A, B.

III Conclusion

We conclude that, under the Public Safety Article and its implementing regulations, a law enforcement agency must investigate a complaint of police misconduct involving a member of the public and forward the matter to the appropriate ACC, even if the complainant seeks to withdraw the complaint. Although the Commission might conceivably establish a different rule by regulation for those complaints that are eligible for mediation, it has not done so. Under current law, withdrawal does not alter the obligations of a law enforcement agency to investigate and forward any type of misconduct complaint involving a member of the public.

Sincerely,



Anthony G. Brown



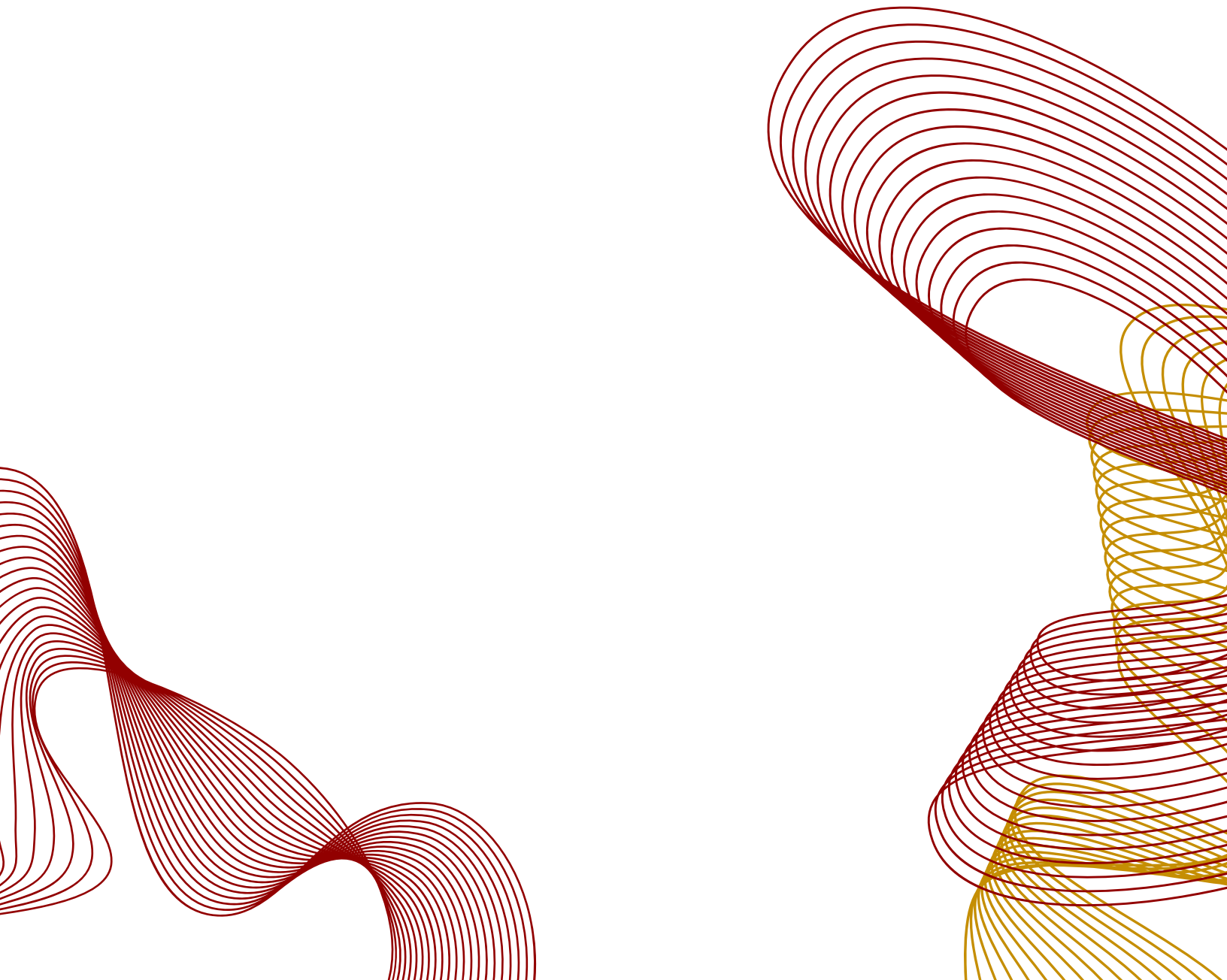
Ben Harrington
Assistant Attorney General



Patrick B. Hughes
Chief Counsel, Opinions and Advice

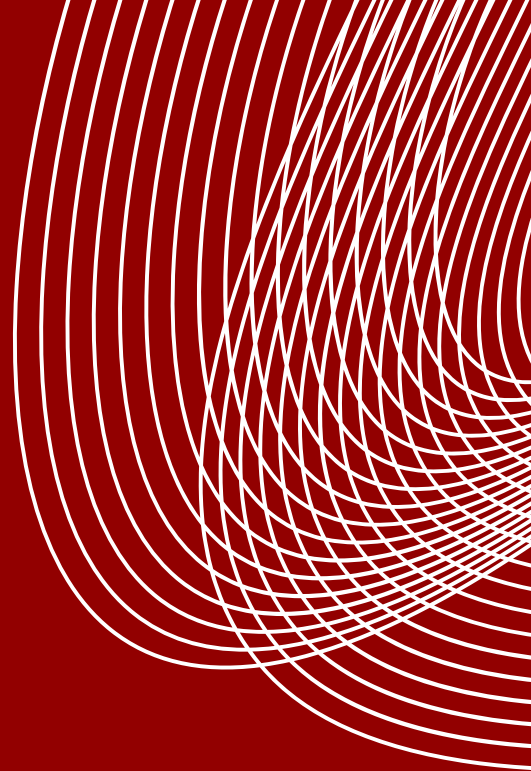
APPENDIX E:

Caroline County checklist for investigation reports referred to the ACC



Please include each item in every IA report given to the Administrative Charging Committee

1. Complaint form
2. All video and audio recordings
3. Witness statements
4. Interview statements taken place regarding the complaint.
5. Relevant policy and procedures
6. Disciplinary records and commendations for the Officer(s) or please indicate "No disciplinary record found."
7. Officer training record
8. LEA opinion



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