



## **MONTGOMERY COUNTY, MARYLAND DEPARTMENT OF POLICE**

### **DISCIPLINARY PROCESS FOR SWORN OFFICERS**

**DIRECTIVE NO:**

**FC 0301**

**EFFECTIVE DATE:**

**September 09, 2024**

**REPLACES:**

FC 0301, dated August 16, 2002

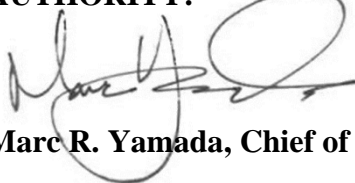
**ACCREDITATION STANDARDS:**

CALEA Standards: 26.1.4, 26.2.1, 26.2.2, 26.2.4, 26.3.5

**PROPONENT UNIT:**

Internal Affairs Division

**AUTHORITY:**

  
**Marc R. Yamada, Chief of Police**

If a regulation, departmental directive, rule, or procedure's provision conflicts with a contract provision, the contract prevails, except where the contract provision conflicts with State law or the Police Collective Bargaining Law (FOP Contract, Article 61).

#### **I. POLICY**

A relationship of trust and confidence between the department and the community is essential to effective law enforcement. It is important to establish a disciplinary process that enables the department to initiate positive, corrective action for improper conduct while protecting employees from unwarranted criticism for properly discharging their duties.

Discipline must be fair and equitable. Disciplinary action against an employee must be initiated promptly when it is evident that the action is necessary to maintain an orderly and productive work environment. Except in cases of theft or serious violations of policy or procedure that create a health or safety risk, disciplinary actions must be progressive in severity. The severity of the action should be determined after consideration of the nature and gravity of the offense, its relationship to the employee's assigned duties and responsibilities, the employee's work record, and other relevant factors.

It is the policy to invite any individual to bring to the department's attention complaints about its employees' conduct whenever that person believes an employee acted improperly. Further, it is the policy of this department to provide a thorough, fair, and expeditious disposition of complaints regarding the conduct of department employees.

Complaints will be received courteously by any department employee, and the department will make every effort to ensure that no adverse consequences occur to any person due to having brought what they believe to be a legitimate complaint or information to the department's attention. The procedures enumerated within this directive apply to allegations of misconduct against department employees, both on and off duty.

## II. AUTHORITY IN DISCIPLINARY MATTERS

The Chief of Police has authority for disciplinary action involving both sworn personnel within the guidelines of the *Maryland Title 12 Department of Public Safety and Correctional Services, Subtitle 04 Police Training and Standards Commission, Chapter 09 Police Accountability Boards and Administrative Charging Committees (ACC)* and civilian employees. (*Md. Public Safety Code Ann. Section 3-101 et. seq.*)

## III. DEFINITIONS

- A. Administrative Closure: An administrative conclusion used to terminate an internal investigation that cannot proceed to a normal conclusion (e.g., because of an uncooperative complainant).
- B. Brutality: The use of excessive or unjustified force by an officer in the exercise of official duties.
- C. Complaint: An allegation of *poor performance or behavior* made against an employee of the department.
- D. Demotion: The movement of an employee from one merit system position or class to another with a lower grade level assignment.
- E. Dismissal: Removing an employee from the county service for just cause.
- F. Exonerated: The incident did occur, but the actions of the involved employee(s) were justified, lawful, and proper.
- G. Forfeiture of Annual Leave or Compensatory Time: Except when prohibited by the Fair Labor Standards Act, the removal of a specified number of hours from an employee's annual leave or compensatory time balance. The amount forfeited may not be less than one day or more than ten days. (This section does not apply to FOP Bargaining Unit members.)
- H. Insufficient Evidence: The investigation failed to disclose sufficient evidence to prove or disprove the allegation.
- I. Internal Investigative Review Panel (IIRP): A *six*-member panel consisting of the *four* assistant chiefs, the *Internal Affairs* Division (IAD) Director, and the commander of the involved officer(s). Each of these individuals is a voting member. The County Legal Advisor (OCA) and Legal and Labor Relations Division (LLRD) attorneys also attend for advisory purposes; however, they have no voting rights. The *IAD* Director facilitates IIRP meetings. The panel will convene regularly to review sustained internal investigations *that are not required to be sent to the Administrative Charging Committee (ACC). The panel will decide* on findings and

recommendations on discipline. *If a sworn officer is the subject of the IIRP, the panel will use the Maryland Statewide Police Disciplinary Matrix to recommend discipline.*

- J. Investigation: An investigation conducted by the Internal Affairs Division (IAD) or other designated department personnel into allegations of misconduct by department employees that, if true, would or could result in disciplinary action. These investigations are done in accordance with Maryland law, negotiated contracts, Montgomery County Personnel Regulations, department directives, *and department memorandum.*
- K. Letter of Reprimand: One of the lowest levels of disciplinary action permitted under the Montgomery County Personnel Regulations (section 33.1) *and the Maryland Statewide Police Disciplinary Matrix.* The letter is a written statement concerning a specific act, infraction, or violation of a policy or procedure and is included in the employee's personnel file.
- L. Misconduct: *An act or behavior that violates a Department Directive (Policy) or federal, state, or local law.*
- M. Non-Punitive Transfer: The Chief of Police has the authority "to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including, but not limited to, transfer and reassignment where that action is not punitive and where the chief determines that action to be in the best interest of the internal management of the law enforcement agency.
- N. Policy Failure: *This is an investigative finding that an* incident did occur, but the applicable policy did not address the issue presented or was insufficient or ineffective. The directive will be referred to the Policy and Planning Division (PPD), Policy Development Section, for correction and re-issue.
- O. Suspension Pending Investigation of Charges or Trial: The placing of an employee on leave without pay status for an indefinite period pending investigation of charges or trial for job-related offenses. If found innocent, or the charges are dismissed, the employee must be reinstated without loss of pay. Any salary due for the suspension period must equal the employee's normal earnings minus the amount earned in other employment obtained and engaged during the period.
- P. Sustained: The investigation disclosed sufficient evidence to prove an allegation of misconduct.
- Q. Unfounded: The complaint investigation reveals that the acts complained about did not occur.

#### IV. FILING OF COMPLAINTS

##### A. Initial Procedures

- 1. *At a minimum, a person should prepare a narrative written statement about the event, including the times, dates, location, and name of the officer(s), if known. It is preferred, but not necessary, to submit this information via an MCP Form 580, "Compliment/ Complaint Form," to document their allegation. A person may also submit a complaint*

*using the Montgomery County Police Accountability Complaint Form linked to the county website.*

2. An individual desiring to complain about an employee of the Department of Police, either in person or by telephone, should be provided with the MCP Form 580 or have their complaint documented for them on the MCP Form 580. If an individual wishes to speak with a supervisor, they will be referred to the highest-ranking on-duty supervisor. A police executive or supervisor should be notified as soon as practical after a complaint is documented. (Refer to FC 0250, "Duty Commander Function," section III.)
3. **An MCP Form 580** will be provided to any citizen upon request.
4. Complaints will be taken by any employee regardless of the duty assignment of the employee who is the subject of the complaint.
5. Complaints will be filed on the MCP Form 580 and forwarded via the district/unit commander, where the complaint was made to IAD for proper dissemination.
6. A photocopy **or electronic image** of the complaint will be given to the complainant as a receipt.
7. The investigative assignment will be made at the IAD, and a letter of acknowledgment will be sent to the complainant.

B. Complaint by an Employee of the Department

Any employee desiring to file a complaint against another department employee will document the complaint on the MCP Form 580 or in memo form, including the identical information prescribed in section IV.A.1, and submit it to IAD.

C. Anonymous or Uncooperative Complainant

Anonymous complaints are not, per se, excluded from investigation. The information relating to anonymous complaints will be documented on the MCP Form 580 and forwarded directly to IAD.

D. Nothing precludes the department from investigating allegations of misconduct against police officers from whatever source consistent with the law when it is determined that such investigation is in the best interests of the department or the community.

E. Retaliatory Action Prohibited

Any department employee who takes retaliatory action against a complainant or witness shall incur appropriate disciplinary action. However, this in no way prohibits an officer's right to bring suit arising out of their duties as a police officer.

F. IAD Log

An IAD log will be maintained to record all complaints against departmental personnel. This log will include the following information:

1. The name(s) of the accused employee(s)
2. Name of the complainant
3. District of the complaint
4. Nature of the complaint
5. IAD control number
6. Date the complaint is received
7. Date of the incident
8. The unit assigned to investigate
9. Disposition

## **V. *INVESTIGATIONS OF COMPLAINTS***

### **A. Investigative Reports**

All reports will include:

1. The allegations as made by the complainant or discovered through investigation.
2. A written report of the investigative process and information uncovered or obtained.
3. List all those contacted and/or interviewed during the investigation.

### **B. Interrogation of Officers Under Investigation**

#### **1. Notification**

- a. The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness(es) at least *thirty* days prior to any hearing.
- b. The MCP Form 242, "Internal Investigation Notification," is used in the administrative investigation of any incident that could lead to disciplinary action against an officer. Once an apparent violation is discovered and the supervisor's investigation focuses on a particular officer, the MCP Form 242 shall be executed prior to the interrogation of that officer. For example, since many at-fault traffic accidents result in disciplinary action, this form should be executed prior to the supervisor's questioning the responsible officer. It is suggested that the supervisor allow the accident investigator to complete the accident report before starting the supervisor's investigation.

#### **2. Representative at Interrogation**

At the request of any law enforcement officer under interrogation, they shall have the right to be represented by counsel or any other responsible representative of their choice who shall be present at all times during the interrogation unless waived by the law enforcement officer. The interrogation shall be suspended for a period of time not to exceed ten days until representation is obtained. However, the chief may, for good cause shown, extend that period within those ten days.

3. Record of Interrogation

A complete record, either written, taped, or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. Upon completion of the investigation and request of the law enforcement officer under investigation or their counsel, a copy of the record of their interrogation shall be made available ***at least thirty*** days prior to any hearing.

4. When to Use the MCP Form 50, "Advice of Rights"

If the law enforcement officer under interrogation is under arrest or is likely to be placed under arrest as a result of the interrogation, they shall be completely informed of all their rights prior to the commencement of the interrogation.

5. Time, Place, and Manner of Interrogations

- a. The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer unless otherwise waived in writing by the law enforcement officer, or at any other reasonable and appropriate place.
- b. The interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty unless the seriousness of the investigation requires immediate interrogation.
- c. Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.
- d. The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.
- e. The law enforcement officer under investigation shall be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator during any one interrogating session.

6. Required Interrogations and Tests

***The department may require*** a law enforcement officer under investigation to submit blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation. ***The department is not prevented*** from commencing any action that may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath, or urine tests for controlled dangerous substances, polygraph examination, or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol tests, blood, breath, or urine test for controlled dangerous substances, polygraph examination, or interrogation, as may be required by the law enforcement agency, are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit to

it. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the Administrative Hearing.

7. During the internal investigation, any officer may be ordered by the investigator to submit a statement and/or answer all questions that specifically relate to the subject matter of the investigation, regardless of the relative rank of the officers involved.

C. Notification of Employee after Investigation

1. In those cases where a finding other than sustained has been determined, the employee will be notified in writing within seven business days by the IAD Director that the case has been concluded.
2. In those cases where a sustained finding has been determined by the IIRP *or the Administrative Charging Committee (ACC)*, the employee will be notified in writing by the Chief of Police of the investigative outcome and the recommended action to be taken.

D. Notification of Complainant

In all investigations, the complainant will be notified in writing by the Chief of Police or the IAD Director about the outcome of the investigation.

E. Circumstances for No Punitive Action

An investigation shall result in no punitive action where the complaint is unfounded, the employee is exonerated, the case is administratively closed, or a policy failure is discovered.

F. When Officers will be Furnished a Copy of the File

In those cases where a charge of misconduct has been sustained, and the officer has requested a hearing board, the officer will be furnished with a copy of the investigative file under the following conditions:

1. Excluding the identity of confidential sources.
2. Excluding any non-exculpatory information.
3. Not less than **30** days before any hearing if the officer and the officer's attorney agree:
  - a. To execute a confidentiality agreement with the law enforcement agency to not disclose any of the material contained in the record for any purpose other than to defend the officer; and

## VI. IAD NOTIFICATION PROCEDURES

A. Immediate Notification Circumstances

An IAD investigator will be notified of and will immediately respond whenever an employee is involved in any of the following circumstances:

1. When an employee is involved in a firearm discharge, whether intentional or accidental, regardless of duty status, except for authorized target practice or the killing of a dangerous or injured animal as authorized in FC 0131, “***Response to Resistance and*** Use of Force.”
2. When an employee is charged with a criminal offense, or anytime there is an allegation of criminal activity on the part of an employee where police investigation is necessary, regardless of the jurisdiction of occurrence. (Refer to FC 0310, “Administrative Leave.”)
3. When an employee is charged with operating a motor vehicle while under the influence of alcohol or drugs.
4. When an employee is the operator of a county vehicle involved in a fatal accident.
5. After a supervisor confers with an executive officer and justification is determined, an employee is believed to violate the department’s substance abuse policy. (Refer to FC 0371, “Employee Substance Abuse Program.”)
6. Any incident where an executive officer or officer in charge of the district of occurrence feels an immediate administrative investigation is necessary or where so directed by the Chief of Police or designee.

B. Notifying IAD

1. When the circumstances are such that notification of IAD is necessary (events listed in section VI.A), the notification will be made by an executive officer by direct contact with IAD during business hours or through the Public Safety Communications Center (PSCC) during off-duty hours. Any doubt should be resolved in favor of the notification being made. Once notification is made, the IAD investigator is responsible for the administrative investigation. If an executive officer is unavailable, the responsibility for notification will revert to the senior ranking officer on the event scene.
2. IAD may be notified between 0800 and 1600 hours, Monday through Friday, at 240-773-6000. At all other times, an IAD investigator will be available through the PSCC.

C. On-Call Investigator’s Responsibility

1. Upon notification, the IAD investigator will consult with the IAD Director to determine the number of investigators who will respond to those incidents listed in section VI.A.
2. Interviews of involved employees by IAD investigators will be conducted, if necessary, independently of any other interview or interrogation. IAD investigators will not involve themselves in the interviews of involved employees conducted by other units unless requested.