

MARYLAND REGISTER

Emergency Action on Regulations

TO BE COMPLETED BY AELR COMMITTEE	EMERGENCY Transmittal Sheet	TO BE COMPLETED BY DSD
Date Received by AELR Committee		Date Filed with Division of State Documents
06/24/2022		Document Number
Emergency Status Approved		Date of Publication in MD Register
_ -Yes _ -No		
Emergency Status Begins On		
Emergency Status Ends On		
Name of AELR Committee Counsel		

1. COMAR Codification

Title Subtitle Chapter Regulation

12 04 09 01-.07

2. Name of Promulgating Authority

Department of Public Safety and Correctional Services

3. Name of Regulations Coordinator Telephone Number

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4. Name of Person to Call About this Document Telephone No.

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5. Check applicable items:

- New Regulations

- Amendments to Existing Regulations

- Repeal of Existing Regulations

- Incorporation by Reference of Documents Requiring DSD Approval

6. Date Requested for Emergency Status to Begin: 7/1/2022

Date Requested for Emergency Status to Expire: 12/27/2022

7. Agency Will Take the Following Action on These Regulations

- Promulgate them in accordance with State Government Article, §§ 10-101 -- 10-126

- Allow them to expire

8. Is there proposed text which is identical to emergency text:

- Yes - No

9. Check the following item if it is included in the attached document:

- Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

10. Reason for Request for Emergency Status

The Police Training and Standards Commission is requests emergency action to enact Regulations .01—.07 under Chapter 09—Police Accountability Boards and Administrative Charging Committees. Granting emergency status will ensure that the regulations are enacted by the effective date of July 1, 2022 of the Maryland Police Accountability Act of 2021, as established in Chapter Law 059 of the Acts of the 2021 Maryland General Assembly.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Matthew W. Mellady, Assistant Attorney General, (telephone #410-875-3603) on June 24, 2022. A signed copy of the approval is on file at this agency.

Name of Authorized Officer

Troy D. Berry

Title

Chair

Date

June 24, 2022

Telephone No.

301-609-6415

Title 12
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

Subtitle 04 POLICE TRAINING AND STANDARDS COMMISSION

12.04.09 Police Accountability Boards and Administrative Charging Committees

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

Notice of Emergency Action

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The Joint Committee on Administrative, Executive, and Legislative Review has granted emergency status to new Regulations .01—.07 under a new chapter, COMAR 12.04.09—Police Accountability Boards and Administrative Charging Committees

Emergency status began:

Emergency status expires:

Comparison to Federal Standards

There is no corresponding federal standard to this emergency action.

Estimate of Economic Impact

The emergency action has no economic impact.

Economic Impact on Small Businesses

The emergency action has minimal or no economic impact on small businesses.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2023

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:
general funds

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:
Whether these proposed regulations have an economic impact on local government cannot be determined at this time. An increase in local government expenditures may occur depending on how each Maryland county and Baltimore City implement the Maryland Police Accountability Act of 2021.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Response to small business worksheet:

Attached Document:

Title 12 DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

Subtitle 04 POLICE TRAINING AND STANDARDS COMMISSION

Chapter 09 Police Accountability Boards and Administrative Charging Committees

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

.01 Purpose.

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

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

.02 Definitions.

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

B. Terms Defined.

(1) "ACC jurisdiction" means the governmental entities responsible under Public Safety Article, §3-104(a) and (b), Annotated Code of Maryland for establishing a jurisdictional ACC and appointing the jurisdiction's ACC members.

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

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

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

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

(6) "Final Disposition" means:

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

(b) The police officer accepts the agency head's increased penalty disposition;

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

(d) The appeal process is exhausted.

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

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

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

(c) Observant of the rights of other individuals.

(8) "Law enforcement agency" has the meaning stated in Public Safety Article, 3-201, Annotated Code of Maryland.

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

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

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

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

.03 Police Accountability Board.

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

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

C. A local governing body shall determine the number of individuals necessary to administer the PAB.

D. PAB Membership Eligibility.

(1) A local governing body may impose eligibility criteria on PAB membership such as requiring that an applicant be:

(a) At least 21 years old;

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

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

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

.04 State Administrative Charging Committee and Local Administrative Charging Committees.

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

- (1) Have one ACC to serve law enforcement agencies within its ACC jurisdiction; and*
- (2) Develop written procedures for processing police officer misconduct complaints involving members of the public.*

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

C. Public Invitation to Apply for ACC.

(1) At least 30 days prior to selecting a member, an ACC jurisdiction shall publicly invite individuals to apply for an appointment to a membership vacancy on the ACC.

(2) An ACC jurisdiction shall, at minimum, publicly announce on its website an ACC appointment prior to the member's initial term, successive term, or expiration of term.

D. ACC Membership Eligibility.

(1) To the extent permitted by law, an ACC jurisdiction may limit its membership eligibility, by requiring, for example, a member to be:

- (a) At least 21 years old;*
- (b) A legal resident or citizen of the United States of America;*
- (c) A resident of the jurisdiction the ACC serves;*
- (d) Of good moral character; and*
- (e) Free from bias that may negatively impact the integrity of the ACC.*

(2) If permitted by law, an ACC jurisdiction may exclude an individual from appointment to its ACC for ethical and public trust-related reasons consistent with the ACC's business needs. An ACC jurisdiction's reasons for exclusion may include, but are not limited to:

- (a) An individual has a demonstrable conflict of interest, as determined by the ACC jurisdiction;*
- (b) An individual is under criminal investigation by a law enforcement agency;*
- (c) An individual is charged with a crime pending before a court; or*
- (d) An individual has been convicted of, or has received probation before judgement for a felony or misdemeanor for which a sentence for one or more years could have been imposed.*

E. ACC Membership Requirements.

(1) To the extent consistent with Public Safety Article, §3-104, Annotated Code of Maryland, an ACC jurisdiction may require as a condition of its membership, that an individual applying to be an ACC member:

(a) Submits to a background investigation with the law enforcement agency or investigative firm chosen by the ACC jurisdiction to which the individual has applied;

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

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

(2) Background Investigation.

(a) To the extent permitted by law, an ACC jurisdiction may authorize a background investigation to determine if an individual applying to be an ACC member:

- (i) Is of good moral character; and*
- (ii) Unencumbered by conflicts of interest.*

(b) An ACC jurisdiction shall ensure that a background investigation includes, but is not limited to:

- (i) An examination of publicly available records; and*
- (ii) A review of the individual's presence on social media websites, applications, and platforms.*

(c) The law enforcement agency or firm conducting the background investigation shall report the results in writing to the ACC jurisdiction that made the request.

F. Grounds for Refusal of an Appointment to the ACC. If permitted by law, an ACC jurisdiction may refuse to appoint an individual to serve as a member, if the individual:

- (1) Does not meet the eligibility requirements imposed by the ACC jurisdiction under §D of this regulation;*
- (2) Does not agree to the membership requirements imposed by the ACC jurisdiction under §E(1) of this regulation; or*

(3) Is determined to be unsuitable for membership by the ACC jurisdiction based on the results of the background investigation.

G. Self-reporting of Adverse Events.

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

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

- (a) Conflicts of interest;*
- (b) Criminal charges;*
- (c) Criminal investigations; and*

(d) Criminal convictions.

H. Terms of Appointment.

(1) Subject to §H(2) of this regulation, and to the extent such limitations are permitted by law, the term for each appointed ACC member may be limited to a specified period of time.

(2) In order to maintain the continuity of ACC operations, an ACC jurisdiction may during its establishment of an ACC, stagger its members' initial terms of appointment.

(3) To the extent permitted by law, an ACC jurisdiction may impose term limits for appointment to an ACC.

(4) Removal or Resignation of an ACC member.

(a) If an ACC jurisdiction decides to remove a member from the ACC prior to the end of the member's term, the ACC jurisdiction shall provide written notification of the decision to the member and the ACC's chairman.

(b) An ACC jurisdiction shall immediately remove a member who fails to maintain confidentiality as established under §E of this regulation.

(c) A member may resign from an ACC at any time by providing written notification to the ACC jurisdiction and the ACC chairman.

I. Election of an ACC Chairman.

(1) The members shall choose a chairman from their membership.

(2) A chairman shall follow Robert's Rules of Order.

(3) A chairman's responsibilities include:

(a) Establishing the meeting schedule, with a minimum of one meeting per month;

(b) Establishing a written agenda for each meeting for dissemination to the members in advance of each meeting;

(c) Calling a meeting to order;

(d) Coordinating a meeting in accordance with the agenda;

(e) Inviting discussion among members before voting;

(f) Inviting motions, seconds, and votes from members;

(g) Ensuring that a record of all business conducted by the ACC is kept; and

(h) Promptly reporting to the ACC jurisdiction any concerns or adverse events as established under §G(2) of this regulation.

.05 ACC Meetings.

A. As a public body, an ACC is subject to and shall act in accordance with the requirements established in the Maryland Open Meetings Act.

B. An ACC must establish a schedule for making determinations or asking for further review in all pending matters within 30 days of the date a law enforcement agency within its jurisdiction completes its investigation.

C. An ACC shall issue a determination for every initial filing of a complaint by a member of the public within one year and a day of the date the complaint was received by:

(1) A PAB, as established in Public Safety Article, §3-113(c), Annotated Code of Maryland; or

(2) A law enforcement agency.

D. In order to maintain confidentiality, an ACC shall:

(1) Adhere to the requirements for closed sessions as required in the Maryland Open Meetings Act; and

(2) Utilize secure methods to electronically transmit documents, files, notes, and any other materials pertaining to a complaint and subsequent investigation.

E. Quorum and Attendance.

(1) Three members constitute a quorum and a quorum shall be in attendance prior to conducting any ACC business.

(2) ACC meetings may be conducted in person or remotely via secure video connection.

.06 Law Enforcement Agency Investigation.

A. Complaints Eligible for Mediation.

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

(2) Complaints from the public handled through mediation shall be:

(a) Tracked with other citizen complaints; and

(b) Reported to the PAB.

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

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

(1) Law enforcement agency completed its investigation and agency review; or

(2) Agency head of the law enforcement agency completes the agency review and issues a written recommendation regarding the imposition of discipline consideration by the ACC.

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

(1) An agency head may include a written recommendation for the ACC to consider regarding the matter under investigation.

(2) The written recommendation may include an agency head's:

(a) Opinion regarding whether the police officer should be disciplined;

(b) Explanation of aggravating or mitigating factors or circumstances; and

(c) A recommendation for a remedial measure, if the ACC determines not to impose administrative charges against the police officer.

(3) If an agency head believes that discipline is warranted, based on the facts presented in the investigation, an agency head may make a specific recommendation for discipline in accordance with the Uniform State Disciplinary Matrix, as approved by the Police Training and Standards Commission under Public Safety Article, §3-105, Annotated Code of Maryland.

.07 ACC Deliberation and Determination.

A. Deliberation.

(1) When reviewing an investigative file responsive to a complaint of alleged police officer misconduct, an ACC shall:

(a) Conform to the procedures established in Public Safety Article, §3-104(e), Annotated Code of Maryland; and

(b) If applicable, read and consider an agency head's written recommendation before making a determination, and note the ACC's consideration in the ACC's written recommendation.

(2) An ACC, in the performance of its duties under Public Safety Article, §3-104(f)(1), Annotated Code of Maryland, may request additional information and investigation by the law enforcement agency that conducted the initial investigation.

(3) Conflict of Interest.

(a) An ACC member shall abstain from participation in the review, deliberation, voting, and determination of whether to impose administrative charges against a police officer if the ACC member has a specific conflict of interest related to either the police officer under investigation or the complainant.

(b) An ACC member with a potential conflict of interest shall announce the existence of the potential conflict of interest prior to any receipt of the materials contained in the investigative file or any deliberations of the complaint.

(c) If an ACC member becomes aware of a potential conflict of interest after receiving a copy of the investigative file or beginning deliberation, the ACC member shall immediately announce the existence of a potential conflict of interest to the other members of the ACC.

(d) ACC members shall discuss the details of the potential conflict of interest and if the majority determines that the conflict is such that the affected member should not be involved, that member shall be excused from the meeting prior to any consideration of the matter and shall return only after voting on the matter has concluded.

B. Determination.

(1) Following deliberation of the investigative file, interviews, body camera footage, and other available materials, an ACC determination shall be made by a majority vote of the members in attendance.

(2) Each ACC member shall cast one vote and shall not abstain unless prohibited from participating in accordance with §A(3) of this regulation.

(3) If an ACC makes a determination that administrative charges should be filed, the ACC shall make a recommendation in accordance with the Uniform State Disciplinary Matrix established under Public Safety Article, §3-105, Annotated Code of Maryland.

(4) An ACC shall not administratively charge a police officer for conduct for which the police officer has previously been disciplined or sanctioned.

(5) Within five business days of the completed deliberations and vote, an ACC shall forward a written opinion and charging recommendation to the agency head, the police officer, and the complainant.

C. Law Enforcement Agency-Receipt of Written Opinion.

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

(2) An agency head may offer the same discipline recommended by an ACC or a higher degree of discipline within the applicable range of the Uniform State Disciplinary Matrix but may not deviate below the ACC's recommendation.

(3) A police officer may:

(a) Accept the discipline as originally offered by an agency head; or

(b) Refuse the discipline as originally offered by an agency head and have the matter referred to a trial board.

Troy D. Berry
Chair
Maryland Police Training and Standards Commission