

**Maryland General Assembly  
Department of Legislative Services**

**Emergency Regulations  
Department of Public Safety and Correctional Services**  
(DLS Control No. 22-338)

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**Overview and Legal and Fiscal Impact**

These regulations establish certain criteria for and exceptions to a model uniform disciplinary matrix maintained by the Maryland Police Training and Standards Commission.

The regulations present one legal issue of concern. Please see the Legal Issues section of the Legal Analysis below for additional comments.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Public Safety and Correctional Services:**

Police Training Commission: Model Uniform Disciplinary Matrix:  
COMAR 12.04.10.01 through .04

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**Legal Analysis**

**Background**

Chapter 59 of 2021 repealed the Law Enforcement Officers Bill of Rights in its entirety and established new provisions relating to police accountability and discipline as Title 3, Subtitle 1 of the Public Safety Article. A law enforcement agency may not negate or alter any of the requirements relating to specified police officer accountability and discipline through collective bargaining. Provisions relating to the accountability and discipline process and administrative charging committees apply prospectively and may not be applied or interpreted to have any effect or application to: (1) any bona fide collective bargaining agreement entered into by June 30, 2022, for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original contract or (2) a disciplinary matter against a law enforcement officer based on alleged misconduct occurring before July 1, 2022.

Under Chapter 59, each county must have a police accountability board (PAB) to, among other things, receive complaints of police misconduct and then forward the complaints to the appropriate law enforcement agency. Police misconduct is defined as a pattern, a practice, or conduct by a police officer or a 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.

Chapter 59 also required that each county have one administrative charging committee (ACC) and that there be at least one statewide ACC. Following the completion of an investigation of a complaint of misconduct by a law enforcement agency, the agency is required to forward the results of the investigation to the appropriate ACC. The ACC must review the findings and make a determination whether the police officer subject to the investigation should be administratively charged or not administratively charged. If the officer is administratively charged, the ACC must recommend discipline based on a disciplinary matrix. The commission must develop and adopt, by regulation, a model uniform disciplinary matrix for use by each law enforcement agency in the State. Each law enforcement agency is required to adopt the matrix.

Within 15 days after an ACC issues an administrative charge against a police officer, the chief of the law enforcement agency must offer discipline to the police officer who has been administratively charged in accordance with the disciplinary matrix. The chief may offer the same discipline that was recommended by the ACC or a higher degree of discipline within the applicable range of the disciplinary matrix but may not deviate below the discipline recommended by the ACC. If the police officer accepts the chief's offer of discipline, the offered discipline must be imposed. However, if the police officer does not accept the chief's offer of discipline, the matter must be referred to a trial board.

Chapter 141 of 2022 slightly altered provisions established under Chapter 59 by clarifying that an investigation by a law enforcement agency is for any complaint of police misconduct involving a member of the public and a police officer regardless of whether or not the complaint originated from within the law enforcement agency or from an external source. Chapter 141 also clarified the uniform disciplinary matrix is to apply to all matters that may result in discipline of a police officer.

## **Summary of Regulations**

The regulations establish the Uniform State Disciplinary Matrix ("disciplinary matrix" or "matrix").

Regulation .01 states the purpose of the disciplinary matrix including the application of disciplinary standards in a fair, equitable, and consistent manner statewide. Regulation .02 establishes general provisions for the disciplinary matrix including the separate consideration of each sustained misconduct allegation for the recommendation and implementation of discipline; the consolidation of violations into one form of discipline; and a prohibition against the imposition of discipline based on a police officer's race, religion, gender expression, sex assigned at birth, sexual orientation, national origin, age, ethnicity, or familial status and prohibit discipline from being influenced by the high or low profile nature of the incident. Regulation .03 contains definitions including "aggravating factor" and "mitigating factor".

Regulation .04 establishes the disciplinary matrix and provides a table of infraction categories and their descriptions as well as disciplinary ranges. Violation levels one, two, and three

are established for a first, second, or third sustained occurrence of misconduct within specified time periods. Regulation .04 also provides guidance on the calculation of violations that fall into more than one violation category.

Regulation .05 establishes the process for determining discipline. Following a complaint of misconduct, a law enforcement agency is required to investigate the actions of the police officer to determine if the action was a violation of law, regulation, law enforcement agency policy, or other form of misconduct. The regulation also:

- establishes procedures for an ACC to review an investigatory file and calculate disciplinary measures;
- provides that the matrix does not impact certain police management rights to maintain order and manage the affairs of a law enforcement agency;
- provides that an ACC, agency head, or trial board may only deviate from the use of the disciplinary matrix when required by court order, consent decree, or other superseding legal authority;
- authorizes a law enforcement agency to operate a formal mediation program; and
- requires that the matrix tables be maintained and published on the commission's public website.

## **Legal Issues**

The regulations present one legal issue of concern.

As noted in the Summary of Regulations section above, Regulation .05I provides that “[a] law enforcement agency may operate a formal mediation program pursuant to Public Safety Article § 3-207(d) to the extent doing so is consistent with Title 3, Subtitle 1 of the Public Safety Article.” Regulation .03B(8) defines mediation as “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 non-violent dispute or conflict.”

Section 3-207(d) of the Public Safety Article provides in full:

“(d) The [Maryland Police Standards and Training] Commission shall:

(1) establish a Police Complaint Mediation Program to which a law enforcement agency may refer a nonviolent complaint made against a police officer out of the standard complaint process;

(2) refer a complaint referred to the Program to voluntary mediation conducted by an independent mediation service; and

(3) adopt regulations to implement the Program, including criteria concerning eligibility for referral of complaints.”

In discussions with the Department of Legislative Services (DLS) regarding the requirements of § 3-207(d), the commission indicated that it has created a model mediation program document for use by law enforcement agencies but has not established the Police Complaint Mediation Program through regulations adopted in accordance with the requirements of the Administrative Procedure Act. There is also no requirement in the model mediation program that its provisions be uniformly applied statewide. Mediation programs are currently operated independently by certain local jurisdictions.

As noted, the introductory clause of § 3-207(d) requires that the commission itself to carry out the dependent clause provisions. The *commission* shall establish, refer, and adopt. There is no language that would empower the commission to authorize an individual law enforcement agency to operate a formal mediation program or authorize a law enforcement agency to refer a complaint to its own program.

There is no scenario under which Regulation .05I may be given effect under § 3-207(d) because there is no formal mediation program operated by a law enforcement agency that is pursuant the statute. As previously mentioned, there is no statutory provision authorizing an individual law enforcement agency to establish and operate its own mediation program or nor is there language granting the commission the authority to empower law enforcement agencies to do so. In the opinion of DLS, § 3-207(d) requires the commission to establish a mediation program to be administered by the commission itself. The commission must establish referral eligibility requirements. The commission must forward eligible complaints to independent mediation. These requirements are to be achieved through the adoption of regulations, which the commission has not done. Nothing in the plain language of § 3-207(d) indicates an intent of the General Assembly for the commission to establish, outside of the regulatory adoption process, a model mediation program that law enforcement agencies may voluntarily adopt. If a model program were the intent of the General Assembly, § 3-207(d) might look very much like § 3-105(a) of the Public Safety Article, which expressly requires the commission to adopt the model uniform disciplinary matrix.

Further, Title 3, Subtitle 1 does not contemplate the role of mediation in police discipline at all. While it is reasonable to conclude that the General Assembly did not intend to foreclose the option of mediation for certain complaints when it did not amend § 3-207(d), there is no express language indicating how the two statutes are meant to interact. Were it possible to give Regulation .05I effect under § 3-207(d), each law enforcement agency with a mediation program would be left to individually determine what is consistent with Title 3, Subtitle 1 because there is no mandatory authority on what complaints are eligible. The only guidance provided is the use of “nonviolent complaint” in § 3-207(d)(1). The lack of more specific standards could lead to an agency-by-agency determination of eligibility requirements and the appropriateness of mediation. This outcome appears contrary to the overall purpose of a uniform disciplinary process statewide.

To address this legal issue, DLS recommends the introduction of legislation to clarify the intended interaction between Public Safety Article § 3-207(d) and Title 3, Subtitle 1.

## **Statutory Authority and Legislative Intent**

The commission cites §§ 3-208, 3-105, and 3-114 of the Public Safety Article as statutory authority for the regulations. Specifically, § 3-105(a) of the Public Safety Article requires the commission to develop and adopt, by regulation, a model uniform disciplinary matrix. Section 3-114 of the Public Safety Article requires the commission to adopt regulations to implement Title 3, Subtitle 1 of the Public Safety Article, which encompasses the provisions of police accountability and discipline enacted under Chapter 59 of 2021 and subsequent changes to those provisions enacted Chapter 141 of 2022.

The remaining cited authority is not relevant to these regulations. The relevant cited authority is correct and complete. Except as noted in the Legal Issues section above, the regulations comply with the legislative intent of the law.

## **Emergency Status**

The commission requests emergency status beginning July 1, 2022, and expiring December 27, 2022. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The commission indicates the emergency status is necessary to meet the effective date of Chapter 59 of 2021 and Chapter 141 of 2022, which require the commission to develop and adopt a model uniform disciplinary matrix.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulations have no fiscal impact on State or local governments. The Department of Legislative Services concurs and notes that the regulations establish procedures to implement portions of Chapter 59 of 2021 (House Bill 670) and Chapter 141 of 2022 (Senate Bill 763); any potential fiscal impact has already been accounted for in the fiscal and policy notes for the bills.

## **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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