

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
06/27/2022		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 10 01—.04

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.

Wayne Silver 410-875-3605

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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 Maryland Police Accountability Act of 2021 (HB670) is due to take effect on July 1, 2022. While the Maryland Police Training and Standards Commission (MPTSC) has been in the development stage of the new regulations, the 2022 General Assembly passed several amendments (SB763) that had a significant impact on the existing legislation. The MPTSC had to reconvene and work through regulations that had previously been drafted under the original HB 670 language, and modify the draft regulations to meet the requirements of the newly passed SB763 amendments. The Office of Attorney General reviewed the final document for legal sufficiency and returned the document with several highlighted areas that had to be changed in order to satisfy legal sufficiency. The MPTSC met several times over the past few several weeks to complete the document. Attorney General Frosh assisted the Commission with understanding the legal opinion so the document could be finalized on June 13, 2022. Emergency filing is necessary in order to meet the effective date of the legislation and provide guidance to local governing bodies as they develop their new boards and committees.

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 Mellady, Assistant Attorney General, (telephone #410-875-3603) on 06/24/2022. A signed copy of the approval is on file at this agency.

Name of Authorized Officer

Troy D. Berry

Title

Telephone No.

Chair, Police Training and Standards
Commission

301-609-6543

Date

06/24/2022

Title 12
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES

Subtitle 04 POLICE TRAINING AND STANDARDS COMMISSION

12.04.10 Model Uniform Disciplinary Matrix

Authority: Public Safety Article, §3-208, §3-105, 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—.04 under a new chapter, 12.04.10—Model Uniform Disciplinary Matrix.

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:
These regulations will be implemented by local governing bodies and law enforcement agencies with existing resources.

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

There is no impact on small businesses. The regulations have been developed for governmental entities - local governing bodies and law enforcement agencies.

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 10 Uniform State Disciplinary Matrix

Authority: Public Safety Article, §3-208, §3-105, and §3-114; Annotated Code of Maryland

.01 Purpose.

A. The purpose of the Uniform State Disciplinary Matrix is for law enforcement agencies to apply disciplinary standards in a fair, equitable and consistent manner statewide.

B. This chapter establishes a statewide Uniform State Disciplinary Matrix required for all matters that may result in discipline of a police officer.

C. A law enforcement agency shall adopt the Uniform State Disciplinary Matrix in accordance with Public Safety Article, §3-105, Annotated Code of Maryland.

.02 General Provisions.

A. In order to protect the collective integrity of a law enforcement agency, all matters that may result in discipline shall be imposed pursuant to the Uniform State Disciplinary Matrix as responsive measures to a police officer's sustained violation of a law enforcement agency's policy.

(1) Generally, each sustained charge of police officer misconduct shall be considered separately for the purpose of recommending and imposing discipline.

(2) When multiple sustained violations arise from the same conduct or incident, as applicable, an agency head or Administrative Charging Committee (ACC), may decide that the most effective way to determine the appropriate level of discipline in the case is to consolidate sustained violations into one form of discipline.

B. Discipline imposed for first or subsequent sustained misconduct violations may follow a progressive course for repeat or increasingly serious violations.

(1) The Uniform State Disciplinary Matrix and the imposition of discipline shall not be based on a police officer's race, religion, gender expression, gender identity, sex assigned at birth, sexual orientation, national origin, age, ethnicity, or familial relationship.

(2) The imposition of discipline shall not be influenced by the high or low profile nature of the police misconduct.

.03 Definitions.

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

B. Terms Defined.

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

(2) Aggravating Factor.

(a) "Aggravating factor" means conditions or events related to a police misconduct violation that may increase the seriousness of the violation and degree of penalty as specified in the Uniform State Disciplinary Matrix.

(b) "Aggravating factor" includes, but is not limited to the following:

(i) A police officer's prior disciplinary history;

(ii) A police officer's prior negative work history, including non-disciplinary corrective action;

(iii) A police officer's rank;

(iv) A violation was committed willfully or for personal gain;

(v) A police officer's effort to conceal the violation, or to be untruthful or dishonest;

(vi) A police officer's failure to cooperate with an investigation into alleged misconduct;

(vii) A violation was retaliatory in nature;

(viii) A violation or behavior was motivated by bias against a member or group of protected class under Maryland's hate crimes law, as stated in Criminal Law Article, §10-304, Annotated Code of Maryland and the Anti-Employment Discrimination law as stated in State Government Article, §20-602, Annotated Code of Maryland or other state and federal hate crimes law;

(ix) The police officer's expressed unwillingness to comply with policy, tactics, or performance standards;

(x) The impact of the violation on the community or the law enforcement agency's ability to carry out its mission;

(xi) The degree to which the violation caused or could have caused the loss of life or injury; and

(xii) The degree to which the violation caused loss or damage to public or private property.

(3) "Formal written counseling (FWC)" means a written warning given to a police officer that outlines a police officer's misconduct and serves as the least severe form of discipline.

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

(5) "Letter of reprimand" means a formal letter given to a police officer detailing the wrongful action and detailing the required corrective action.

(6) "Loss of leave" means the removal of paid time off from a police officer's earned and accrued paid time off total.

(7) "Loss of pay" means the suspension from duty without pay.

(8) "Mediation" means 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.

(9) Mitigating Factor.

(a) "Mitigating factor" means a condition or event related to a policy violation that may decrease the seriousness of the violation and degree of discipline.

(b) "Mitigating factor" includes, but is not limited to, the following:

(i) A police officer's actions are attributable to selfless concern for the wellbeing of others;

(ii) A police officer's lack of disciplinary history;

(iii) A police officer's complimentary work history;

(iv) A police officer's prior positive work history;

(v) A violation was the inadvertent result of reasonable, otherwise compliant performance;

(vi) A police officer's prompt acceptance of responsibility for the conduct and willingness to be held accountable;

(vii) A police officer's commission of the violation at the direction of a superior;

(viii) A police officer's exposure to unusually serious workplace tensions and stressors; and

(ix) The violation is attributable to limitations beyond the control of the police officer based on a physical or mental disability.

(13) "Penalty days" means either the forfeiture of vacation days or the imposition of suspension without pay for a specified period of time, or both. The number of hours that determines a day is based on the police officer's work schedule.

(10) "Police misconduct" has the meaning stated in Public Safety Article, §3-101, Annotated Code of Maryland.

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

(12) "Remedial training" means training designed to correct the behavior of:

(a) A police officer who has failed to perform the police officer's duties with the skill, knowledge, and ability expected and required of an individual given the authority and responsibility to enforce the law; or

(b) A police officer who has demonstrated a need for additional training.

(13) "Sustained violation" means an investigation has revealed sufficient evidence to impose administrative charges against a police officer for a violation category established in Regulation .04 of this chapter.

(14) "Uniform State Disciplinary Matrix" has the meaning stated in Public Safety Article, §3-101, Annotated Code of Maryland.

.04 Uniform State Disciplinary Matrix.

A. Violation Levels.

(1) Level One. The first level of violation category indicates a first sustained occurrence of a police officer's misconduct.

(2) Level Two. The second level of a violation category indicates a second sustained occurrence of a police officer's misconduct within the time periods specified in Regulation .04 of this chapter and during which a sustained level one violation was committed.

(3) Level Three. The third level of a police misconduct violation category indicates a third sustained occurrence of a police officer's misconduct within the time periods specified in Regulation .04 of this chapter and during which a sustained level one and level two violation was committed.

B. Disciplinary Ranges.

(1) The range of disciplinary penalties within the Uniform State Disciplinary Matrix includes:

(a) A formal written counseling;

(b) A letter of reprimand;

(c) Loss of leave;

(d) Suspension and loss of pay;

(e) Demotion; and

(f) Termination.

(2) A law enforcement agency shall determine the number of hours that constitutes a penalty day, based on a police officer's work schedule.

C. Additional Corrective Measures.

(1) In addition to the disciplinary penalties established within the Uniform State Disciplinary Matrix a law enforcement agency head, ACC or Trial Board following a determination to impose administrative charges, may:

(a) Refer the police officer to:

(i) Counseling;

(ii) An employee assistance program;

- (iii) Remedial training; or
 - (iv) Another police officer assistance program permitted by a law enforcement agency's policy;
 - (b) Suspend or remove a police officer from a take-home car program; and
 - (c) Suspension from secondary employment.
- (2) The options listed in §C(1) of this regulation may be independently imposed by police management in addition to any administrative charges imposed by an ACC or trial board.

D. Violation Categories.

(1) The Uniform State Disciplinary Matrix includes six designated violation categories that represent a progression in the severity of police misconduct violation.

(2) **Category A Violation.**

Categories and Descriptions	Level	Disciplinary Range Mitigating Factors → Aggravating Factors	
Category A: Conduct that has or may have a minimal negative impact on operations or professional image of the law enforcement agency.	One: 1st Violation	Formal Written Counseling	to Letter of Reprimand
	Two: 2nd Violation in 24 Months	Formal Written Counseling	to Up to 1 Day Loss of Leave or Loss of Pay
	Three: 3rd Violation in 24 Months	GO TO CATEGORY B LEVEL 1	

(3) **Category B Violation.**

Categories and Descriptions	Level	Disciplinary Range Mitigating Factors → Aggravating Factors	
Category B: Conduct 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.	One: 1st Violation	Letter of Reprimand	to Up to 2 Days Loss of Leave or Loss of Pay
	Two: 2nd Violation in 36 Months	1 Day Loss of Leave or Loss of Pay	to Up to 3 Days Loss of Leave or Loss of Pay
	Three: 3rd Violation in 36 Months	GO TO CATEGORY C LEVEL 1	

(4) **Category C Violation:**

Categories and Descriptions	Level	Disciplinary Range Mitigating Factors → Aggravating Factors	
Category C: Conduct that involves a risk to safety or that has or may have a pronounced negative impact on the operations or professional image of the law enforcement agency or a member, or on relationships with other officers, agencies, or the public.	One: 1st Violation	2 Days Loss of Leave or Loss of Pay	to Up to 4 Days Loss of Pay
	Two: 2nd Violation in 48 Months	3 Days Loss of Pay or 3 Days Loss of Leave	to Up to 5 Days Loss of pay

	Three: 3rd <i>Violation in 48 Months</i>	GO TO CATEGORY D LEVEL 1
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(5) *Category D Violation.*

(a)

Categories and Descriptions	Level	Disciplinary Range Mitigating Factors → Aggravating Factors
Category D: <i>Conduct substantially contrary to the values of the law enforcement agency or that substantially interferes with its mission, operations, or professional image, or that involves a serious risk to officer or public safety, or intentionally violates law enforcement agency policy.</i>	One: 1st <i>Violation</i>	5 Days Loss of Pay or 5 Days Loss of Leave <i>to</i> Up to 15 Days Loss of Pay
	Two: 2nd <i>Violation in 60 Months</i>	10 Days Loss of Pay <i>to</i> Up to 20 Days Loss of Pay
	Three: 3rd <i>Violation in 60 Months</i>	GO TO CATEGORY E LEVEL 1

(b) *Demotion or reduction in rank may also be considered as a part of the disciplinary penalty for Category D Violation.*

(6) *Category E Violation.*

<i>Categories and Descriptions</i>	<i>Level</i>	<i>Disciplinary Range Mitigating Factors → Aggravating Factors</i>
Category E: <i>Conduct that involves misuse of authority, unethical behavior (not involving false reporting or false statements), or an act that could result in an adverse impact on an officer or public safety or to the professionalism of the law enforcement agency or a violation of any misdemeanor.</i>	One: <i>1st Violation</i>	15 Days Loss of Pay <i>to</i> 25 Days Loss of Pay up to Termination
	Two: <i>2nd Violation in 60 Months</i>	15 Days Loss of Pay <i>to</i> 30 Days Loss of Pay up to Termination
	Three: <i>3rd Violation in 60 Months</i>	GO TO CATEGORY F LEVEL 1

(b) *Demotion or reduction in rank may also be considered as a part of the disciplinary penalty for Category D Violation.*

(7) *Category F Violation.*

<i>Categories and Descriptions</i>	<i>Level</i>	<i>Disciplinary Range Mitigating Factors → Aggravating Factors</i>
Category F: <i>Any violation of law, policy, rule or regulation which: foreseeably results in death or serious bodily injury; or constitutes a willful and wanton disregard of the law enforcement agency's mission, vision and values; or involves any act or omission which demonstrates a serious lack of the integrity, ethics or character related to an employee's fitness to hold their position; or involves egregious misconduct substantially contrary to the standards of conduct reasonably expected, to include those whose sworn duty is to uphold the law; or involves conduct which constitutes the failure to adhere to any condition of employment required or mandated by law, including any 18 U.S.C. § 922(g) (Lautenberg) violations.</i>	One: <i>Any Violation</i>	TERMINATION

(8) Special Circumstance Categories.

(a)

Categories and Descriptions	Level	Disciplinary Range Mitigating Factors → Aggravating Factors	
Driving Under The Influence <i>Category 1: Any off-duty driving under the influence of alcohol and/or drugs which would constitute a violation of law</i>	One: 1st Violation	15 Days Loss of Pay	to TERMINATION*
	Two: 2nd Violation	30 Days Loss of Pay	to TERMINATION*
	Three: 3rd Violation	TERMINATION*	
Category 2: Any on-duty or off-duty in a departmental vehicle driving under the influence of alcohol and/or drugs which would constitute a violation of law.	One: 1st Violation	TERMINATION*	
<i>*Termination may be imposed as discipline unless prohibited by an Executive Order or superseding government policy.</i>			

(b)

Categories and Descriptions	Level	Disciplinary Range Mitigating Factors → Aggravating Factors	
FAILURE TO APPEAR FOR COURT AND MVA HEARINGS <i>Category 1: Intentional or purposeful failure to appear for any properly summoned court appearance which is the result of action taken as a law enforcement officer. This category also includes MVA hearings.</i>	One: 2 violations in 1 year	Formal Written Counseling	to Formal Written Counseling
	Two: 2 additional violations in 2 years	Formal Written Counseling	to Up to 2 Days Loss of Leave or Loss of Pay
<i>Note: The penalty cycle resets one calendar year from the date of the first violation.</i>			

(c)

Categories and Descriptions	Level	Disciplinary Range <i>Mitigating Factors → Aggravating Factors</i>	
DEPARTMENTAL COLLISIONS <i>Category 1: Minor Damage¹ to Police Vehicle and/or Other Property or Vehicle¹</i>	One: <i>1st Violation up to 12 months</i>	Formal Written Counseling	to Letter of Reprimand
	Two: <i>2nd Violation within 0-24 months</i>	Formal Written Counseling	to Up to 2 Days Loss of Leave or Loss of Pay
	Three²: <i>3rd or more Violations within 0-36 months</i>	Letter of Reprimand	to Up to 5 Days Loss of Leave or Loss of Pay
<i>Category 2: Major Damage to Police Vehicle, Other Property, or Vehicle</i>	ONE: <i>1st Violation up to 12 months</i>	Formal Written Counseling	to Up to 1 Day Loss of Leave or Loss of Pay
	TWO: <i>2nd Violation within 0-24 months</i>	Letter of Reprimand	to Up to 3 Days Loss of Leave or Loss of Pay
	THREE²: <i>3rd or more Violations within 0-36 months</i>	Letter of Reprimand	to Up to 10 Days Loss of Leave or Loss of Pay
<i>Category 3: Injury to Law Enforcement Personnel or Civilian</i> <i>If gross negligence or reckless operation of a police vehicle is involved in any collision that results in serious injury or death the disciplinary range shall increase up to and including termination.</i>	ONE: <i>1st Violation up to 12 months</i>	Formal Written Counseling	to Up to 2 Days Loss of Leave or Loss of Pay
	TWO: <i>2nd Violation within 0-24 months</i>	Letter of Reprimand	to Up to 5 Days Loss of Leave or Loss of Pay
	THREE²: <i>3rd or more Violations within 0-36 months</i>	Letter of Reprimand	to Up to 14 Days Loss of Leave or Loss of Pay
<p>¹Law Enforcement Agencies may establish a dollar amount as a guideline for determining the level of severity (minor vs major).</p> <p>²Driver re-training may be imposed at any level but shall impose for three or more at-fault departmental collisions.</p>			

(9) *Violations that Fall into More than One Violation Category.*

(a) *Some acts of police misconduct may fall into more than one violation category depending on the category definition.*

(b) *If an act of police misconduct falls into more than one violation category, an ACC, agency head, or trial board, as applicable, shall review the totality of circumstances related to the act and the violation category definition descriptions prior to choosing the category, level, and range.*

(10) *Violations not found in the Uniform State Disciplinary Matrix shall be assigned to a violation category based on the circumstances of the police misconduct and the violation category definitions.*

.05 Process for Determining Discipline and Imposing Administrative Charges.

A. *Following a complaint of police officer misconduct the law enforcement agency conducting the investigation shall:*

(1) *Investigate the police officer's actions to determine if the action was a violation of law, regulation, the law enforcement agency's policy, or other form of police misconduct; and*

(2) *Include the information in the investigative file.*

B. *An ACC shall review the investigative file and, if applicable, an agency head's recommendation regarding the imposition of administrative charges in accordance with Chapter .09 of this subtitle.*

C. *Following an ACC's review and deliberation, the ACC shall review the violation category definitions for the most appropriate violation category.*

D. *When determining the appropriate violation category, level, and disciplinary range, an ACC, agency head, or trial board may use the Uniform State Disciplinary Matrix violation examples posted on the Police Training and Standards Commission's website as a guide.*

E. *Factors Influencing the Determination to Recommend Administrative Charges and Impose Discipline.*

(1) *Mitigating and aggravating factors surrounding a sustained violation may increase or decrease the discipline.*

(2) *Factors considered within a disciplinary range must stay with the specific violation category.*

F. *Multiple Count Adjustments. When multiple violations arise from the same incident:*

(1) *The violations may be consolidated into one form of discipline, by:*

(a) *Selecting the most serious violation as a starting point within a violation category; and*

(b) *Weighing the other violations to determine whether and how much to increase the discipline with the selected violation category; or*

(2) *Each sustained misconduct violation may be considered separately for the purpose of determining discipline.*

G. *Prior Disciplinary Record.*

(1) *An ACC, agency head, and trial board shall consider a police officer's prior sustained disciplinary record when determining discipline for a new violation.*

(2) *When applicable, three or more sustained violations in the same category within a specified time period shall progress to the next violation category.*

H. *Deviation from the Uniform State Disciplinary Matrix.*

(1) *An ACC, agency head, and trial board may only deviate from the use of the Uniform State Disciplinary Matrix when required by court order, consent decree, or other superseding legal authority.*

(2) *The Uniform State Disciplinary Matrix does not impact a law enforcement agency's rights to maintain order and manage the affairs of a law enforcement agency in all aspects including, but not limited to:*

(a) *Establishing standards of service;*

(b) *Transfer or assignment of a police officer;*

(c) *Establishing standards for performance and conduct; and*

(d) *Maintaining control and regulation of the use of government equipment and property.*

I. *Mediation Programs. 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.*

J. *The Uniform State Disciplinary Matrix and Special Circumstance Violations tables shall be maintained and published by the Maryland Police Training and Standards Commission on its public website.*

Troy D. Berry
Chair

Maryland Police Training and Standards Commission