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“INTEGRITY...FAIRNESS...SERVICE”

SPECIAL ORDER # 2023-02

DATE: July 1, 2023

TO: All Police Department Personnel. To be Announced at Roll Call and a Copy Posted on the Department’s Intranet Site.

RE: Disciplinary Process for Misconduct Required to be Handled in Accordance with Previously Existing Laws, Department Policies, and Memorandum of Understanding.

EFFECTIVE: Upon release of the Department’s revised disciplinary process policies, this Special Order will take effect for misconduct required to be handled in accordance with previously existing laws, Department policies, and Memorandum of Understanding (MOU) as outlined in this Special Order.

BACKGROUND: During the 2021 Session of the Maryland General Assembly, House Bill 670 – Maryland Police Accountability Act of 2021 – Police Discipline and Law Enforcement Programs and Procedures, was passed. This bill contained police misconduct and discipline-related provisions, including the repeal of the Law Enforcement Officers’ Bill of Rights (LEOBR) and requiring the creation of an Administrative Charging Committee to hear specified misconduct complaints.

The Department’s previously existing disciplinary process has been revised to reflect the provisions of House Bill 670 and subsequent related law changes codified in Title 3, Subtitle 1 (i.e., §§ 3-101 through 3-114) of the Public Safety Article. As outlined in the bill, the law changes took effect on July 1, 2022 but apply only prospectively and may not be applied to or interpreted to have any effect on or application to any bona fide collective bargaining agreement entered into on or before June 30, 2022, for the duration of the contract term, excluding any extensions or renewals.

During the time period between July 1, 2022 and June 30, 2023 sworn members who were not members of the Executive Corps were disciplined in accordance with the provisions of the MOU between the Baltimore County Administration and the Fraternal Order of Police, Lodge #4 dated July 1, 2021 – June 30, 2023. Therefore, the revised disciplinary process is only applicable to sworn members covered by the MOU for misconduct alleged to have occurred on or after July 1, 2023, after the MOU contract term expired.

This document has been created to codify policy for the handling of misconduct complaints that are not subject to the Department’s new disciplinary process because the alleged misconduct occurred at a time when the member was protected by the LEOBR, and was subject to provisions of the previous laws, MOU, etc. It also codifies procedures for the handling of certain offenses (i.e., via a non-disciplinary corrective action or as discipline) occurring prior to July 1, 2023 in the same manner for non-sworn members as it is for sworn members.

PURPOSE: To establish procedures for the implementation of the Department’s disciplinary processes for misconduct to be handled in accordance with previously existing laws, Department policies, and MOU, where applicable.

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RELATIONSHIP TO DEPARTMENTAL VALUES: This Special Order supports the Department's value of **FAIRNESS** by ensuring that members are subject to a disciplinary process that is handled in accordance with applicable laws, policies, and MOU as they existed at the time the alleged misconduct occurred. It also ensures that non-sworn and sworn members are treated consistently when it comes to the application of the Department's disciplinary process.

POLICY: It is the policy of the Department to handle the discipline process in accordance with previously existing laws, Department policies, and the MOU, as outlined in this Special Order for all misconduct alleged to have occurred within the applicable timeframes.

PROCEDURES:

GENERAL

- Procedures contained within this Special Order apply to the following:
 1. All complaints of misconduct by a sworn member of the Executive Corps where the alleged misconduct occurred prior to July 1, 2022.
 2. All complaints of misconduct by all other sworn members where the alleged misconduct occurred prior to July 1, 2023.

NOTE: During this time period, sworn members who were not a member of the Executive Corps at the time of the alleged misconduct were subject to discipline in accordance with the provisions of the MOU between the Baltimore County Administration and the Fraternal Order of Police, Lodge #4.
 3. The application of the Department's disciplinary matrix for all disciplinary matters regarding misconduct by a member of the Executive Corps alleged to have occurred:
 - a. On or after July 1, 2022 but before September 6, 2022; or
NOTE: This is because the Uniform State Disciplinary Matrix was not codified until September 6, 2022.
 - b. Between December 27, 2022 and January 8, 2023.
NOTE: This is due to a lapse of time between the expiration of the emergency provisions and the adoption of the regulations governing the use of the Uniform State Disciplinary Matrix.
 4. The application of specified previously existing procedures to misconduct by non-sworn members alleged to have occurred prior to July 1, 2023.
NOTE: For members promoted into the Executive Corps after July 1, 2022, the member's rank at the time of the alleged misconduct will determine which timeframes apply.
- Unless specifically outlined in this Special Order, complaints of misconduct alleged to have occurred after the aforementioned time periods are to follow the Department's revised disciplinary process as codified in revisions to various sections of the Administrative Manual and Field Manual effective July 1, 2023.
- The Internal Affairs Section Commander shall be contacted for a determination of the procedures to be followed, should doubt or ambiguity exist regarding processes to be followed or rights to be granted in relationship to a specific incident.

PUBLIC INQUIRIES AND COMPLAINTS

- Will be handled in accordance with the provisions of the revised disciplinary process.

NOTE: Members will utilize the following flowcharts when responding to potential misconduct by a sworn member:

 1. Non-Supervisory Member Response to Potential Misconduct.
 2. Supervisor Response to Potential Misconduct Identified by a Member of the Public.
EXCEPTION: Provisions related to the forwarding of complaints to the Administrative Charging Committee as listed on the aforementioned flowchart do not apply.
 3. Supervisor Response to Potential Misconduct Identified by a Member of the Department.

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NON-DISCIPLINARY CORRECTIVE ACTION

- When documentation is completed, it will be on a Form 375, Non-Disciplinary Corrective Action Form.
NOTE: The Form 115, Performance Observation Form, and Form 115A, Verbal Counseling, have been archived and may not be used.
- The Form 375 will utilize the following modified distribution:
 1. Original – retained by the supervisor until the period for appeals for the next performance appraisal has expired and then destroyed.
NOTE: If a rating is under appeal, the related documentation must be retained until the appeal is concluded.
 2. Copy – to the member.
- May be used to document complaints regarding a member's failure to appear in court without initiation of the Department's disciplinary process.

COMPLAINT WORKFLOW

- All complaints involving a sworn member, regardless of whether they involve a member of the public, will follow the workflow for complaints not involving a member of the public.
NOTE: Complaints covered under this Special Order will not be forwarded to the Baltimore County Administrative Charging Committee. Recommendations of charges and discipline for sworn members will be determined solely within the Department.

INVESTIGATIONS

- Into alleged misconduct by a sworn member will be conducted in accordance with the provisions previously contained in the LEOBR and the previously existing MOU. See attachment A and attachment B.

EMERGENCY SUSPENSIONS OF SWORN MEMBERS

- Will be imposed by the Chief of Police or designee.
NOTE: The previous version of the Form 56, Suspension Form, dated 12/2022 will be used (See attachment C).
- Will be imposed in accordance with the provisions of Public Safety Article §3-112 as it existed under the LEOBR (i.e., may be imposed with pay if it appears the action is in the best interest of the public and the Department, may be imposed without pay if the member is charged with a felony, etc.). See attachment A.
- Members suspended with pay in the best interest of the public/Department are entitled to a suspension review hearing in accordance with previous Department policy and the LEOBR (See attachment A and D).
NOTE: The suspension review date will be listed on the Form 56.
- Reviews of suspension of Other Employment will be conducted by the Bureau Chief of the Professional Standards Bureau.
- When a member is suspended without pay for felony allegations, reinstatements and back pay will be handled in accordance with the previous MOU. See attachment B.

CHARGES AND DISCIPLINE OF SWORN MEMBERS

- Case disposition classifications will be made using definitions contained in the previous MOU (e.g., unfounded, not sustained, exonerated, sustained, withdrawn, etc.).
- Misconduct complaints involving a member of the public may be handled via the Alternative Disciplinary Process (ADP) as described in the ADP section of the revised disciplinary process, when all other use criteria are met.
NOTE: The Department's disciplinary matrix shall be used as stated below.
- Education-Based Discipline (EBD) may be offered as part of the ADP when appropriate, in accordance with the provisions of attachment E.

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- Discipline will be imposed in accordance with the Department's Disciplinary Matrix as it previously existed under the Second Addendum to Special Order 1-10, Departmental Disciplinary Matrix. See attachment F.
NOTE: The previous version of the Form 80, Notification of Sustained Violations and Disciplinary Action Report, will be used. See appendix K of attachment G.

ADMINISTRATIVE HEARING BOARDS FOR SWORN MEMBERS

- Will be conducted in accordance with provisions previously contained in Special Order 2017-01, Administrative Hearing Boards, and associated attachments, and in accordance with the previous MOU. See attachment G and attachment B.
- A sworn member is not entitled to an Administrative Hearing Board when they have been convicted of a felony. They are entitled in all other cases.

AUTOMATED ENFORCEMENT VIOLATIONS

- When a member pays the citation or appears in court:
 1. Commanders identifying a "Not Justified" violation captured by another jurisdiction occurring during the timeframes covered by this order will not:
 - a. Initiate departmental disciplinary procedures for non-sworn members receiving their third or more "Not Justified" violation in 12 months.
 - b. Initiate a Form 375, Non-Disciplinary Corrective Action Form, for any member receiving their first or second "Not Justified" violation in 12 months.
 2. The precinct/section commander designated by the Chief of Police, will not initiate a BlueTeam entry upon receipt of a Form 12L indicating that a sworn member has received their third or more "Not Justified" violation in 12 months.
NOTE: The Department's disciplinary process will not be initiated.

RECORDS RETENTION/CASE EXPUNGEMENT

- The expungement of complaints against Department members through the Internal Affairs Section (IAS) will be in accordance with the LEOBR and the previous MOU.
- Requesting members will submit a Form 12L to the IAS requesting expungement of eligible case records.
- The IAS will notify the requesting member via a Form 12L when eligible cases are expunged.

IMPLEMENTATION: This Special Order will be distributed electronically to all Department members. Shift/Unit supervisors will be responsible for the referencing of this Special Order.

By order of,

Robert O. McCullough
Chief of Police