

MEMORANDUM

September 15, 2021

TO: Public Safety Committee

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Expedited Bill 34-20, Police – Disciplinary Procedures – Police Labor Relations – Duty to Bargain – Amendments

PURPOSE: Worksession – Committee to make recommendations on bill

Expected attendees:

Assistant Police Chief Willie Parker-Loan
Assistant Police Chief Darren Francke
Assistant CAO Earl Stoddard
Ed Lattner, County Attorney's Office
Fraternal Order of Police President Torrie Cooke
Fraternal Order of Police Vice President Lee Holland

Expedited Bill 34-20, Police – Disciplinary Procedures – Police Labor Relations – Duty to Bargain – Amendments, sponsored by Lead Sponsors Councilmembers Riemer and Rice, and Co-Sponsors Councilmembers Jawando and Navarro, was introduced on July 21, 2020. A public hearing was held on September 22 with 11 speakers.¹ Bill 34-20 would be known as the Police Accountability Act.

Expedited Bill 34-20 would amend the disciplinary procedures for County police officers by requiring the use of a traditional hearing board under the Law Enforcement Officers Bill of Rights (LEOBR), codified at §§3-101 to 3-113 of the Public Safety Article of the Annotated Code of Maryland. The Bill would also require two additional voting public members on a hearing board in a case originating from a citizen complaint alleging an excessive use of force and authorize the Chief of Police to issue a final order on employee discipline based on the recommendations of a hearing board. Finally, the Bill would exclude collective bargaining over the composition of a police hearing board, the right of the Chief to make a final decision on

¹#PoliceAccountabilityAct

discipline, and the right of the Chief to issue a directive or administrative order implementing an employer right.

Councilmembers Riemer and Rice explain their reasons for introducing Bill 34-20 at ©7-8. The County Attorney's Office concluded that there are no legal issues with the Bill (©34-36).

Public Hearing

There were 11 speakers at the public hearing providing a range of views. Police Chief Marcus Jones explained the Executive's position. The Executive requested the Council to delay acting on the Bill to provide the Police Advisory Committee time to make recommendations and to wait to see if the General Assembly amends the Law Enforcement Officers' Bill of Rights (LEOBR). Paulette Kee-Dudley, representing MCGEO (©14); Torrie Cooke, Fraternal Order of Police President (©15-17); Tara Merlo (©18); and Clint Sobratti (©19) each opposed the Bill because it would reduce the scope of collective bargaining for police officers. Jeffrey Rubin, Jews United for Justice (©20-21); Emil Parker, Takoma Park Mobilization (©22-23); and Stephanie Guttormson (©24-25) opposed the Bill arguing that it is fatally flawed because the LEOBR provides too much protection for police officers. Jo Saint-George, representing Women of Color for Equal Justice (©26-28) supported the Bill with amendments to increase citizen input into the police discipline system. Faith T. Blackburne, representing the Montgomery County NAACP (©29); and Michael Marceau, Indivisible Montgomery (©30-31) each supported the Bill as a necessary measure to increase police accountability. David Martinsen (©32-33) also supported the Bill in written testimony.

Issues

1. What is the effect of the enactment of HB 670, Maryland Police Accountability Act of 2021 – Police Discipline and Law Enforcement Programs and Procedures on Bill 34-20?

HB 670 repealed and replaced the LEOBR with a new State-wide disciplinary system for police officers in Maryland. The new uniform disciplinary system established in HB 670 generally applies to misconduct occurring on or after July 1, 2022. The new law also contains a grandfather clause that delays the effective date of the new disciplinary system until the expiration of any existing collective bargaining agreement for the duration of the agreement, excluding extensions. The current collective bargaining agreement between the Executive and the Fraternal Order of Police expires on June 30, 2023. Therefore, the current disciplinary system continues, unless modified, for the next 2 years. Beginning on July 1, 2023, the uniform State-wide disciplinary system established in HB 670 will apply to the County Police Department and will preempt the County from altering it.²

2. What is the current police disciplinary system in the County?

Each of the speakers at the public hearing acknowledged the national need for some type of police reform, considering the tragic examples of police officers using excessive force on people

² HB 670 includes other significant provisions concerning police officers that is not directly relevant to the new State-wide disciplinary system.

of color in Wisconsin, Oregon, and Kentucky. The speakers had differing views on how the County should try to lessen the problem here. The Council recently enacted 4 bills that are intended to increase police accountability. Bill 1-19, Police – Officer Involved Death – Independent Investigation (Law Enforcement Trust and Transparency Act or LETT Act) requires an independent investigation of an officer-involved death; Bill 14-19, Police – Policing Advisory Commission – Established, established a citizen-led advisory commission to advise the Council on policing matters; Bill 33-19, Police – Community Policing, established minimum community policing guidelines; and Bill 27-20, Police – Regulations – Use of Force Policy, established minimum standards for a police use of force policy.

Police accountability requires a fair and efficient disciplinary system to ensure that the police officers who have been given the unique authority to carry weapons and use force to protect and serve the public execute this authority in a fair and reasonable manner. A police officer who fails to do so must be subject to reasonable discipline, including termination. In Maryland, until the effective date of HB 670, the discipline of a police officer is governed by the Law Enforcement Officers Bill of Rights (LEOBR), codified at §§3-101 to 3-113 of the Public Safety Article of the Annotated Code of Maryland.

The LEOBR was enacted by the General Assembly to provide law enforcement officers in Maryland certain procedural rights in disciplinary cases. In 1977, the General Assembly amended the LEOBR to expressly preempt alternate procedures for discipline under local law. One of the mandated uniform procedures was the right to a quasi-judicial hearing before a police trial board composed of three police officers selected by the Chief of Police, with at least one officer at the same rank as the subject of the discipline. The General Assembly enacted laws in 1987 and 1988 amending the LEOBR to permit collective bargaining over police disciplinary procedures. The Governor vetoed both bills because it would erode the uniformity of the LEOBR system. In 1989, the General Assembly amended the LEOBR to permit collective bargaining for an alternate hearing board and the finality of the board's decision.

In *Moats v. Hagerstown*, 324 MD 519 (1991), the Court of Appeals held that the 1989 amendments to the LEOBR permitted a police officer to choose between the traditional hearing board and a collectively-bargained alternate board and permitted finality of the board's decision to be a subject of collective bargaining. In the County, an alternate hearing board was first added to the collective bargaining agreement with the Fraternal Order of Police (FOP) in the agreement that took effect in 1996, but the final decision was still made by the Chief of Police. In 2006, the General Assembly amended the LEOBR again to permit interest arbitration over an alternate hearing board and the finality of the board's decision. The Executive and the FOP bargained to impasse in 2007 and submitted the dispute to final offer by package interest arbitration. The arbitrator selected the FOP's final offer that included making the decision of the alternate hearing board the final agency decision. For example, if the Chief recommends termination and the hearing board sustains the statement of charges against an officer but decides that a suspension is more appropriate, the Chief must accept that decision.

Under the current FOP Agreement, the alternate hearing board is composed of one officer selected by the Chief, one officer selected by the union, and a private labor arbitrator jointly agreed upon by the Chief and the union. In 2016, the General Assembly authorized the addition of up to two voting or nonvoting public members on a traditional hearing board. However, this provision

does not apply to a collectively-bargained alternate hearing board unless the parties agree to add citizens.

Expedited Bill 34-20 would move the County back to the traditional hearing board authorized by the LEOBR, including the additional public members for a case originating from a citizen complaint alleging excessive force. Under the LEOBR, if the Chief wants to increase the penalty recommended by the hearing board, the Chief must first meet with the officer to hear the officer's position and the Chief must state his or her reasons for increasing the penalty on the record. The final decision would be subject to appeal to the Circuit Court on the record.

3. Do other local jurisdictions use an alternative hearing board?

Chief Marcus Jones provided the following information on other jurisdictions (see the August 21 email from Chief Jones at ©37-39):

This is a breakdown of how the other major Maryland jurisdictions handle hearing boards for their Police Departments. It should be noted that an officer usually has the option of choosing the alternate hearing board, or a traditional hearing board as provided for under the LEOBR:

- **Anne Arundel County:** *Has an alternate hearing board, which is chaired by a member of Police Management. The other two members of a hearing board are chosen from a blind drawing, with the option to strike several drawn names. The decision of the hearing board is not binding on the Chief.*
- **Baltimore County:** *It is an alternate hearing board, chaired by a member of Police Management. It is similar to a traditional hearing board, but the charged employee can strike two members of the board, excluding the chairperson. Their hearing is final in that it is binding on the Chief, but it is appealable to Circuit Court.*
- **Baltimore City:** *Has an alternate hearing board of 5 people. Two are civilians chosen from a panel of those who have attended training, ride alongs, etc. The remaining three are either an Administrative Law Judge and two sworn officers, or just three sworn officers. One sworn officer is always of equal rank. The decision of the hearing board is a recommendation to the Commissioner.*
- **Howard County Police:** *Has an alternate hearing board, which is chaired by a member of Police Management. The Chief of Police retains the final authority in the disciplinary process.*
- **Prince Georges County:** *Is an alternate hearing board, chaired by a member of Police Management. It is similar to a traditional hearing board, but charged employees randomly select two names, via lottery, as their officer of equal rank. Their verdict is not binding on the Chief.*

The two key points from this survey is that none of these jurisdictions use an independent private labor arbitrator to make a final decision. Baltimore City uses an Administrative Law Judge from the Office of Administrative Hearings or 3 sworn officers and the hearing board decision is a recommendation to the Police Commissioner. Anne Arundel, Baltimore, Howard, and Prince George's Counties each have a hearing board chaired by a member of Police Management. The decision is not binding on the Chief in Anne Arundel, Baltimore City, Howard, and Prince George's counties. Montgomery County is an outlier because the alternate hearing board is not

chaired by a member of Police Management and the private labor arbitrator's decision is binding on the Chief.

It must be noted that a private labor arbitrator is authorized to make the final disciplinary decision for members of the Fire and Rescue bargaining unit and the 2 bargaining units represented by MCGEO. Why should the police bargaining unit members be treated differently? First, the LEOBR provides significant procedural protections for police officers subject to discipline that is not afforded to other County employees. Most importantly, police officers are unique because they are delegated authority to use force, including lethal force, to protect and serve the residents of the County.

The most recent tragic incidents of police officer-involved deaths that gave rise to the ongoing nationwide protests for racial equity did not occur in the County. The County is fortunate to have a well-trained and professional police force, but no police force is perfect. Recent County legislation on police accountability was enacted by the Council to improve the community's trust in our police officers. Part of the answer is strong and effective leadership by Police Management. While collective bargaining is an important policy to enable harmonious labor relations, it should not take away the tools the Chief needs to exercise strong and effective leadership. Control over the disciplinary system is an important tool for an effective leader. Chief Jones answered questions from Council staff about the current disciplinary system as follows (see the Chief's August 21 email at ©37-39):

Without names or other identifying information, how many statements of charges recommending dismissal have been issued in the last 5 years and how many have been sustained with the penalty reduced by the arbitrator to less than dismissal over the last 5 years?

Since July 1, 2015, there have been 12 cases where the Chief of Police has imposed dismissal. Two of those cases went to trial board. In one of those cases, the hearing board sustained the dismissal. In the other, the hearing board reduced the discipline to a written reprimand. 6 of these cases resulted in the officer resigning prior to their hearing board.

As a point of clarification, the department has not held an alternate hearing board since September, 2016. The county and the FOP engaged in a lengthy dispute over the County's ability to remove arbitrators from the selection panel. Once that matter was resolved, there was another lengthy dispute over which arbitrators would sit on the panel, followed by another dispute over the order in which the backlogged hearing boards would be heard. The last of these disputes was recently resolved. The department is currently in the process of scheduling outstanding hearing boards.

What is the average time between the issuance of a statement of charges and final action by the alternate board?

For the two hearings held since July 1, 2015, the average time between the date the Statement of Charges was issued and the final outcome of the hearing board was approximately 9 ½ months (the individual times were approximately 7 months and 10 months).

Council staff does not have any information to analyze the merits of the 2 decisions cited, nor do we feel it would be appropriate. The delay in agreeing on an arbitrator with the FOP and the delay in arriving at a final decision on a dismissal is troubling. One of the key provisions of the Bill is to include 2 citizen voting members on a hearing board on a case arising out of a citizen complaint of excessive force. This provision responds directly to some of the criticism of policing nationwide and can only be mandated under the LEOBR as part of a traditional hearing board. HB 670 will require citizen participation in the police disciplinary system beginning in 2 years. Therefore, if the Council wants to require citizen participation in a hearing board during this interim period before HB 670 takes effect, it must be forced by legislation.

4. How will the new State-wide police disciplinary system work under HB 670?

The governing body of each County (here the Council and the Executive) must establish a Police Accountability Board (PAC). The County must establish the membership of the PAC, appoint a chair, provide a budget and staff for the PAC, and establish procedures for record keeping. An active police officer must not be a member of the PAC and the membership should reflect the racial, gender, and cultural diversity of the County. The PAC must review final disciplinary decisions of police misconduct and report to the Council and the Executive.

A complaint of police misconduct may be filed with the PAC or the Department. The PAC must forward a complaint to the Department within 3 days for investigation. The County must also establish one Administrative Charging Committee (ACC) for all local law enforcement agencies operating in the County except for M-NCPPC and WSSC police departments.³ The 5-member ACC must include the Chair of the PAC or another member of the PAC designated by the Chair, 2 civilian members selected by the PAC, and 2 civilian members selected by the Executive. The appropriate law enforcement agency must forward the results of a police misconduct complaint to the ACC. The ACC will decide whether to file disciplinary charges against a police officer in a written decision. The ACC may review body camera video and call a police officer to appear before the ACC accompanied by a representative.

The Maryland Police Training and Standards Commission must establish a disciplinary matrix creating penalty guidelines for different offenses. If the ACC determines discipline is appropriate, the Chief of Police must offer discipline per the matrix that is recommended by the ACC or is higher than the ACC-recommended discipline. If the police officer does not accept the discipline offered, a trial board is convened to conduct an adjudicatory hearing. The 3-member trial board must include an active or retired administrative law judge or a retired district court or circuit court judge, a civilian selected by the PAC, and a police officer of equal rank to the officer being charged. The trial board hearing must be open to the public except for certain exceptions. The trial board can administer oaths and issue subpoenas. The trial board decision is appealable to the circuit court on the record.

The County must not “negate or alter” any of the mandatory State-wide disciplinary system through collective bargaining. HB 670 does not either require or prohibit compensation for the members of the PAC, the ACC, or the trial board.

³ M-NCPPC and WSSC police departments are covered by a State-wide Administrative Charging Committee.

5. Should the Committee amend the Bill to delete the changes to the current disciplinary system in light of HB 670?

The Executive urged the Council to wait for both the Policing Advisory Commission and possible amendments to the LEOBR. The Policing Advisory Committee supported the Bill as introduced at ©1. As explained above, HB 670 will completely revise the police disciplinary system in the County beginning on July 1, 2023. Any changes to the disciplinary system made by Bill 34-20 would be short-lived and likely to create confusion as the County prepares to implement the significant changes mandated by HB 670. Although not members of the Public Safety Committee, Lead Sponsors Councilmembers Riemer and Rice plan to move to amend Bill 34-20 to delete the proposed changes to the current disciplinary system. If the Committee agrees to do this, an amended Bill deleting the changes to the disciplinary system is at ©175.

6. Should directives implementing an employer right be subject to collective bargaining?

The Bill would also prohibit collective bargaining over the right of the Chief to issue a directive or administrative order implementing an employer right. Section 33-80(b) provides that neither the police collective bargaining law, nor any police collective bargaining agreement, shall impair the employer's right and responsibility to take certain actions (e.g., to maintain and improve the efficiency and effectiveness of operations; to determine the services to be rendered and the operations to be performed). However, over the years, the permanent umpires have interpreted this provision to require collective bargaining over implementation of these employer rights. Bill 34-20 would amend the law to provide the Chief with the discretion to issue a directive or administrative procedure to implement an employer right without bargaining with the union over implementation. Section 33-80(b) provides:

- (b) *Employer rights.* This article and any agreement pursuant hereto shall not impair the right and responsibility of the employer.
 - (1) To determine the overall budget and mission of the employer and any agency of county government;
 - (2) To maintain and improve the efficiency and effectiveness of operations;
 - (3) To determine the services to be rendered and the operations to be performed;
 - (4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
 - (5) To direct or supervise employees;
 - (6) To hire, select and establish the standards governing promotion of employees and to classify positions;
 - (7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
 - (8) To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;
 - (9) To take actions to carry out the mission of government in situations of emergency;

- (10) To transfer, assign and schedule employees.

In recent years, the Chief's attempt to issue a directive implementing an employer right has resulted in litigation and delay in several notable subjects. This has occurred because almost every management directive can affect the working conditions of a police officer. The Permanent Umpire has struggled with this issue in deciding the negotiability of a directive requiring the use of body worn cameras, a social media policy, and laundry. Even the Chief's desire to use Microsoft Teams to interview a police officer for a vacant internal position has been held up by bargaining with the FOP.

Body Worn Cameras

The Chief decided to begin a pilot program for body worn cameras in mid-2015. The FOP demanded bargaining over some issues related to body worn cameras and the Chief responded that the pilot program was not bargainable. The FOP filed a prohibited practice charge with the Permanent Umpire on June 30, 2015 under the County Labor Code. On October 30, 2015, the Umpire issued a 57-page opinion prohibiting the Chief from implementing the pilot except to use body worn cameras for criminal investigation. Specifically, the Chief was prohibited from implementing the provisions of the body worn camera pilot program related to discipline, document retention, and document disclosures until the parties completed bargaining. The parties exchanged proposals during term bargaining in late 2015, but could not agree on the negotiability of several proposals concerning body worn cameras, including to whom to assign cameras, when to activate the cameras, access to the videos by management, the use of the videos for discipline, the release of videos to the public, the use of videos for training, and the use of videos for performance evaluations. The Permanent Umpire issued a 24-page opinion on January 29, 2016 finding some of the FOP proposals negotiable and some of the proposals non-negotiable. The Umpire's 2016 Opinion is at ©40-63.

Social Media Policy

Police Management sent a proposed social media policy to the FOP in August 2016. The FOP demanded bargaining over the policy. The Department disagreed and the issues were submitted to the Permanent Umpire for a determination of negotiability in September 2016. The disputed provisions included the statement of purpose, the use of social media on behalf of the Department, and the use of social media by bargaining unit members on their personal time. The Umpire issued a 22-page opinion on December 5, 2016 finding parts of the policy negotiable and parts non-negotiable and directed the County to bargain over the issues found to be negotiable. See ©64-85. Since the Opinion was issued, the parties have been unable to negotiate a social media policy for police officers and no policy has been issued.

Laundry

The Department provides laundry and dry cleaning service for police officer uniforms and certain other garments. The Department forwarded proposed revisions to the laundry and dry cleaning directive in May 2018. The FOP demanded bargaining. The County refused and issued the revised directive. The FOP filed a prohibited practice charge challenging the unilateral issuance of the revised directive concerning laundry and dry cleaning on December 17, 2018. The

dispute centered around the negotiability of a provision that stated, “Employees are responsible for regularly checking the laundry room for their garments and promptly removing them from the room.” The Permanent Umpire issued a 16-page Interim Order on February 26, 2020 finding that the County failed to bargain in good faith over the revisions to the laundry and dry cleaning directive and ordered the County to bargain over the proposed changes. See the Interim Order at ©86-101.

Microsoft Teams

The global pandemic has drastically changed the way the County operates. The Council has moved all meetings online since March. Teleworking has been mandatory for all County employees who can do their work in that manner. Microsoft Teams has become a standard platform for internal and external meetings. The FOP Agreement includes a provision governing the procedure for hiring internal applicants for vacant positions. The procedure includes an interview. Due to the pandemic, the Department wanted to conduct vacant position interviews on Microsoft Teams. The FOP demanded bargaining. The parties have been unable to negotiate an agreement and Teams has not yet been used for these interviews.

7. What other options are available to limit bargaining over a directive implementing an employer right?

The examples described above support the argument that the current collective bargaining system is not working well in this area. The Council recently excluded bargaining over the use of force policy mandated in Bill 27-20, Police – Regulations – Use of Force Policy. Bill 27-20 narrowed the scope of collective bargaining in the Police Labor Relations Law to expressly exempt bargaining over the use of force and no-knock warrant policy mandated in the law. As the County Attorney pointed out, the new exemption from Bill 27-20 that was enacted after Bill 34-20 was introduced would require a technical amendment to Bill 34-20 to renumber the exemptions.

One option would be to delineate specific types of directives that would be exempted from collective bargaining. Assuming the Chief could suggest specific subjects that should be exempted from bargaining, it is doubtful we can anticipate all future subjects of employer rights.

The second option is to change the standard for the Permanent Umpire to follow when determining the negotiability of a directive that implements an employer right and also affects employee working conditions. The current standard is that bargaining must not “impair the right and responsibility of the employer” to implement the listed employer rights. Changing this standard to “interfere or unreasonably delay the right and responsibility of the employer”, it is difficult to predict how the Permanent Umpire would interpret this standard.

8. What is the fiscal and economic impact of the Bill?

OMB found that the Bill would save money for compensating a private labor arbitrator to chair a hearing board. OMB pointed out that the cost was \$12,000 over the past 6 years because we have not held many hearing boards recently. OMB also added that the Bill might produce some savings by reducing the time an officer remains on paid administrative leave while waiting

for a final decision of the hearing board.⁴ Finally, OMB pointed out that using citizens on a hearing board may add some undetermined costs. See ©11.

OLO concluded that the Bill is unlikely to have a significant effect on the County's economy. See ©9.

Technical Amendment

Since Bill 27-20 amended one of the subsections that would be amended by Bill 34-20 and took effect before this Bill has been acted on, the following technical amendment is necessary:

Amend lines 43-61 as follows:

(c) *Exemptions from bargaining.*

- (1) The minimum standards of the policies adopted by the Police Chief under Section 35-22 must not be subject to bargaining.
- (2) An alternative method of forming a hearing board to provide a hearing required by the Law Enforcement Officers' Bill of Rights (LEOBR), as codified in §§3-101 to 3-113 of the Public Safety Article of the Annotated Code of Maryland must not be subject to bargaining.
- [[(2)] (3) The authority of the Chief of Police to issue a final order based on a review of the findings, conclusions, and recommendations of a hearing board under the LEOBR must not be subject to bargaining.
- [[(3)] (4) The authority of the Chief of Police to issue a directive or administrative procedure to implement an employer right must not be subject to collective bargaining.
- [[(1)] [[4]] (5) Nothing contained in this [article shall] Article must be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in subsection 33-80(b) above, but such matters [shall] must not be subject to bargaining.
- [[(2)] The minimum standards of the policies adopted by the Police Chief under Section 35-22 must not be subject to bargaining.]]

⁴ Although not noted by OMB, there would also be savings if the Bill reduces the number of negotiability opinions issued by the Permanent Umpire because the Permanent Umpire bills on an hourly basis.

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Expedited Bill No. 34-20
Concerning: Police – Disciplinary
Procedures - Police Labor Relations
– Duty to Bargain - Amendments
Revised: July 30, 2020 Draft No. 6
Introduced: July 21, 2020
Expires: January 21, 2021
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Riemer and Rice
Co-Sponsors: Councilmembers Jawando and Navarro

AN EXPEDITED ACT to:

- (1) amend the disciplinary procedures for a police officer and the membership of a hearing board;
- (2) remove negotiation of an alternative method of forming a hearing board and issuing a directive to implement an employer right from the scope of collective bargaining under the Police Labor Relations Law;
- (3) authorize the Chief of Police to issue a final order on employee discipline based on the recommendations of a hearing board; and
- (4) generally amend the disciplinary procedures for a police officer and the scope of collective bargaining under the Police Labor Relations Law.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-80

Montgomery County Code
Chapter 35, Police
Section 35-9

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 33-80 is amended as follows:**

2 **33-80. Collective bargaining.**

3 (a) *Duty to bargain; matters subject to bargaining.* Except as limited in
 4 subsections (b) and (c), [A] a certified employee organization and the
 5 employer must bargain collectively on the following subjects:

- 6 (1) Salary and wages, provided, however, that salaries and wages
 7 shall be uniform for all employees in the same classification;
- 8 (2) Pension and retirement benefits for active employees only;
- 9 (3) Employee benefits such as, but not limited to, insurance, leave,
 10 holidays and vacation;
- 11 (4) Hours and working conditions, including the availability and use
 12 of personal patrol vehicles;
- 13 (5) Provisions for the orderly processing and settlement of
 14 grievances concerning the interpretation and implementation of
 15 the collective bargaining agreement, which may include binding
 16 third party arbitration and provisions for exclusivity of forum;
- 17 (6) Matters affecting the health and safety of employees; and
- 18 (7) Amelioration of the effect on employees when the employer's
 19 exercise of rights listed in subsection (b) causes a loss of existing
 20 jobs in the unit.

21 (b) *Employer rights.* This article and any agreement pursuant hereto shall
 22 not impair the right and responsibility of the employer.

- 23 (1) To determine the overall budget and mission of the employer and
 24 any agency of county government;
- 25 (2) To maintain and improve the efficiency and effectiveness of
 26 operations;

- (3) To determine the services to be rendered and the operations to be performed;
- (4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
- (5) To direct or supervise employees;
- (6) To hire, select and establish the standards governing promotion of employees and to classify positions;
- (7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
- (8) [To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;
- (9)] To take actions to carry out the mission of government in situations of emergency;
- [(10)] (9) To transfer, assign and schedule employees for any reason.

(c) *[Exemption] Exemptions from bargaining.*

- (1) An alternative method of forming a hearing board to provide a hearing required by the Law Enforcement Officers' Bill of Rights (LEOBR), as codified in §§3-101 to 3-113 of the Public Safety Article of the Annotated Code of Maryland must not be subject to bargaining.
- (2) The authority of the Chief of Police to issue a final order based on a review of the findings, conclusions, and recommendations of a hearing board under the LEOBR must not be subject to bargaining.

(3) The authority of the Chief of Police to issue a directive or administrative procedure to implement an employer right must not be subject to collective bargaining.

(4) Nothing contained in this [article shall] Article must be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in subsection 33-80(b) above, but such matters [shall] must not be subject to bargaining.

* * *

35-9. [Reserved] Police Officer Accountability Act.

(a) Definitions. As used in this Section:

Chief of Police or Chief means the Director of the County Department of Police.

Department means the County Department of Police.

Hearing board or board means a temporary board created to provide a hearing for a police officer under the LEOBR.

Law Enforcement Officers' Bill of Rights or LEOBR means §§3-101 to 3-113 of the Public Safety Article of the Annotated Code of Maryland.

Police officer means a member of the Department who is a law enforcement officer as defined in the LEOBR.

Public member means a member of the public who has received training administered by the Maryland Police Training and Standards Commission, or any successor agency, on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.

(b) Right to hearing. If a police officer requests a hearing required by the LEOBR, the Chief must appoint the members of the hearing board.

(c) Membership of the board. The Chief must appoint three law enforcement officers from the Department or another law enforcement agency that have had no part in the investigation or interrogation of the police officer who is the subject of the statement of charges. At least one member must be of the same rank as the police officer who is the subject of the statement of charges.

(d) Additional public members.

(1) The Chief must appoint two additional voting public members for each case originating from a citizen complaint alleging an excessive use of force.

(2) The Chief may appoint one or two voting or nonvoting public members for any other case.

(e) Conduct of hearing. The board must conduct the hearing pursuant to the procedural provisions of the LEOBR.

(f) Disposition of administrative action. Within 30 days after receipt of the recommendations of the hearing board, the Chief must:

(1) review the findings, conclusions, and recommendations of the hearing board; and

(2) issue a final order.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law. Notwithstanding any provision in a collective bargaining agreement executed by the Executive and the exclusive representative under the Police Labor Relations Law, the amendments in Section 1 must apply to any employer action taken after this law takes effect, including issuing a statement of charges against a police officer, a directive, or an administrative order.

LEGISLATIVE REQUEST REPORT

Expedited Bill 34-20

Police – Disciplinary Procedures - Police Labor Relations – Duty to Bargain – Amendments

DESCRIPTION:	Expedited Bill 34-20 would amend the disciplinary procedures for County police officers by requiring the use of a traditional hearing board under the Law Enforcement Officers Bill of Rights (LEOBR). The Bill would also require two additional voting public members on a hearing board in a case originating from a citizen complaint alleging an excessive use of force and authorize the Chief of Police to issue a final order on employee discipline based on the recommendations of a hearing board. Finally, the Bill would exclude collective bargaining over the composition of a police hearing board, the right of the Chief to make a final decision on discipline, and the right of the Chief to issue a directive or administrative order implementing an employer right.
PROBLEM:	Collective bargaining has reduced the Chief's authority over the discipline of police officers.
GOALS AND OBJECTIVES:	Increased police officer accountability.
COORDINATION:	
FISCAL IMPACT:	To be provided.
ECONOMIC IMPACT:	To be provided.
EVALUATION:	To be provided.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	N/A
PENALTIES:	N/A



MONTGOMERY COUNTY COUNCIL

ROCKVILLE, MARYLAND

July 15, 2020

Dear Colleagues:

We recognize that there is a growing rift in America between those charged with enforcing our laws and protecting our lives and property, and the communities those law enforcement officers have pledged to serve. Montgomery County is blessed to have one of the most professional, compassionate, and diligent police forces in the Country, but there are clearly communities here in our County who do not feel the Montgomery County Police Department is devoted to serving them. Several high-profile incidents over the past several years have deepened this divide, even before the murder of George Floyd accelerated the national conversation on the role of police in our communities.

MCPD Officer Kevin Moris was convicted of assault for kneeling Arnaldo Pesoa in the back of the head while Mr. Pesoa was restrained outside a McDonald's in Aspen Hill. A white MCPD officer used the N-word while conducting a search of four black residents outside a McDonald's in White Oak. And both Robert White and Finan Berhe were killed by MCPD Officers in situations in which mental health professionals may have been able to deescalate dangerous situations.

These incidents are the result of decisions made by individual police officers, but those decisions are heavily influenced by the training and policies they operate under. We are taking strides to improve those policies. We have created a civilian Policing Advisory Commission to conduct a comprehensive review of the way Montgomery County enforces the law in our community. County Executive Elrich has succeeded in getting the union that represents police officers to agree to a new policy that requires officers to intervene when they witness another officer violating procedures or using excessive force. And Bill 27-20, introduced by Councilmembers Jawando, Rice, Navarro, and Albornoz, will greatly strengthen our policies governing the use of force by police.

But none of the content of our policies and procedures will matter if officers are not subject to quick, fair discipline for violating them. Through state law (LEOBR) and the Collective Bargaining Agreement with the County, we have a slow, uncertain, and complex process to discipline officers for violations of Department policies. This must change because we should have a department where the Chief's ability to set a culture and hold officers accountable for meeting high expectations is strong.

Officer Moris was convicted by a jury in December for use of excessive force in July of 2019. Over a year later, he remains on the MCPD payroll awaiting a final determination on his disciplinary charge. Similarly, the officer who used the N-word in White Oak still has not faced official discipline for her actions. We understand that an officer was once on paid administrative leave for four years while waiting for the appeal of their termination to be resolved. The reason these officers have not been held accountable is because we have a disciplinary process that doesn't work.

To strengthen the management of the Police Department and ensure that officers who break the rules face swift, clear consequences, we plan to introduce the Police Accountability Act on Tuesday, July 21. This bill would remove the availability of an “Alternative Hearing Board” and revert internal appeals back to the traditional trial board used by most other Departments in Maryland. It would restore the ability of the Police Chief to make a final determination on disciplinary matters.

To promote transparency and improve community trust over the disciplinary process, the bill would require that the trial board also include two civilian members whenever discipline stems from a civilian complaint alleging excessive force.

The bill would also strengthen Police management’s ability to create and enforce workplace rules and regulations to implement the policy changes we wish to see, by ensuring that when the Chief has an employer right to issue a management directive (for example, body camera use), it is not bargainable. This critical component continues the effort the last Council undertook in partnership with former County Executive Leggett to repeal “effects bargaining.”

We need a strong, well-trained police force to keep us safe, respond to violence, investigate serious crimes, and ensure justice is served. But the police must have the trust of all of our communities to fulfill that mission, and to earn that trust, residents need to know that when a police officer breaks the rules, they are subject to consequences just like the rest of us.

To achieve that goal, we must empower our Chief to set expectations, create a positive culture and hold officers accountable.

We hope you will join us in supporting this important legislation.

Regards,



Hans Riemer
Councilmember (At Large)



Craig Rice
Councilmember (District 2)

Economic Impact Statement

Office of Legislative Oversight

Expedited Bill 34-20

Police – Disciplinary Procedures – Police Labor Relations – Duty to Bargain – Amendments

SUMMARY

Overall, the Office of Legislative Oversight (OLO) expects the enactment of Expedited Bill 34-20 to have an insignificant impact on the Montgomery County economy.

BACKGROUND

The purpose of Expedited Bill 34-20 is to improve police accountability. If enacted, the Bill would change “the disciplinary procedures for County police officers by requiring the use of a traditional hearing board under the Law Enforcement Officers Bill of Rights (LEOBR).” In addition, the Bill would “require two additional voting public members on a hearing board in a case originating from a citizen complaint alleging an excessive use of force and authorize the Chief of Police to issue a final order on employee discipline based on the recommendations of a hearing board.” Lastly, the Bill would limit the scope of collective bargaining under the Police Labor Relations Law. Specifically, it would “exclude collective bargaining over the composition of a police hearing board, the right of the Chief to make a final decision on discipline, and the right of the Chief to issue a directive or administrative order implementing an employer right.”¹

METHODOLOGIES, ASSUMPTIONS and UNCERTAINTIES

No methodologies were used in this statement. The assumptions underlying the claims made in the subsequent sections are based on the judgment of OLO staff.

VARIABLES

Not applicable

IMPACTS

Businesses, Non-Profits, Other Private Organizations

OLO believes that enacting Expedited Bill 34-20 would have an insignificant impact on private organizations in the County in terms of the Council’s priority indicators, namely workforce, operating costs, property values, capital investment, taxation policy, economic development, and competitiveness.

¹ Montgomery County Council, Expedited Bill 34-20, Police – Disciplinary Procedures – Police Labor Relations – Duty to Bargain – Amendments, Introduced on July 21, 2020, Montgomery County, Maryland, 6.

Economic Impact Statement

Office of Legislative Oversight

Workforce, operating costs, property values, capital investment, taxation policy, economic development, competitiveness, etc.

Residents

Workforce, property values, income, taxation policy, economic development, etc.

OLO believes that enacting Expedited Bill 34-20 would have an insignificant impact on County residents in terms of the Council's priority indicators, namely workforce, property values, income, taxation policy, and economic development.

WORKS CITED

Montgomery County Council. Expedited Bill 34-20, Police – Disciplinary Procedures – Police Labor Relations – Duty to Bargain – Amendments. Introduced on July 21, 2020. Montgomery County, Maryland.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent the OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

This economic impact statement was drafted by Stephen Roblin (OLO).

Fiscal Impact Statement
Bill 34-20E, Police – Disciplinary Procedures - Police Labor Relations – Duty to Bargain -
Amendments

1. Legislative Summary

Expedited Bill 34-20 would amend the disciplinary procedures for County police officers by requiring the use of a traditional hearing board under the Law Enforcement Officers Bill of Rights (LEOBR). The Bill would also require two additional voting public members on a hearing board in a case originating from a citizen complaint alleging an excessive use of force and authorize the Chief of Police to issue a final order on employee discipline based on the recommendations of a hearing board. Finally, the Bill would exclude collective bargaining over the composition of a police hearing board, the right of the Chief to make a final decision on discipline, and the right of the Chief to issue a directive or administrative order implementing an employer right.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

The elimination of the option for an alternative hearing board would avoid the need to contract with an outside arbitrator. However, savings from this avoided cost are immaterial as County expenditures on alternate hearing board arbitration over the past six years has only totaled approximately \$12,000.

The Bill's creation of two additional public board members could have some minor impact on expenditures since current County policy makes members of a board, committee, or commission eligible to receive mileage reimbursements and dependent care expenses though this impact would be immaterial.

The elimination of the option for an alternate hearing board may decrease the length of time it takes for hearing board matters to be heard, thus reducing the cost associated with placing the accused officer on administrative leave for longer periods of time. It is difficult to estimate the fiscal impact of this change given the uncertainty of this anticipated trend and the multitude of factors influencing the length of the hearing board process.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Revenue and expenditure changes from the avoidance of the need to contract with an outside arbitrator and reimbursements for public board members are expected to be immaterial.

Revenue and expenditure changes from a more efficient hearing board process are impossible to estimate accurately at this time.

- 4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

Not applicable.

- 6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Bill 34-20 does not authorize future spending.

- 7. An estimate of the staff time needed to implement the bill.**

There is no additional staff time needed to implement the bill.

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

There is no impact on current staff responsibilities.

- 9. An estimate of costs when an additional appropriation is needed.**

No additional appropriation is needed to implement Bill 34-20

- 10. A description of any variable that could affect revenue and cost estimates.**

Not applicable.

- 11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

- 12. If a bill is likely to have no fiscal impact, why that is the case.**

Not applicable.

- 13. Other fiscal impacts or comments.**

Not applicable.

14. The following contributed to and concurred with this analysis:

Edward Haenftling Jr., County Attorney's Office

Steven Blivess, Office of Labor Relations

Michael Pratt, Police Department

Neil Shorb, Police Department

Trevor Lobaugh, Office of Management and Budget



Jennifer Bryant, Acting Director
Office of Management and Budget

09/04/20

Date



Testimony for Paulette Kee-Dudley, UFCW Local 1994 MCGEO on:

Expedited Bill 34-20, Police – Disciplinary Procedures – Police Labor Relations – Duty to Bargain - Amendments

My name is Paulette Kee-Dudley. I have been a Program Coordinator with the Housing Opportunities Commission for the past 30 years. I am also a founding member and current Vice President with UFCW Local 1994 MCGEO.

We represent approximately 1100 sworn and civilian public safety personnel, which includes sworn law enforcement officers. As their collective bargaining representative, Local 1994 urges you to reject Expedited Council Bill 34-20.

In rejecting this change to collective bargaining law, we are not advocating that we should protect bad police officers.

There's no denying that the public safety infrastructure is currently broken. From the disproportionate sentencing and incarceration of our black and brown brothers and sisters, to the violence encountered on the street at the hands of people who should be held to the highest standards of protection. We're as repulsed as anyone by the egregious acts of violence and senseless murders we've witnessed across the country.

But taking away collective bargaining rights should not be the way we begin reforms. We need real solutions to these problems. All too often, supervisors and other leaders point fingers and place blame on unions for their inaction in the workplace.

"We can't fire that bad employee because the union has tied our hands," is an often-used claim.

We say, wrong!

Employers can and should be held accountable for enabling bad and potentially criminal behavior. Police Departments have the responsibility and the discretion to mete out discipline against their employees and to rein in or ultimately fire police officers who violate the law.

Don't make unions and workplace rights the scapegoat for police malfeasance. Unions don't make hiring or firing decisions. But we do believe that collective bargaining rights should afford due process that employees deserve.

Our union is happy to work together with County leaders to make changes to the county's public safety system, but we will not support any law that weakens employee collective bargaining in any way, shape or form.

Local 1994 urges the County Council to reject CB 34-20.



Fraternal Order of Police
Montgomery County Lodge 35

Phone 301.948.4286 • Fax 301.590.0317

Testimony to the Montgomery County Council
On a Proposal to Amend Police Disciplinary Procedures (Bill 34–20)

Torrie L. Cooke, President
Fraternal Order of Police, Lodge 35

September 22, 2020

Council President Katz and members of the County Council:

I appreciate the opportunity to testify today about Bill 34–20, which would amend disciplinary procedures for police officers. On behalf of the more than 1,100 police officers who serve and protect the people of Montgomery County, I want to express our opposition to this legislation.

We are willing to discuss concerns about disciplinary procedures—which have been in place for 30 years and have been agreed to by the county executive—and were open to considering changes. Our opposition is because the bill would unilaterally break a legally binding contract the county just agreed to with your police officers, and that such an action violates state law allowing that process.

If the way we address police discipline in Montgomery County is a real problem, the police chief and the county executive have a legal tool, defined by state law, to correct the issues through mutual discussion and understanding. It is the collective bargaining process.

Every resident of this community should know you had the chance in 2020 to have this discussion. We negotiated our new contract this year. In fact, never once—let me repeat that—never once did the police chief, the county executive or the council say we have a problem with discipline that we should discuss and modify in the contract. If this was a concern—if it was such an urgent matter, if this was a crisis—why was it never brought up in our contract talks as something that needed to be changed quickly?

As you know, our most recent collective bargaining agreement was finalized this spring and went into effect on July 1. In our contract negotiations, both sides had substantial and unrestricted opportunities to express concerns and seek changes they sincerely thought necessary. Indeed, we worked through difficult and sensitive issues together through what we thought were open and honest discussions.

Yet at no time during those bargaining discussions did the police chief or anyone from the county express concerns about the inability to unilaterally terminate police officers without allowing due process through the procedures outlined in the agreement. Nor did anyone from the county—or the police chief—express concerns about the composition of hearing boards or other disciplinary processes. Not once did the subject come up.

The police chief has been able to terminate employees and employees have exited service through the current disciplinary process. Why is the County Council now attempting to legislate what the county and police chief showed absolutely no concern about during bargaining? One can conclude from the silence of the county executive and the police chief during bargaining, and their subsequent execution of the contract, that there is no issue with the disciplinary process or the hearing boards.

Let me remind you, too, that the two disciplinary examples the sponsors of this bill highlighted took place prior to our recent negotiations. They were known at the time and no concerns were raised. Both cases had outcomes that most people would agree are correct. Moreover, both officers were afforded due process and the process used—the process you want to overturn with this bill—was mutually developed and based on state law, so both the county and police have an interest in making sure it works.

We undoubtedly could improve life in Montgomery County. But we believe these improvements can come via a focus on community policing and training—areas now under consideration by several working groups. Working police officers long have advocated for a renewed focus on community policing and additional training, and we would welcome the opportunity to work with the county executive and police chief to consider how a return to community policing, and new and better training opportunities, would work best in Montgomery County.

The working police officers of this county think it's important that we face challenges in policing together. A collaborative approach has worked well, leading to significant progress and benefits for our community. We introduced community policing in the early 1990s, improved hiring standards with an education requirement, eliminated chokeholds in 2002, instituted the use of car cameras in early 2000 and added body cameras in 2015. All these improvements were accomplished through collective bargaining.

We are more than open to making additional improvements as we move forward. But we should do so together.

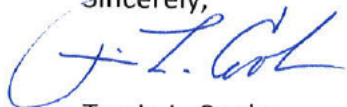
Montgomery County voters chose to enact collective bargaining to keep the peace, and to create an orderly exchange between workers and the employer. Why would the council try to subvert collective bargaining by seeking change for the police chief through legislation, rather than directing him to use the collective bargaining process?

This legislation appears to be an outcome of the political pressure the County Council may feel in this difficult time of unrest in communities across the country—but those incidents did not happen in Montgomery County. Our police officers are working their hardest every day to make sure everyone in our communities is treated with fairness, respect, dignity and compassion.

We have always been—and we continue to be—ready to sit down and work on our shared challenges in policing. We hear and appreciate the public's concerns, and we think there should be an open and constructive dialogue in Montgomery County about policing and public safety. But we should work together to build a better future—not take unilateral action that serves no purpose and breaks faith with those who are dedicated to serving the county.

Thank you for your consideration of the views of the more than 1,000 police officers who protect you and the residents of Montgomery County every day. We look forward to working with you and the people you represent, and we serve.

Sincerely,



Torrie L. Cooke
President

Tara Merlo

My name is Tara Merlo. I am a Social Worker with Montgomery County and a resident.

In my capacity as a resident, I urge you to reject Expedited Council Bill 34-20.

While the need for police reform has become glaringly apparent with the horrifying violence at the hands of police we've witnessed recently, it is a mistake to start to reform the way the police do their jobs by removing some of their collective bargaining rights.

This legislation moves too quickly. It does not give the newly created police reform task forces the time to do their job we're asking of them.

Accountability and collective bargaining can go hand-in-hand. It is dangerous to give too much power to one person. Adding community members to participate in the discussion of police discipline and accountability is a valuable added layer of oversight, but these changes should be brought to the table and discussed with Union input.

I know we can do better for our community. We can reform the police while also upholding collective bargaining rights.

I urge you to reject Expedited Council Bill 34-20.

Clint Sobratti

Good morning,

I'm Clint Sobratti. I'm a RideOn Bus Operator and Transit Coordinator and Montgomery County Resident. I'm very active in our community, our county and in the state. I work to promote better government on many levels.

As a community organizer, I understand the need for police reform. What has been going on across the nation appalls me. We must stop the senseless violence and reform the way our police interact in our communities. I agree that change is inevitable and that we definitely need to take a different approach.

That said, the way to make necessary change cannot and should not involve eroding workers' rights.

I urge the Council to work in partnership with the police unions and make reforms that fit the needs of our community without taking away or diminishing police officers' voices on the job. I urge you to reject Expedited Council Bill 34-20.

Dr. Jeffrey S. Rubin
Phone: 301-448-0464
Address: 11708 Rosalinda Drive, Potomac, MD 20854

Bill 34-20

TESTIMONY IN OPPOSITION TO BILL 34-20

Police – Disciplinary Procedures – Police Labor Relations – Duty to Bargain - Amendments

Council President Katz and Members of the Council,

My name is Jeffrey Rubin. I've been a resident of Montgomery County since 1986, and am currently a member of the Jews United for Justice (JUFJ) Working Group on Policing Legislation and Budget. On behalf of JUFJ, I provide this testimony in opposition to Bill 34-20.

Jewish tradition places a high value on justice. The bible contains many passages describing how differences should be resolved, and commentaries over millennia have sought to ensure a fair reckoning among affected parties.

We agree with the Councilmembers who sponsored this bill that numerous incidents in the County and around the country point to the need for reforming disciplinary procedures related to police misconduct. However, we have concluded that this expedited legislation is misguided and fundamentally flawed in the ways it attempts to address the problem.

The bill is **misguided** because it relies on the current provisions in Maryland statute that defines the Law Enforcement Officers Bill of Rights, LEOBR. The reality is that this law has been under intensive review, and likely would have been revised had the 2020 General Assembly not ended early because of the Covid-19 pandemic. The Senate Judicial Proceedings Committee is scheduled to hold a hearing later this week to consider various changes to the law. From a practical standpoint, it would be a mistake for the Council to advance legislation based on a law that is likely to change in the coming months.

Bill 34-20 is **flawed** because it does not provide the public with an essential, substantive role in evaluating police misconduct. The only cases that would appear before the hearing board described in this legislation would be ones already subjected to an internal police investigation, which had found the police officer guilty, and for which the officer was seeking an appeal of the ruling. **This represents a tiny fraction of the allegations of police misconduct.** Moreover, the mere addition of one or two voting or nonvoting members of the public to a hearing board reviewing these cases would have insufficient impact when the ultimate decision in the case would be determined by the review of the board findings, conclusions and recommendations by the Chief of Police.

Bill 34-20 is **fundamentally flawed** because it rests on a defective foundation, LEOBR and the principle it has enshrined that enables the police to investigate themselves and, through the Maryland Public Information Act, restrict, as they see fit, the release of information to the public. According to the legislative request report, the primary goal of Bill 34-20 is to improve disciplinary procedures for County police officers. The Council will only make miniscule progress in this area until LEOBR is repealed. Rather than spending time now on trivial pursuits, **we urge Councilmembers to advocate forcefully in Annapolis for the elimination of LEOBR.** That is the most constructive action you can take now to address public outrage about the failure to address police brutality. Once LEOBR is removed, you will be in a position to create a better foundation for community involvement in a fair and balanced review of police conduct.

Takoma Park Mobilization and Silver Spring Justice Coalition Testimony on Expedited Bill
34-20, Police -- Disciplinary Procedures - Police Labor Relations – Duty to Bargain
September 22, 2020

- Good afternoon Councilmembers. My name is Emil Parker. I am testifying on Expedited Bill 34-20, on behalf of Takoma Park Mobilization and the Silver Spring Justice Coalition.
- Takoma Park Mobilization, with over 1,800 members and SSJC, a coalition of 19 organizations, are committed to ensuring that the Council takes advantage of this unprecedented opportunity to enact meaningful policing reform legislation.
- Unfortunately, I must express the strong opposition of both organizations to the Police Accountability Act. The proposed legislation would, consistent with the constraints imposed by the Maryland Law Enforcement Officers' Bill of Rights (LEOBR), re-implement a hearing board on which law enforcement officers have a majority -- at least three of the voting members would still have to be current law enforcement officers, and no more than two could be civilians.
- Under this bill, police officers would effectively continue to operate under rules they make themselves. They would continue to enjoy special rights – in particular, a pre-disciplinary hearing before a board where their fellow law enforcement officers are in the majority – which are not available to other public sector employees.
- As a result, the bill would do virtually nothing to ensure that police officers are held accountable for excessive use of force, violating the civil rights of Montgomery County residents, and otherwise breaking the law or egregiously failing to comply with department procedures.
- This bill seems to be an attempt to answer the question of what can be done to promote accountability for Montgomery County police officers even if LEOBR remains in place. The legislation confirms that the answer is “nothing.”
- To have accountability for Montgomery County police officers, the LEOBR must be repealed or dramatically revamped to allow for civilian review boards, with the power to discipline officers.
- We do agree that the Police Chief should be able to impose discipline when officers harm the public - for example, in the case of excessive force or sexual harassment. But history shows that Police Chiefs are just as apt to shield officers from discipline.
- We urge Councilmembers Riemer and Rice to abandon this misguided effort to tinker with hearing boards handcuffed by LEOBR, and to instead join us in working with our state legislators to repeal LEOBR. Only then can the Councilmembers, with our enthusiastic participation, move police accountability legislation worthy of the name.

- I should add that our broader goal remains reducing the number of interactions between police and the community, by diverting funding from the police to non-policing forms of public safety and community support.

Bill 34-20, Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain

This bill is outrageous and a waste of time for all gathered today. This bill is a slap in the face of those seeking justice for acts of brutality, other illegal conduct committed by the Montgomery County Police, and substantive change to the policing system. This bill keeps all the power within the police department - granting more powers to the police chief by allowing them to appoint a minority of members of the public to the hearing board. These non-police members have no real power and thus their inclusion is a waste of time and is meant to be placating window dressing- not substantive change or real accountability. This bill will not make us safer or stop the blue wall of silence.

If the council was serious about police accountability, it would, among other things, join activists at the state level to push for the repeal of the LEOBR which effectively puts cops above the law. The LEOBR prevents the County from making any substantive attempts to hold Montgomery County police accountable as noted in § 3-102 subsections (a) and (b) wherein it states:

(a) Conflicting law superseded.- Except for the administrative hearing process under Title 3, Subtitle 2 of this article that relates to the certification enforcement power of the Police Training Commission, this subtitle supersedes any other law of the State, a county, or a municipal corporation that conflicts with this subtitle.

(b) Preemption of local law.- Any local law is preempted by the subject and material of this subtitle.

The police as an institution needs to be abolished in its entirety because reform has failed despite countless opportunities. There are eight things that you need to do to abolish the police: Defund the police, Demilitarize communities, removed police from schools, free people from prisons and jails, repeal law criminalizing survival, invest in community self-governance, provide safe housing for everyone, invest in care not cops. Abolition is not just about getting rid of police and their buildings. It's about divesting from punitive systems and investing in system that care for people such as mental health clinics and emergency response, drug treatment (not criminalization), universal child care and after school programs. This is not an exhaustive list. A police abolitionist framework entails developing and implementing new social projects, institutions and conception of governance and solving problems collectively as a community.

By conceptualizing the problem of policing as one of inadequate training, you fail to directly address how the nature of policing and the legal system serve to maintain and exacerbate racial inequality. You seem to fail to appreciate that the basic nature of law, as currently constituted and the police, since its earliest origins, is to be a tool for maintaining inequality. Police reforms that fail to directly address this reality are doomed to reproduce it.

Stop telling us, through your inaction and lack of imagination, that a better, post-police public safety system and, by extension, a better community isn't possible when you haven't even put forth a serious effort to do so. Don't let the cops, their supporters or their copaganda deter you from doing the right thing.

In closing this section of my testimony, I ask the council to vote against this bill and to not waste our time with such ineffectual, meritless bills in the future.

Expedited Bill 36-20, Forest Conservation

As with many of the bills this council proposes, it's okay but fails to go far enough in conserving forests. I'm for this bill but I'd like to see those clearing for agriculture above and beyond what's currently in use to be subject to some fee for each square foot of forest cleared that will be used to reforest other areas, preferably nearby. I'd like to see the council have more courage and take bold steps to address serious issues such as those dealing directly with climate change. Forests are one of our best tools to fight climate change and this bill needs to reflect that fact.



September 22, 2020

Montgomery County Council Members
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850

Montgomery County Executive Marc Elrich
Executive Office Building
101 Monroe Street, 2nd Floor
Rockville, MD 20850

Berke Attila, Human Resources Director
Montgomery County Executive Office Building
101 Monroe St #7, Rockville, MD 20850

**RE: COMPLETE TESTIMONY RE: AMENDMENTS TO BILL 34-20 – POLICE
ACCOUNTABILITY ACT - WHY WE MUST HAVE CHANGE**

Dear Councilmen Rice, Riemer & Entire Council:

Thank you for the opportunity to come before the County Council to summarize and stress the need to amend Bill 34-20. Our main contention with the bill is that it puts a HUGE burden solely on the Chief of police to manage all of the discipline process and final determinations without a mandate that includes community involvement. That is too large of a burden to place on the Chief without community support and, when the Chief needs to “reimagine” a new police department that is transparent, accountable and better engaged with the community. While this Council placed its faith the Chief when they selected him, this proposed bill can reduce the Chief’s effectiveness by placing this huge triple burden on him without community support at a time when aggressive measures must be made to deal with serious police misconduct issues that the community believes exists in the department.

It is no secret that the community does not trust the police department to properly handle comprehensive and effective investigation of officer misconduct or to give appropriate discipline. So, putting that responsibility solely on the Chief is inconsistent with effective management protocols and is inconsistent with the data.

This huge distrust is supported and echoed by the most recent national police misconduct investigation by the USA Today in October 2019 report which reviewed approximately 85,000 public record of police misconduct around the country, which does not account for the thousands of unpublished records, and the following was found:

- 22,924 investigations of officers using excessive force,
- 3,145 allegations of rape, child molestation and other sexual misconduct by officers
- 2,307 cases of domestic violence by officers
- **Dishonesty is a frequent problem**
- at least 2,227 instances of perjury, tampering with evidence or witnesses or falsifying reports.

- 418 reports of officers obstructing investigations, most often when they or someone they knew were targets.
- Less than 10% of officers in most police forces get investigated for misconduct
- Nearly 2,500 have been investigated on 10 or more charges.
- Twenty faced 100 or more allegations yet kept their badge for years.

Also, in a hot off the press report USA Today published this September 13, 2020, studied 2,400 convictions of defendants who were later found innocent in the National Registry of Exonerations, and found that

- 35% of the cases involved some type of misconduct by police.
- 54% – involved misconduct by police or prosecutors

The specific misconduct by **police or prosecutors** that caused wrongful convictions where:

- witness tampering
- violent interrogations
- falsifying evidence, account for the majority

These two reports demonstrate that police departments around the country have more than just a “few bad apples” in their ranks that need appropriate discipline, which the report notes is not happening, and the MPD is not exception. In the most up to date public report by the Montgomery County Police Department Internal Affairs Department (IAD) from 2018 there were 1,888 sworn officers in the department and:

- 491 complaint allegations which makes up 25% of the Department
- Only 246 complaint cases were opened, of which
- Only 69 formal investigations were initiated, which took on average
- 187 – 300 days to investigate
- Only 14 sustained complaints
- Yet there were over 400 use of force incidents in that same year, one of which included the Robert White police caused death

Yet, the IAD which makes the Office of the Chief had approximately a \$3 Million Dollar budget which includes paying for community events, but the sustained complaints are incredibly low. It is this kind of data that validates the communities distrust of the police departments ability to “police itself”; especially when videos of police engagement shows that there is a great misconduct problem.

Consequently, the Women of Color for Equal Justice strongly urge the County Council to seek to regain the publics trust and make REAL CHANGE to the police discipline process that result in true accountability and community transparency by doing the following:

- Using the IAD Budget to hire Independent lawyer Investigators who have the legal minds to truly seek evidence and information to adequately investigate complaints
- Make it mandatory on the chief to include 4 community members to the Hearing Board with full voting and subpoena power, that include two people from the community, 1 community lawyer and 1 police ethics expert who will make discipline decisions

- Limit the role of the Chief in the final discipline order to just determining if the Independent Investigators and the Hearing Board followed the law, with the power to overrule only if the law was not followed by clear and convincing evidence.
- Placing the IAD Budget in the hands of a state chartered trust company to pay for these third party community investigators and board members so that there is no burden on or undue influence by the Chief on these community workers so that they can be “truly” independent.

When the community can see misconduct that goes undisciplined commensurate with the egregiousness of the misconduct, there will never be trust in this police department.

This council passed the LETT Act which allows outside state attorneys to investigate police involved deaths. Therefore, this council can also pass this legislation to allow “outside” community attorneys to investigate police and allow the community to serve as voting members of the community board.

Regards,

Jo Saint-George

Supported by:

Pastor Segun Adebayo
Macedonia Baptist Church
James Frederick
Stephan Lapham
Attorney Judith Danso
Alex Bell
Lois Rawji
Kenneth Moton
Kim Dawkins
Attorney Jill Sege



**National Association for the Advancement of Colored People
Montgomery County Branch
Testimony- MC BILL EXPEDITED Bill 34-20, Police – Disciplinary Procedures - Police
Labor Relations
Tuesday, September 22, 2020**

Good afternoon, Council President Katz and Members of the County Council. Thank you for holding this hearing to receive comments on the expedited Council Bill 34-20 The Police Disciplinary Procedures and Police Labor Relations. Introduced by Council Members Riemer and Rice.

On behalf of the Montgomery County Maryland Branch of the National Association for the Advancement of Colored People (NAACP); and as chair of the Political Action Committee for the branch, we submit this testimony in support of Bill 34-20.

For 110 years the NAACP has been in the forefront of securing racial equality and civil rights for all. Here in Montgomery County Maryland, the NAACP has forged relationships with community and county leaders including with the county police chief and department, to protect and promote the civil rights of every resident of the county, particularly African Americans and communities of color.

The Expedited Bill 34-20: The Police Disciplinary Procedures and Police Labor Relations, would move Montgomery County back to the traditional hearing board format authorized by the, Law Enforcement Officers Bill of Rights (LEOBR). Expedited Bill 34-20 would amend the disciplinary procedures for County police officers by requiring the use of a traditional hearing board under the Law Enforcement Officers Bill of Rights (LEOBR).

Our interest in this bill and our support of its enactment is based on over 50 years of advocacy on behalf of people who are often marginalized in this county. Bill 34-20 gives the Chief of Police the right to make a final decision on discipline, and the right to issue a directive or administrative order implementing an employee's right. This authority to dispense immediate disciplinary actions to those officers involved in use excessive force incidents is paramount and prudent in the management of Montgomery County Police Department.

As 2020 will surely go down in history as one of the most unabashedly violent display of police brutality against unarmed, non-resistant citizens such as Breonna Taylor, George Floyd, and Jacob Blake. This in what seems to be a blatant disregard of African American life can not and will not be tolerated here in Montgomery County, we must ensure so that there are no more cases like Robert White of Silver Spring, this bill is a step in the right direction.

While the Maryland Senate Judiciary Proceedings Committee intends to consider legislation to curb the constraints of LEOBR in police reform and accountability, we have no confidence that will happen anytime soon. But, the legislation before us now, MC 34-20, gives us the opportunity to change the disciplinary process in MCPD; and gives us the circumstance to strengthen management's domain over executive directives.

Accordingly, we support those changes in MC 34-20, now, as opposed to the potential of an amended LEOBR to do the same. Thank you

On behalf of Indivisible Montgomery, I am submitting my written testimony in support of Bill 34-20E for the hearing on Tuesday September 22nd at 1:30 PM.

Michael W. Marceau
12712 Veirs Mill Rd #202
Rockville MD 20853
301-542-9867

*Good afternoon council president Katz and all council members. I am glad to join you today.

*My name is Michael Marceau, I live in Rockville and I'm a lifelong county resident. I am here today for Indivisible Montgomery in support of Bill 34-20E. Indivisible Montgomery has nearly 1800 members, and we are parts of communities and neighborhoods across the entire county.

*We can all agree that the majority of law enforcement are professional, hard working people who are on duty 24/7, doing a difficult job in sometimes stressful situations. As such they must rely on their training and department guidelines and policies to enforce the law fairly with everyone they encounter. County residents must be able to trust law enforcement so that everyone can work together to keep our communities safe.

*As with any workforce, there are times when officers violate department rules and regulations or break laws. When they do so they must be held accountable. For a minor infraction a letter of reprimand may be what is needed. For more serious acts harsher measures, like suspensions, may have to be used. For repeat offenders termination could be the result. These consequences are necessary to demonstrate that police officers are held to the same standards as the people in the communities the officers have volunteered to protect.

*We know that Unions have long been an important force in America. They keep workers safe on the job, ensure fair wages

for their work, and give benefits if workers are injured on the job. Unions and employers should have equal input as to how these benefits are agreed to. Sometimes these situations get out of balance and need to be corrected.

*That seems to describe the current situation with police accountability in Montgomery County. As Mr Riemer explained, the current disciplinary system is slow, uncertain and complex. Transparency in the disciplinary process is necessary for the community to maintain trust in the law enforcement system. Therefore, management directives should be clearly stated, transparent, and not bargainable. The last Council took up this issue and this Council should finish it.

*Indivisible Montgomery supports Bill 34-20E and urges the members of the Council to support it as well.

September 13, 2020

I am submitting this comment on **Expedited Bill 34-20, Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain – Amendments.**

First, I would state that I support the changes to disciplinary procedure outlined in the bill. It is an urgent modification, long overdue, but certainly important in the context of current events. An impression that police officers not only enforce the law, but are themselves above the law, hurts the reputation of the entire force. This is only a first step, though, to the real changes that are needed in the entire criminal justice system. I would offer the following thoughts for your consideration.

Imagine a county, or a country, where Black Americans do not need to worry about being killed in a routine traffic stop. Imagine a county, or a country, where Black parents do not need to sit down and give their children “the talk”. Imagine a county, or a country, where Black Americans can jog through neighborhoods without fear of being shot by vigilante citizens.

Alternately, imagine a county, or a country, where White Americans needed to worry about being killed in a routine traffic stop, or where White parents needed to sit down and give their children “the talk”, or where White Americans were being shot by vigilante citizens.

Finally, imagine a county, or a country, where the police were respected and trusted by all segments of society.

Either of the first two concepts would be more equitable than the broken system we have today, but the second would result in cries of police harassment from a better funded and more lawyered up segment of our society. It is only the first concept that would lead to the third concept; thus the first and third scenarios are the more desirable ones. At this critical juncture in our understanding of policies, practices, and review of police actions in our communities, we have an opportunity to find the best way to achieve a goal of equality where no person of any race has more reason than any other to feel threatened by the police.

The repeated shootings and killings of African American citizens, often captured on video by bodycams and by the public, have brought us to this boiling point. While the shootings are the most extreme examples of inequitable treatment of African Americans, they represent only a small fraction of the unfair treatment, harassment, and fear that people of color feel when they find themselves, either justifiable or not, in an encounter with police. The demonstrations by both Black and White Americans, largely peaceful, are a testament to the large swath of people who feel things need to change. Vigilantism, and the call for Law and Order, while expected, only serve to increase the level of tension. Tensions are high on all sides of our political divide. Simply calling for more of the same, that is an increasingly aggressive approach to Law and Order on the one hand, or calling for defunding or dismantling the police on the other, may satisfy an emotional need in the heat of this moment. They are not solutions to the underlying problems. A focus only on Law and Order will increase the level of harassment of, and fear, and inequitable treatment. The current scenes in the street may be held down for a while, but the eruption will be even stronger next time. I think it is important that we listen to the comments and perspectives of our Black brothers and sisters in order to take positive action. Labeling a re-examination of the history of racism in the US, and even prior to the founding of the US, as un-American is just another way to suppress the problems and ensure that they will erupt later.

I would suggest that you be guided by the following considerations:

1) The discipline of police officers committing illegal actions is a deterrent against violations by police officers. It is also a way in which the county can demonstrate transparency and accountability for the actions of its employees. Recently, a comparison of policing to golf was put forth, and widely publicized. This observation was that sometimes in the heat of the moment, when a split second decision is needed, people choke and make the

wrong decision. In golf, this could mean a missed putt. In policing, it might mean a shooting or killing of a suspect. This comparison is inaccurate. A golfer choking and missing the putt is usually the result of many seconds or minutes of agonizing over the shot. That type of action would be better characterized as premeditation. The truly split second decision is one made without thinking or overthinking, is where gut reaction and prior training guide the action. It is under these conditions that personal bias may come into play. We are all biased. In order to act responsibly, we must recognize our biases and overcome them.

2) How can we overcome our biases? The word discipline can be used in different ways. I understand the use in this bill is related to the consequences to an officer as a result of actions that lead to shootings and killings. However, another meaning of discipline is related to training someone to follow the appropriate rule, even under very trying conditions. Sensitivity training sessions as they are characterized in popular culture may not be all that helpful. Many find them offensive (“are you calling me a racist, or a white supremecist?”) or treat them as a joke. Is there action-oriented training that can help us recognize and overcome bias? Are there ways in which anti-bias training can be measured? I am sure people with greater expertise than mine have thought about this. In 2015, a police force in North Miami used mug shots of Black men for their target practice. This seems a perfect, actually a perfectly horrendous, way to reinforce bias. What if during training, officers were confronted with both Black and White, men and women, adults and children, and had to score a racial and gender balance in their choices to shoot or not to shoot?

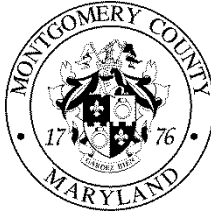
3) The issue of police reform has been studied in the past and practical solutions have been proposed. The Obama *Task Force on 21st Century Policing*, May 2015, is one such proposal, and should be considered as a model. Each of the pillars is important. In these times where police officers may feel unappreciated, even vilified, one of the pillars included in that report is a focus on the well being of the officers themselves. Overwork combined with feeling the wrath of crowds of protesters is not a combination where the best decisions are made. Being aware of these challenges to the practice of policing are important to be addressed, and are quite relevant to attracting and retaining a quality, diverse, and respected police force.

4) I believe this is already the norm in Montgomery County, but police shootings and killings should be investigated by review panels outside of the prosecutors of our County. They need to be independent, not the same attorneys who work hand-in-hand with the police to prosecute cases in the County.

Finally, I would suggest that two of the main purposes of government are for order and justice. It is possible, at least for a time, to have order without justice. However, that order will not be sustainable, but will erupt into disorder when certain trigger events occur. Justice has several nuances. It means that individuals who commit crimes are tried and punished/rehabilitated. It also means that individuals suffer the consequences regardless of race or economic status. Policing is one way that order and justice can be applied fairly or unfairly. However, policing is only one part of the criminal justice system. The criminal justice system must also be re-imagined to ensure “liberty and justice for all”.

Thank you for this opportunity to address the Council.

David Martinsen
701 King Farm Blvd, #325
Rockville, MD 20850



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich
County Executive

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Fariba Kassiri
Deputy CAO

FROM: Edward B. Lattner, Chief *Edward B. Lattner*
Division of Government Operations

DATE: August 14, 2020

RE: **Bill 34-20E, Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain - Amendments**

Bill 34-20E raises no legal issues. However, the proposed amendments to § 33-80(c) will have to be updated to reflect recent changes made by Bill 27-20E.

ebl

cc: Dale Tibbitts, Special Assistant to the County Executive
Marcus Jones, Police Chief
Marc P. Hansen, County Attorney
Haley Roberts, Associate County Attorney
Robert H. Drummer, Senior Legislative Attorney

20-004316

From: [Jones, Marcus](#)
To: [Drummer, Bob](#)
Cc: [Farag, Susan](#); [Lattner, Edward](#)
Subject: RE: Expedited Bill 34-20, Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain - Amendments
Date: Friday, August 21, 2020 2:22:34 PM

Bob,

Please see the our responses to your questions.

1. What other Maryland Counties have bargained an alternative hearing board? How many authorize the board to make the final decision?

This is a breakdown of how the other major Maryland jurisdictions handle hearing boards for their Police Departments. It should be noted that an officer usually has the option of choosing the alternate hearing board, or a traditional hearing board as provided for under the LEOBR:

- **Anne Arundel County:** *Has an alternate hearing board, which is chaired by a member of Police Management. The other two members of a hearing board are chosen from a blind drawing, with the option to strike several drawn names. The decision of the hearing board is not binding on the Chief.*
- **Baltimore County:** *It is an alternate hearing board, chaired by a member of Police Management. It is similar to a traditional hearing board, but the charged employee can strike two members of the board, excluding the chairperson. Their hearing is final in that it is binding on the Chief, but it is appealable to Circuit Court.*
- **Baltimore City:** *Has an alternate hearing board of 5 people. Two are civilians chosen from a panel of those who have attended training, ride alongs, etc. The remaining three are either an Administrative Law Judge and two sworn officers, or just three sworn officers. One sworn officer is always of equal rank. The decision of the hearing board is a recommendation to the Commissioner.*
- **Howard County Police:** *Has an alternate hearing board, which is chaired by a member of Police Management. The Chief of Police retains the final authority in the disciplinary process.*
- **Prince Georges County:** *Is an alternate hearing board, chaired by a member of Police Management. It is similar to a traditional hearing board, but charged employees randomly select two names, via lottery, as their officer of equal rank. Their verdict is not binding on the Chief.*

2. Without names or other identifying information, how many statement of charges recommending dismissal have been issued in the last 5 years and how many have been sustained with the penalty reduced by the arbitrator to less than dismissal over the last 5 years?

Since July 1, 2015, there have been 12 cases where the Chief of Police has imposed dismissal. Two of those cases went to trial board. In one of those cases, the hearing board sustained the dismissal. In the other, the hearing board reduced the discipline to a written reprimand. 6 of these cases resulted in the officer resigning prior to their hearing board.

As a point of clarification, the department has not held an alternate hearing board since September, 2016. The county and the FOP engaged in a lengthy dispute over the County's ability to remove arbitrators from the selection panel. Once that matter was resolved, there was another lengthy dispute over which arbitrators would sit on the panel, followed by another dispute over the order in which the backlogged hearing boards would be heard. The last of these disputes was recently resolved. The department is currently in the process of scheduling outstanding hearing boards.

2. What is the average time between the issuance of a statement of charges and final action by the alternate board?

For the two hearings held since July 1, 2015, the average time between the date the Statement of Charges was issued and the final outcome of the hearing board was approximately 9 ½ months (the individual times were approximately 7 months and 10 months)

3. Can you give me examples of directives that the FOP has insisted on bargaining over and how long the bargaining delayed the directive?

When drafting directives, we conduct an in-depth review to see if there are bargainable subjects contained within the directive. If we feel there are bargainable subjects in the directive, we try to work them out prior to implementation. In recent years, there have been a few times where a directive or other initiative has been flagged as bargainable by the FOP, which delayed or prevented implementation. Examples include a change to our Laundry Directive which resulted in a prohibited practice charge. Additionally, attempts made to take our positional vacancy file review process online was declared by the FOP to be bargainable, as well as an attempt to make position vacancy interviews online during the COVID pandemic was declared to be bargainable. None of these have been implemented as of yet.

4. Any other information that you feel is relevant to the Bill.

If the alternative hearing board is no longer an option for police officers, then the department will revert to a traditional hearing board process as the sole hearing board option for officers, as provided for in the LEOBR. Under the LEOBR, the Chief of Police has the ability to modify the disciplinary sanction of the hearing board (unless he is a witness to the event). However, if the Chief of Police wants to increase a sanction that is imposed by the hearing board, the Chief is required to consider the officers past job performance, to review the entire record of the proceedings of the hearing board, meet with the officer and allow him/her to be heard of the record, and state on the record why the Chief is increasing the penalty. If the Chief wants to lower the penalty, then these steps are not required. Additionally, the employee has the option of appealing the Chief's decision to the Circuit Court.

Although dated, there was a 1999 study by the Institute for Governmental Service found that, in Maryland, the Chief of Police accepted the traditional hearing board recommendation in approximately 91% of cases. In 4% of the cases, the Chief increased the penalty and in 2%, the penalty was reduced.

Please let me know if you have additional questions.

Marcus G. Jones
Chief of Police
Montgomery County Police, MD
100 Edison Park Drive
Gaithersburg, MD 20878
240-773-5005

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From: Drummer, Bob <Bob.Drummer@montgomerycountymd.gov>
Sent: Tuesday, August 18, 2020 12:10 PM
To: Jones, Marcus <Marcus.Jones@montgomerycountymd.gov>
Cc: Farag, Susan <Susan.Farag@montgomerycountymd.gov>; Lattner, Edward <Edward.Lattner@montgomerycountymd.gov>; Smith, Ronald <Ronald.Smith@montgomerycountymd.gov>
Subject: Re: Expedited Bill 34-20, Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain - Amendments

Thank you.

Bob Drummer

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From: Jones, Marcus <Marcus.Jones@montgomerycountymd.gov>
Sent: Tuesday, August 18, 2020 10:53:03 AM
To: Drummer, Bob <Bob.Drummer@montgomerycountymd.gov>
Cc: Farag, Susan <Susan.Farag@montgomerycountymd.gov>; Lattner, Edward <Edward.Lattner@montgomerycountymd.gov>; Smith, Ronald <Ronald.Smith@montgomerycountymd.gov>
Subject: RE: Expedited Bill 34-20, Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain - Amendments

Bob,

We are working on getting you these answers soon. Thanks in advance for your patience.

Marcus G. Jones
Chief of Police
Montgomery County Police, MD
100 Edison Park Drive

Gaithersburg, MD 20878
240-773-5005

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From: Drummer, Bob <Bob.Drummer@montgomerycountymd.gov>

Sent: Tuesday, August 11, 2020 4:58 PM

To: Jones, Marcus <Marcus.Jones@montgomerycountymd.gov>

Cc: Farag, Susan <Susan.Farag@montgomerycountymd.gov>; Lattner, Edward <Edward.Lattner@montgomerycountymd.gov>; Smith, Ronald <Ronald.Smith@montgomerycountymd.gov>

Subject: Expedited Bill 34-20, Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain - Amendments

Chief Jones,

The attached Bill 34-20 is scheduled for a public hearing on September 15 at 1:30 pm. I expect a Committee worksession to be scheduled soon thereafter. I need some background information on the current discipline process for the worksession packet. Specifically:

1. What other Maryland Counties have bargained an alternative hearing board? How many authorize the board to make the final decision?
2. Without names or other identifying information, how many statement of charges recommending dismissal have been issued in the last 5 years and how many have been sustained with the penalty reduced by the arbitrator to less than dismissal over the last 5 years?
3. What is the average time between the issuance of a statement of charges and final action by the alternate board?
4. Can you give me examples of directives that the FOP has insisted on bargaining over and how long the bargaining delayed the directive?
5. Any other information that you feel is relevant to the Bill.

*Robert H. Drummer
Senior Legislative Attorney
Montgomery County Council
100 Maryland Ave
Rockville, MD 20850
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Mobile: 240-381-2897*

Take 10 minutes to be counted now – visit: <https://2020census.gov/>



For COVID-19 Information and resources, visit: www.montgomerycountymd.gov/COVID19

**BEFORE THE PERMANENT UMPIRE FOR THE
MONTGOMERY COUNTY POLICE LABOR RELATIONS LAW**

In the Matter of:

MONTGOMERY COUNTY, MARYLAND

Respondent

and

FRATERNAL ORDER OF POLICE,
MONTGOMERY COUNTY LODGE NO. 35

Charging Party

Prohibited Practice Charge

Date of Filing: January 20, 2016

Negotiability of Various Proposals
in Term Bargaining (Article 72)

Permanent Umpire: Ira F. Jaffe, Esq.

APPEARANCES:

For the FOP:

Robert E. Paul, Esq.
(Zwerdling, Paul, Kahn & Wolly, P.C.)

For the County:

Heather A. Mulloy, Esq.
(Associate County Attorney)

OPINION

On January 20, 2016, at the conclusion of term bargaining for a successor to the FY2016 Agreement and prior to the scheduled start of mediation on January 29, 2016, the County declared certain portions of the Union's proposal for a new Article 72, Body Worn Cameras, non-negotiable. The Union then filed a Prohibited Practice Charge ("PPC") challenging that determination and seeking a finding that the proposals in question were negotiable under the Police Labor Relations Act ("PLRA") and a directive

that the County resume bargaining with respect to those matters.¹ A conference call was held with Counsel and agreement was reached to hold an informal expedited hearing on January 27, 2016.

At the informal hearing, there was significant discussion regarding the Montgomery County Police Department's proposed Body Worn Camera program ("BWC Program"), those areas of the BWC Program that would be significant to the mission of the Department, and the areas in which the BWC Program would result in significant and potentially adverse changes to the working conditions of bargaining unit officers. Given the importance of expeditiously obtaining a ruling as to negotiability of the particular proposals, nature of the issues, the Impartial Umpire agreed to issue his ruling in this matter no later than the morning of January 29, 2016.

The Bargaining History Regarding Body Worn Cameras (Proposed Article 72) and the PPC Regarding the Pilot BWC Program

In mid-2015, the County advised the Union that it was planning to implement a Pilot BWC Program. The Union requested bargaining regarding a number of aspects of that Pilot. The County replied that the Pilot was non-negotiable and implemented the BWC Pilot Program on June 8, 2015 (Function Code 430). The FOP filed a PPC on June 30, 2015 asserting that it enjoyed the right to bargain under the PLRA regarding a number of aspects of the Pilot and that the County's refusal to bargain as to those aspects and unilateral implementation of those aspects of the Pilot violated the PLRA.

¹ The PPC initially also complained about the County's declaration of non-negotiability regarding proposed Article 31, but that matter was resolved prior to the informal hearing when the County withdrew its declaration. The PPC also included a claim that the County's decision to assert non-negotiability at the conclusion of the pre-mediation bargaining sessions constituted bad faith bargaining. After discussion of that allegation at the hearing, the FOP agreed to withdraw that allegation without prejudice to its position that making such a declaration at the end of bargaining was a violation of the obligation to bargain in good faith under the PLRA. Based upon the withdrawal of those claims, no rulings are issued with respect to

On October 30, 2015, I issued an Opinion and Order that found that the County violated the obligation to bargain in good faith imposed by the PLRA by refusing to bargain in good faith with respect to those aspects of Function Code 430 that were the subject of an FOP demand to bargain on May 29, 2015. Those subjects covered by the FOP's May 29, 2015 demand to bargain were: 1) the wearing of body cameras; 2) the nature of the BWC equipment to be worn; 3) the uses of BWC recordings; 4) the use of BWC recordings for administrative discipline; and 5) the maintaining of BWC recordings. There were no specific proposals at issue because the County took the position that it would not negotiate regarding any aspect of Function Code 430. The PPC was the first to address the interplay of working conditions (as to which there is an obligation to bargain under the PLRA) and the impairment of management rights covered by Section 33-80(b) following the amendments to the PLRA that changed the provisions with respect to effects bargaining. After an extensive review of the prior cases of the Impartial Umpire/Labor Relations Administrators and the courts under the PLRA and the other County Labor Relations Acts, and jurisprudence arising under the National Labor Relations Act and under other public sector bargaining statutes, as well as the evidence of the intent of the County Council when it amended the PLRA, I held that:

The determination as to whether and to what extent a particular subject matter or proposal is subject to an obligation to bargain, upon request, under the PLRA, involves several determinations. The threshold determination concerns whether the subject matter or proposal falls within the broad categories of items set forth in Section 33-80(a)(1) through (7) of the PLRA. In substance, that question is whether the subject matter concerns wages, hours, or other terms and conditions of employment. Second, a determination must be made as to whether the subject matter or proposal with respect to the actions or proposed actions of the County may properly be deemed management rights as set forth in Section 33-80(b)(1) through (10) of the PLRA. Third, if the subject matter or proposal both falls within Section 33-80(a)(1) through (7), but would also limit in some meaningful way managerial prerogatives set forth in Section 33-80(b)(1) through (10) of the PLRA, it is necessary to balance the interest of employees and the FOP in the right to engage in bargaining over those issues, on the one hand, with the impact on the management rights in question, on the other, in order to determine whether requiring that

the items be bargained would “impair” those management rights to an extent that renders the matter non-negotiable.

(Decision at 41.)

It was recognized further that the refusal to bargain relative to the Pilot was asserted in the absence of specific proposals and that if a negotiability review addressed specific proposed contract language then the question of whether the proposal inappropriately impaired one or more management rights could be done in a more focused fashion.

The Negotiations over Article 72

The Parties refrained from providing detailed testimony at the January 27, 2016 hearing regarding statements made by Union and by County representatives in their bargaining sessions. Copies, however, of the proposals of the Union and the County with respect to Article 72 were introduced into evidence.

The FOP made its initial proposal for Article 72, Body-Worn Cameras, on November 13, 2015. The FOP restated its Article 72 proposal on November 24, 2015. No significant differences are discernable between those two proposals.

The County made its initial proposal with respect to Article 72 on December 14, 2015. The County made a revised Article 72 proposal on January 13, 2016, that did include a number of changes.

As previously noted, on January 20, 2016, the County declared a number of specific provisions in the Union’s Article 72 proposal to be non-negotiable.

Unlike the objections in the BWC Pilot PPC, this case involves a declaration of non-negotiability with respect to specific proposed contract language. At the hearing in this matter, which was conducted on January 27, 2016, there was significant discussion

by all participants as to: 1) the reasons why the FOP asserted that the particular proposals were subject to a duty to bargain under the PLRA; 2) the reasons why the County maintained that the particular proposals would significantly impair one or more Section 33-80(b) employer rights and should, therefore, be found to be non-negotiable; and 3) the intent of the proposals in question. Several of the disputes regarding non-negotiability were resolved by either withdrawal of the proposal by the Union or an acknowledgement that the proposal was negotiable by the County. A number of significant areas of dispute, however, remain and require ruling. Given the fact that mediation is scheduled to begin on January 29, 2016, the Impartial Umpire committed to issue the ruling in this case by the morning of January 29, 2016, along with a brief explanation of the reasons for the particular negotiability determinations.

General Observations

Prior to addressing the specific proposals, however, some general observations are appropriate.

First, the rulings in this case relate to the negotiability or non-negotiability of specifically worded provisions. Thus, if the proposal is found to constitute a matter within the scope of Section 33-80(a) of the PLRA, the negotiability analysis focuses, of necessity, upon whether the particular proposals in question inappropriately impairs one or more Section 33-80(b) employer rights. A different proposal concerning that same general subject area that does not have the same degree of impairment may well be viewed differently under the PLRA in terms of its negotiability.

Second, the Parties both recognized that the entire BWC initiative is in its very early stages. The state of the applicable law in Maryland is far from settled and may

change significantly in the future. Just recently, on January 8, 2016, the Maryland Police Training Commission (“MPTC”), a subunit of the Maryland Department of Public Safety and Correctional Services, published a policy establishing minimum standards for the issuance and use of BWCs by law enforcement officers that addressed seventeen enumerated subjects set forth in §3-511 of the Maryland Public Safety Code with respect to BWC policies. Compliance with the minimum standards set forth in the MPTC policy is mandatory for police agencies, including the Department, in the state of Maryland. The MPTC on the same date published an extensive Body-worn Camera Procedural Reference Guide (“Guide”) that included commentary, reference materials, and recommendations with respect to a large number of the issues surrounding implementation of BWC programs and their impact on law enforcement efforts and upon law enforcement officers, including such matters as activation and termination of recordings, evidentiary recordings, non-evidentiary recordings, storage, tagging, review, and dissemination and release procedures (including redaction). The Guide includes recommendations by the MPTC and discussion of a number of issues as to which the MPTC declined to make specific recommendations at the time. The governing standards applicable to both voluntary disclosure on the part of the County and disclosure in response to an information request under the Maryland Public Information Act (“MPIA”) or other applicable law also remain unclear. Accordingly, it would not be surprising to find that the legal and programmatic landscapes change significantly in a number of respects in the upcoming months and years, including in ways that may affect issues of negotiability. To the extent that the County’s assertions of non-negotiability are grounded in an assertion that the particular proposal would inappropriately impair the

mission of the Department, it needs to be noted that certain aspects of the law enforcement mission of the Department relative to BWC recordings may not have been fully determined at this time.

Third, notwithstanding these and other limitations, it is clear that all of the disputed proposals involve matters that are of high import to the County and to the FOP and its members. The BWC Program will have as one of its effects a significant expansion of the activities of bargaining unit officers that will be recorded. There can be no serious question that this will represent a very material change in working conditions. Similarly, there can be no serious question that recording the law enforcement activities of many of the County's officers while they interact in various ways with members of the public will have great significance in terms of the manner in which the County accomplishes its law enforcement mission and in terms of how the County's Police Department may be viewed by the public at large.

Fourth, the focus in terms of the negotiability analysis is upon whether the particular challenged proposal is bargainable, not whether it should or should not be adopted. In essence, the analysis addresses whether, if adopted in the impasse process, the particular proposed language would exceed the bounds of what is a mandatory subject of bargaining under the PLRA.

Fifth, the FOP's November 24, 2015 Article 72 proposal is modeled to a large degree upon contractual language that has been bargained by the Parties in Article 66 of the Agreement, which relates to the Mobile Video Systems program of recording devices installed in Department vehicles (dash cams). The FOP asserted that, to the extent that similar language has been bargained without assertion of non-negotiability in Article 66,

it should be treated as binding (or at least highly instructive) relative to questions of non-negotiability concerning proposed Article 72. According to the FOP, “video is video,” and to the extent that the provisions of Article 66 have not been shown to have caused any inappropriate impairment of employer rights or bar to the accomplishment of the Department’s mission, there is no reason to believe that applications of the same provisions will do so in the context of BWCs. The County argues, to the contrary, that there are a number of reasons why Article 66 should be treated as irrelevant to the negotiability determinations in this case. Specifically, the County relies in this regard upon the following: 1) Article 66 was negotiated at a time when the PLRA provisions regarding effects bargaining were different than they are today; 2) Article 66 addresses recordings that take place in a different legal context than recordings on BWCs which are mobile in different ways; 3) the BWC initiative is taking place in the context of new Maryland laws that never applied to Mobile Video Systems recordings and different public expectations relative to the need for police activities to be recorded and the need for those recordings to be disclosed as public records of the activities of government agents; 4) the much greater scope of BWC recordings that will ultimately occur in terms of the percentage of affected officers and the greater range of police activities render the negotiated Article 66 provisions largely inapplicable to proposed Article 72 issues; and 5) the BWC program will involve a significantly larger investment of Department time and resources than the MVS program and, therefore, any contractual restrictions that inappropriately limit the Department’s ability to fully utilize that investment should be viewed differently in the balancing test relative to negotiability set forth in the Opinion regarding the BWC Pilot for resolving claims of non-negotiability.

The fact that Article 66 of the Agreement contains language that mirrors some of the disputed language contained in the FOP's Article 72 proposal cannot be viewed as dispositive of the question of negotiability under the PLRA. The differences in the MVS program and the BWC program, changes in Maryland law regarding disclosures of recordings, changes in the PLRA, and other factors render it inappropriate to summarily find proposed Article 72 provisions negotiable simply on the basis that the County and the FOP agreed to the negotiation and continuation of Article 66 language without challenge to those provisions. The lack of demonstrated mission or operational impairments under Article 66, however, is entitled to some weight in gauging the claims of the Department relative to those matters. The precise weight to be given to that factor, however, will vary depending upon the particulars of the asserted impairment and consideration of the similarities and differences between the MVS program and the BWC program.

The Disputed Proposals

1) Article 72, Section A.3. of the FOP's November 24, 2015 Proposal provides:

(3). The employer shall determine in what units BWC will be implemented. The Employer will first seek volunteers to be assigned a BWC. If the number of volunteers exceeds the number of available cameras, assignment of BWC will be made among volunteers on the basis of seniority. If there is an insufficient number of volunteers, cameras shall be assigned on the basis of inverse seniority.

HOLDING: The first sentence of Section A.3. is negotiable. The remainder of Section A.3. is non-negotiable.

The first sentence is little more than a recognition of the County's right to determine the units in which BWC will be implemented. The discussion at the hearing made clear that the reference to units was not intended to limit the County's right to determine the shift, physical location, or activity for which BWCs could be used.

The requirement to use volunteers first and to use seniority if there were too few or too many volunteers as the mechanism for assigning BWCs to individual officers would inappropriately restrict the County's ability to appropriately deploy BWCs in situations where it was determined to be needed. By imposing an absolute requirement to assign BWCs first on a volunteer basis and secondarily on a reverse seniority basis if there were too many or too few volunteers in a particular unit, the proposal inappropriately and substantially restricts the County's ability to utilize its available Body Worn Cameras in situations where they would be needed most critically. Cited examples included, for example, a mission-driven need to assign a bilingual officer to particular work for which a BWC was deemed appropriate; an inability to assign a BWC to an officer who had suspected problems in his or her interactions with the public or certain members of the public; or assignment of BWCs to individual members of a SWAT team, breach team, entry team, or the like, all in light of the limited number of BWCs and the limited number of officers who will initially be trained in their deployment. Any concerns about favoritism or reprisal by supervision in the assignment of BWCs can be addressed by other proposals that have less impact on the Department's ability to maintain and improve the efficiency and effectiveness of operations, determine the means and personnel by which operations will be performed, and to direct and supervise employees. The proposal, as worded, would significantly restrict the Department's management right to place BWCs where believed most appropriate from a law enforcement perspective or force changes to be made in officer assignments solely to ensure that particular officers in a unit are volunteers or senior/junior such that they may be required to use a BWC.

This holding is not intended to raise questions about the negotiability of other contractual provisions that provide for assignments of various types of equipment or technology to be done on the basis of volunteers/seniority, including the assignment of MVS equipped vehicles to officers pursuant to Article 66. Rather, the holding is limited to the different issues that are implicated by assignments of BWCs to particular officers performing particular assigned duties.

2) Article 72, Section C.7. of the FOP's November 24, 2015 Proposal provides:

7. Employees shall not be required to activate body-worn cameras when engaged in conversations with individuals with whom the employee is in a privileged relationship (e.g., spouse, attorney, police peer counselor, labor representative, minister, etc.).

HOLDING: The proposal is non-negotiable.

Although phrased in terms of non-activation, the FOP explained that the proposal is intended to address both initial activation of BWCs and also the decision to terminate or suspend recording.

As phrased, the proposed Section C.7. language applies equally to both situations in which law enforcement activities are being recorded (e.g., at the scene of a disturbance or accident or shooting) and situations in which the officer is driving in his or her vehicle while en route to a call. The language applies equally to time sensitive conversations and to those that could easily be deferred to a later point in time when there is no requirement to have the BWC activated and recording. The language applies to all conversations with individuals with whom the employee is in a privileged relationship, regardless of whether or not the conversation is actually privileged. If adopted, it would grant the officer the ability to terminate recording even in situations in which the MPTC policy would appear to require that recording continue. The Union's concerns about the BWCs inappropriately capturing privileged communications or the use of any privileged

communications so captured certainly present negotiable concerns. A more narrowly tailored proposal, however, may both comply with law and prevent an inappropriate impairment of the Department's mission while also addressing the situation of BWC recordings that unintentionally capture confidential or privileged conversations. The MPTC Guide recognizes the possibility of accidental or unintentional recordings of matters that have no evidentiary value or official purpose and notes the possibility of those recordings being deleted after the fact. A proposal to limit or preclude reliance by the Department on such recordings and/or to limit or preclude their release may also address many of the stated concerns without inappropriately limiting the Department's right to have complete recordings of law enforcement events.

The hearing indicated that presently there is no bar on personal hands-free telephone conversations during time in the cruiser (including time while traveling to a call) that does not interfere with the officer's law enforcement responsibilities. To the extent that the Union's proposal would allow for officers to decline to activate the BWC after the initiation of a call for service or other activity that is investigative or enforcement in nature and under circumstances where there is no showing that activation was unsafe, impossible, or impractical, serious questions would be presented as to whether it would violate the BWC Policy minimum standards promulgated by the MPTC pursuant to §3-511 of the Public Safety Article.

3) Article 72, Section D.1. and D.2. of the FOP's November 24, 2015 Proposal provides:

1. Management shall have access to BWC recordings for any legitimate matters unrelated to employee performance or discipline, except as noted below in paragraph 2. All recordings will be used for official business only. The Employer shall not externally release any recordings unless required to do so by law.

2. The Employer may only use information contained in a BWC recording as a basis of discipline where the information was obtained after the Department reviewed a specific incident on a recording following:

- a. an external complaint being filed concerning the incident (a non-police Department employee)
- b. a pursuit;
- c. uses of force arising out of the incident that result in injuries to anyone;
- d. a collision involving a police vehicle;
- e. a non-employee's claims of injury arising out of the incident; or
- f. the Employer's reasonable basis to suspect that a recording would show an employee engaged in criminal wrongdoing or serious allegations of misconduct in violation of Department rules and regulations applicable to bargaining unit members. At the time of its review, the Employer shall enter the grounds for its reasonable basis in the log described in subsection 3, infra, or in a related case or investigative file.

Minor administrative infractions discovered during a review under sections 2(b)-(f) above will not result in disciplinary action. Disciplinary action under sections 2(b)-(f) above shall be limited to serious allegations of misconduct.

HOLDING: The proposal is negotiable in part and non-negotiable in part.

These sections were declared non-negotiable by their entirety by the County.

Although the language is modeled upon language contained in Article 66, the proposal raises four major questions of negotiability: 1) whether management may be denied access to BWC recordings for the purpose of performance or discipline except where there was a specific incident for which BWC recordings are reviewed based upon one or more specific triggering scenarios (detailed in Section 2 a. through f.); 2) whether discipline based on minor administrative infractions discovered during a review of BWC recordings following the triggers in Sections 2.b. through f. may be prohibited and, in such situations, limiting disciplinary action to only serious allegations of misconduct; 3) whether a proposal that recordings will be used only for official business is non-negotiable and whether management access will be limited to "legitimate matters"; and

4) whether all release of recordings may be prohibited except for those releases that are required by law.

These questions will be discussed seriatim.

The proposed ban on the use of recordings for performance evaluations is discussed below in connection with the FOP's Article 72, Section D.7. proposal and thus need not be discussed at this point. It is found non-negotiable for the reasons discussed later herein in connection with the Section D.7. proposal.

The proposed limits on the use of recordings to prove misconduct for disciplinary purposes exceed the limits of negotiability in several respects. To the extent that proposed Section D.1. precludes the Department from routinely searching through recordings for the express purpose of discovering one or more acts of misconduct upon which to then propose disciplinary action, the proposal is negotiable. The MPTC Guide at pages 62-63 contains advisory language providing that: "... a BWC recording shall NOT be used to ROUTINELY EVALUATE AN INDIVIDUAL'S PERFORMANCE OR TO ROUTINELY LOOK FOR VIOLATIONS OF POLICY/PROCEDURE and/or RULES/REGULATIONS IN ORDER TO INSTITUTE DISCIPLINARY ACTION." (Capitalization and underscoring as in original.) While it is not known if the County's own policy will include that advisory policy, the assertion that the Department has the unbridled discretion as the owner of the BWC recording to review it and use it as it deems fit, limited only by express limitations contained in law, is unpersuasive. Rather, to the extent that the matters implicate conditions of employment and to the extent that the proposals do not inappropriately impair employer rights, the exercise of managerial discretion relative to BWC policy and recordings is negotiable under the PLRA.

The proposal in Section D.1 and D.2 that bars use of BWC recordings “as a basis for discipline” in situations in which the County learns of officer misconduct by means of appropriate review of BWC recordings is non-negotiable since it would inappropriately impair the County’s right to supervise employees, to enforce rules and regulations not inconsistent with the PLRA or the Agreement, to direct and supervise employees, and to pursue the mission of the Department. Discipline for misconduct that is revealed and/or substantiated by a review of BWC recordings must still meet all applicable requirements contained in the Law Enforcement Officers Bill of Rights and the Agreement. To ban resort to disciplinary action where the reason that the BWC recording came to the attention of Department management was a reason other than those set forth in proposed Section D.2(a) through D.2(f) would inappropriately impair the Department’s mission and its rights to maintain and improve the efficiency and effectiveness of operations, to supervise and direct employees, and to enforce rules and regulations that are not inconsistent with the PLRA or the Agreement. For example, when reviewing a BWC recording of an officer for legitimate business reasons, it may come to the attention of the reviewing supervisor that another officer committed a serious infraction. The proposal would bar the Department from taking a disciplinary response to that misconduct since the reason that the BWC recording was accessed did not fall under any of the enumerated lettered subsections of proposed Section D. An absolute ban on the imposition of discipline for minor administrative infractions (without that term being defined and without regard to the circumstances) would similarly inappropriately impair the Department’s rights under Section 33-80(b)(1), (2), (5), and (8), to take appropriate disciplinary action subject to review in accord with the LEOBR and the Agreement.

The proposal that recordings will be used only for official business is negotiable as is limiting management access to legitimate matters. While the BWC recordings may be the property of the Department, they are compelled recordings of the actions of the bargaining unit officers. Use and release of recordings can cause significant harm to bargaining unit members including leading to civil and/or criminal liability, threats directed at officers and their families in situations in which the recorded behavior of officers provokes such responses on the part of others, and potentially subjecting members and others to unnecessary embarrassment. The MPTC Guide at page 64 contains advisory language that: "Under no circumstances are members with access to BWC recordings permitted to use, show, reproduce or release recordings for the purpose of ridicule or embarrassment of any officer or individual or for other non-law enforcement related purposes." Thus, while it is clear that the BWC recordings are the property of the Department, it is equally clear that the use of those recordings qualifies as a working condition that implicate bargainable subject matter under the PLRA. The limitations on that obligation to bargain arise when a particular bargaining proposal inappropriately impairs one or more of the employer rights recognized in Section 33-80(b) to a degree that outweighs the countervailing interests and rights of the bargaining unit and the FOP. No right to access or to use or to exercise discretion to release recordings for other than official business purposes has been demonstrated. For example, no employer right has been shown to exist to release or to sell BWC recordings for commercial gain or to do so in ways that serve no legitimate law enforcement purpose but may operate to unnecessarily embarrass one or more bargaining unit members.

The proposal that all release of recordings be prohibited except for those releases that are required by law is non-negotiable. The Parties recognize that certain releases are required by law, other releases are prohibited by law, and still other releases of recordings are neither legally required nor legally prohibited. It is this latter category of releases that the proposal would preclude in toto. The problem with such a blanket prohibition is that it would inappropriately impair the mission of the Department, the effectiveness of operations, and in certain circumstances the ability to carry out the Department's mission in emergency situations. As phrased, the proposal would prevent the Department from sharing recordings with other law enforcement agencies, from releasing recordings where it is believed that doing so would assist in the capture of a dangerous individual or the return of a victim or missing person or child or where the Department believes that release of recording information may quell public unrest or address what it believes to be inaccurate or unfair criticism of certain action by the Department or its officers. That is not to say that the general question of when and under what circumstances information may be released is not a bargainable matter. It is. There are legitimate and substantial interests on behalf of the FOP and its bargaining unit members in determining when and how information is to be released and no showing has been made that the discretion that is enjoyed by the Department under the MPIA and other applicable law to disclose or not to disclose BWC recorded information may not be the subject of collective bargaining under the PLRA given the fact that disclosures and non-disclosures of BWC recordings concern working conditions. With respect to certain disclosures, the interests of the bargaining unit members and the FOP are sufficiently strong and the law enforcement related need to be able to decide unilaterally whether disclosure will occur is sufficiently

weak or non-existent such that the procedures and standards for addressing such releases are negotiable matters. A proposal, however, such as the current proposed Section D.1. that would preclude all disclosures of recordings except where required to be made pursuant to law inappropriately impairs the legitimate law enforcement mission of the Department and its operations and must be found to be non-negotiable.

5) Article 72, Section D.5. of the FOP's November 24, 2015 Proposal provides:

No recording may be used for training purposes without the written consent of all employee(s) involved to include the employee whose BWC made the recording and any other employees who may be seen or heard on the recording. Such consent may be withdrawn in writing.

HOLDING: The proposal is negotiable in part and non-negotiable in part.

This proposal, while modeled upon language in Article 66, is different in that it purports to define the phrase "employee(s) involved" to include but any employees who may be seen or heard on the recording and the employee whose BWC made the recording. While it is possible that by redaction of faces or alteration of voices the Department may still use recordings deemed to be suitable tools for training absent consent by one or more officers who would be identifiable by image or voice on the original recording, the proposal would provide an absolute right on the part of the officer whose BWC made the recording to decline to consent to the use of the recording for training purposes and bar the Department from utilizing that recording for training, either in group or individual settings. As such, the portion of the proposal that vests the individual whose BWC with the ability to stymie the Department's ability to use the recording for training purposes inappropriately impairs the Department's rights and obligations regarding officer training. The interest of the officer whose BWC took the

video is relatively weak particularly if that officer is not identified in the training.² The ability of an officer to withdraw previously provided consent at any time, including after training materials have already been prepared, would also inappropriately impair the Department's ability to effectively maintain and improve the efficiency and effectiveness of operations and, in the case of certain trainings, to direct or supervise employees.

6) Article 72, Section D.7. of the FOP's November 24, 2015 Proposal provides:

No recording may be used for the purpose of performance evaluations.

HOLDING: The proposal is non-negotiable.

By providing for a blanket ban of BWC recordings for the purpose of performance evaluations, the proposal inappropriately impairs the Department's right to maintain and improve the effectiveness of operations. The ability to appropriately use BWC recordings as evidence of performance in connection with particular incidents does not mean that the Department is absolved from its obligations regarding fair evaluations of performance based upon the totality of inputs that bear upon evaluating officer performance or would be permitted to routinely scour BWC recordings and use those reviews as a primary basis for evaluating the performance of individual officers. The situation with respect to BWC recordings potentially is distinguishable from that presented with respect to MVS recordings. While there are significant limitations to BWC recordings such that it may be appropriate to bargain over and perhaps limit their

² Interestingly, the MPTC Guide contains advisory language for BWC policies that would provide for notice of intent to use a recording for training purposes and an opportunity to lodge any objections, with the final decision made by management based upon determining whether the training value outweighs the member's objection.

use in performance evaluations,³ BWC recordings may be expected to provide greater information regarding the actions on the job of officers than MVS recordings, based upon the different technologies, their deployment, and the situations in which they are likely to be activated. Under all of these circumstances and those noted earlier in the general observations section of this Opinion, I am persuaded that notwithstanding the provisions of Article 66, the proposed blanket ban on use of BWC recordings as evidence in performance evaluations inappropriately impairs employer rights under the PLRA and is, therefore, non-negotiable.

7) The Union withdrew its Article 72, Section D.11. proposed language rendering moot the dispute over the County's declaration of non-negotiability of that proposal.

8) Article 72, Section D.12. of the FOP's November 24, 2015 Proposal provides:

All external requests for copies of recordings, including subpoenas and summonses, will be reviewed by the County Attorney's Office. The County will notify the FOP of all such requests for BWC recordings/data involving unit members and solicit its opinion before determining whether the request will be granted or denied. If the County determines that a request cannot be denied under the MPIA, it will give the FOP an opportunity to file a reverse MPIA action and will not grant the original request until and unless a court orders that the recording/data be disclosed.

The County has objected to the negotiability of only the first sentence to proposed Section D.12.

HOLDING: The first sentence is non-negotiable to the extent that it specifies that all external requests for recordings will be reviewed by the County Attorney's office.

The proposal that all external requests for recordings, including subpoenas and summonses for recordings, be reviewed is negotiable. That proposal relates to the

³ The MPTC Guide notes at pages 8-10 the following limitations: 1) the camera doesn't follow officers' eyes or see as they see; 2) some important danger cues can't be recorded; 3) camera speed differs from the speed of life; 4) cameras may see better than the officer in low light; 5) an officer's body may block the view; 6) a BWC records only in two dimensions; 7) time stamping of recordings are gross and not sufficiently sophisticated; 8) one camera may not be enough in light of angles, ambient lighting, and other factors; 9) a camera encourages second guessing; and 10) a recording can never replace a fair, thorough, and impartial investigation.

procedures applicable to requests pursuant to the MPIA and implicates strong interests on the part of the FOP and bargaining unit members to ensure that only appropriate recordings are released, that requests for recordings are handled in a consistent fashion, and that any appropriate limitations that are conditions of such releases attach. The County's objection to negotiability relates solely to the requirement in the proposal that the review be conducted by the County Attorney's office. To specify that the County Attorney's office conduct these reviews would inappropriately impair the right of the County to determine the overall organizational structure, methods, processes, means, job classifications and personnel by which operations are to be conducted, particularly given the significant amounts of BWC recordings that will be produced and of the expected high volume of public requests for those recordings. Apart from proposing that reviews be appropriately complete and consonant with applicable standards, including those imposed by law and any imposed by provisions of the Agreement, and performed on a consistent basis, there has been no showing of countervailing interest in ensuring that the County Attorney's office perform the requisite reviews. It may well be that ultimately some or all of these reviews are done by or performed under the supervision of the County Attorney's office. A proposal that would eliminate the ability of the County to do otherwise, however, inappropriately impairs employer rights under Section 33-80(b)(1) and (4) of the PLRA.

9) The County withdrew its negotiability objection with respect to Article 72, Section D.13., of the FOP's November 25, 2015 proposal, rendering moot the challenge to that declaration of non-negotiability.

10) Article 72, Section D.14. of the FOP's November 24, 2015 Proposal provides:

Except as required by law, no recording of an employee injury, death, or other action shall be released for publication of any kind without the prior express written consent of the unit member. Consent may be withdrawn by the unit member in writing. A copy of each written consent and withdrawal of consent shall be sent by the Employer to FOP 35.

HOLDING: The proposal is non-negotiable.

While there are understandable and arguably compelling privacy reasons that might support non-disclosure of such recordings, in limited cases there may be countervailing law enforcement mission-related exigencies that might require the disclosure of such recording (including redacted recording information). The potential need for such disclosure based upon County decisions to do so in such situations as a disclosure of a recording or portion of a recording to assist in the return of a missing child or other victim of a crime on its own or to apprise the public of the image of a dangerous or violent person would be precluded. The proposal as worded would operate as a blanket ban of both disclosures to the public and disclosures to other law enforcement agencies other than as required by law. It is the absolute nature of the proposal's wording that supports the finding of non-negotiability as an inappropriate impairment of the Department's mission, including taking actions to carry out that mission in emergency situations. The Department recognized that the release of recordings of officer death or injury should not occur absent compelling law enforcement related reasons to release the recording or in situations where the release of those recordings are required by law.

The proposal that consent be obtained prior to releasing recordings of "other action" was acknowledged by the FOP to be another way of precluding the release of all BWC recordings that are not required by law and as to which written consent to release has not been secured. That portion of the proposal must be found non-negotiable for the

same reasons that a similar limitation, albeit differently phrased, was found to be non-negotiable in the FOP's Article 72, Section D.1., proposal.

11) Article 72, Section D.15. of the FOP's November 24, 2015 Proposal provides:

Neither this agreement nor any use of BWC or BWC recordings shall be construed as a waiver of any constitutional, statutory, civil, or other right by any unit member.

HOLDING: The proposal is negotiable.

The language, which mirrors language in Article 66, clarifies that the provisions of Article 72 and the use of BWC or BWC recordings do not waive the legal rights, including constitutional, statutory, civil, or any other legal rights of the bargaining unit members. This provision is plainly a working condition and there has been no showing that including such a provision would inappropriately impair the County's employer rights in any fashion.

12) The Union withdrew its proposed Article 72, Section D.17., based upon the agreement of the Union and the County that the withdrawal did not change whatever rights the County otherwise had (if any) to discipline employees for a violation of Article 72. This action rendered moot the challenge to the County's declaration that this proposal was non-negotiable.

ORDER

The County's declaration of non-negotiability with respect to certain provisions in the FOP's November 25, 2015 Article 72 Proposal is sustained in part and overturned in part to the extent noted in the foregoing Opinion. The County is directed to withdraw its assertion of non-negotiability and to bargain with respect to those FOP proposals found to be negotiable under the Police Labor Relations Act.

January 29, 2016

A handwritten signature in black ink, reading "Ira F. Jaffe", is written over a horizontal line.

Ira F. Jaffe, Esq.
Permanent Umpire

BEFORE THE PERMANENT UMPIRE FOR THE
MONTGOMERY COUNTY POLICE LABOR RELATIONS LAW

In the Matter of:

MONTGOMERY COUNTY, MARYLAND

and

FRATERNAL ORDER OF POLICE,
MONTGOMERY COUNTY LODGE NO. 35

| Article 61 Negotiability Determination

| Date of Filing: September 16, 2016

| Function Code 1402; Social Media Policy

Permanent Umpire: Ira F. Jaffe, Esq.

APPEARANCES:

For FOP Lodge No. 35:

Robert E. Paul, Esq.
(Zwerdling, Paul, Kahn & Wolly, P.C.)

For the County:

Heather A. Mulloy, Esq.
(Associate County Attorney)

OPINION

On September 16, 2016, Montgomery County, Maryland (“County”) and FOP Lodge No. 35 (“Union”) jointly requested that, pursuant to Article 61 of the Parties’ FY17 collective bargaining agreement, the Undersigned issue a negotiability determination with respect to the County’s Draft Social Media Policy, identified as Function Code 1402. In a conference call held on October 31, 2016, the Parties agreed that this matter would be submitted to the Umpire for decision on the basis of briefing. The Parties submitted their positions in writing on November 13 and 14, 2016, and the Union submitted a brief reply on November 18, 2016.

The Parties stipulated to the following facts in this matter:

On August 10, 2016, Captain Michael Wahl of the Montgomery County Department of Police, Policy and Planning Division, transmitted a letter to the Union with an attached draft copy of Function Code 1402. On August 19, 2016, the Union responded to the notice, alleged that the proposed policy involves mandatory subjects of bargaining, and demanded that the Social Media Policy be bargained.

On August 24, 2016, Captain Wahl replied, alleging that the Union had failed to identify the specific provisions of the new policy about which it seeks to bargain. On August 24, 2016, the Union transmitted a response to Captain Wahl's August 24, 2016 letter stating, inter alia, that it sought to bargain over each of the nine (9) subdivisions of the draft (excluding Roman Numerals VII, VIII and IX of the Draft Policy). On August 26, 2016, Captain Wahl replied to the Union's August 24, 2016 letter, asserting that the Union's request to bargain over virtually the entire Draft Policy without more specificity as to the particular language that it believed to be at issue was "disingenuous and not consistent [with] Article 61." Capt. Wahl further requested that the FOP identify the specific provisions of Function Code 1402 over which it wished to bargain. On August 30, 2016, the Union replied to Captain Wahl's August 26, 2016 letter, asserting that its letter seeking bargaining complied with Article 61 and further noting that if the County disagreed that the identified provisions were subject to bargaining, then the Parties needed to jointly approach the Permanent Umpire for a ruling on negotiability. On September 2, 2016, Captain Wahl wrote to the Union stating, in part, that the Department did not agree with the Union's position regarding the negotiability of the provisions of FC 1402 and suggesting that the Parties, pursuant to Article 61, Section B2 of the contract, jointly seek a negotiability determination from the Permanent Umpire.

The Draft Function Code 1402 stated in its entirety that:

Contents

- I. Purpose
- II. Policy
- III. Definitions
- IV. Procedures
- V. Personal Use of Social Media
- VI. Social Networking While On Duty
- VII. CALEA Standards
- VIII. Proponent Unit
- IX. Cancellation

I. Purpose

The Montgomery County Police Department endorses the secure use of social media to enhance communication, collaboration, and information exchange; streamline processes; and foster productivity. This directive sets forth policy and procedure to establish acceptable and appropriate use of social media.

II. Policy

Social media use by the Department is designed to enhance communication, collaboration, and information exchange about Department programs, services, and activities with the public. This policy applies to all employees using social media on behalf of the Department as part of their duties or when otherwise acting as a representative of the Department. Social media provides a potentially valuable means of assisting the Department and its personnel in meeting community outreach, problem-solving, investigative, crime prevention, and related objectives. This directive identifies potential uses that may be explored or expanded upon as deemed reasonable by the Chief of Police.

The Department also recognizes the role that social media plays in the personal lives of Department employees. As such, this policy provides information of a precautionary nature as well as prohibitions on the use of social media by Department personnel.

III. Definitions

- A. Blog – A self-published diary or commentary on a particular topic that may allow visitors to post responses, reactions, or comments.
- B. Page – The specific portion of a social media web site where content is displayed, and managed by an individual or individuals with administrator rights.
- C. Post – Content an individual shares on a social media site or the act of publishing content on a site.
- D. Profile – Information that a user provides about himself/herself on a social media networking site.
- E. Social Media – A category of internet-based resources that integrate user-generated content and user participation (video, audio, text, or images) that is publicly available on the internet and allows viewers to publicly post their own content in response. Among the technologies that make up social media are blogs, message boards, wikis, podcasts, photo and video sharing, mashups, and virtual worlds. A few prominent examples of social media applications

as of the date of this policy are Wikipedia (reference), Facebook, MySpace, SnapChat, Gather.com (social networking), Twitter, Nixie (micro-blogging), YouTube (video sharing), Second Life (virtual reality), Digg, Reddit (news sharing), and Flickr (photo sharing).

- F. Social Network – Online platforms where users can create profiles, share information, and socialize with others using a range of technologies.
- G. Wiki – Web page(s) that can be edited collaboratively.

IV. Procedures

A. Department-Sanctioned Use

1. All Department social media sites or pages must be approved by the Chief of Police or designee.
2. The Director of the Police Public Information Office will designate a site administrator(s), who will administer the approved social media site and will be responsible for posting content to the site and monitoring the site for compliance with this policy.
3. Where possible, each social media page must include an introductory statement that clearly specifies the purpose and scope of the Department's presence on the website.
4. Where possible, the page(s) should link to the Department's official website.
5. Social media pages must clearly indicate they are maintained by the Department and must have Department contact information prominently displayed.
6. Social media content must adhere to applicable laws, regulations, and policies, including technology and records management policies.
 - a. Content is subject to public records laws. Relevant records retention schedules apply to social media content.
 - b. Content must be managed, stored and retrieved to comply with open records laws and e-discovery rules and policies.
7. Where possible, social media pages should state that the opinions posted by visitors to the page(s) do not reflect the opinions of the Department.
 - a. Pages must clearly indicate that posted comments will be monitored and that the Department reserves the right to remove obscenities, off-topic comments, and personal attacks.
 - b. Pages must clearly indicate that any content posted or submitted for posting is subject to public disclosure.
8. Employees representing the Department via approved social media outlets must:
 - a. Conduct themselves at all times as a representative of the Department and, accordingly, adhere to all Department policies and standards of conduct and observe conventionally accepted protocols and proper decorum. Posts should provide constructive, accurate, and factual information and be consistent with the Department's mission.
 - b. Not make statements about the guilt or innocence concerning pending prosecutions, nor post, transmit or otherwise disseminate confidential information without permission of the Chief of Police or designee.

- c. Not conduct political activities or private business.
 - d. Not endorse commercial products, services or entities.
9. Employees shall observe and abide by all copyright, trademark, and service mark restrictions in posting materials to electronic media.

B. Potential Uses

- 1. Social media is a valuable investigative tool when seeking evidence or information about:
 - a. Missing and wanted persons;
 - b. Gang activities;
 - c. Crimes perpetrated online (i.e., cyberbullying, cyberstalking), and
 - d. Information, photos or videos of a crime or criminal activity posted by a participant or observer.
- 2. Social media can be used for community outreach and engagement by:
 - a. Providing crime prevention tips;
 - b. Sharing crime maps and data; and
 - c. Soliciting tips about unsolved crimes (i.e. Crime Stoppers, text-a-tip).
- 3. Social media can be used to make timely notifications related to:
 - a. Road closures;
 - b. Special events;
 - c. Weather emergencies;
 - d. Missing or endangered persons, and
 - e. Unfolding incidents.
- 4. Social media can be beneficial as a recruitment mechanism as persons seeking employment and volunteer positions use the internet to search for opportunities.
- 5. Social media content can be reviewed when conducting pre-employment background investigations of potential employees.

V. Personal Use of Social Media

- A. Employees are free to express themselves as private citizens on social media sites to the degree that their speech does not impair Departmental working relationships, impede the performance of duties, or negatively affect the public perception of the Department.
- B. Employees must not post, transmit or endorse the following types of information on any social network, social media, blog, website or any other internet site, whether obtained on county owned or personal devices, without express permission of the Chief of Police or designee:
 - 1. Any information that would discredit or have adverse effect upon the reputation or efficient operation of the MCPD;
 - 2. Any information to which they have access as a result of their employment.
- C. Employees may not post, transmit, or endorse information and/or images that are obscene or sexually explicit, as well as material that is derogatory towards any protected class of individuals, in such a way as to discredit or adversely affect the reputation or efficient operation of the Department.

- D. Employees are responsible for all postings on their personal social networking sites. Should a third party post information on an employee's social networking site which does not conform to the policies of the MCPD, it is the employee's responsibility to remove the non-compliant posting as soon as practical.
- E. Employees are not to disclose any document or information that has been designated For Official Use Only or Law Enforcement Sensitive on any social media or other internet based platforms.
- F. Employees should consider their personal safety before identifying themselves as police officers and disclosing their home address, phone number or other identifiable information on social networking sites.
- G. Employees should consider the possible adverse consequences of social media posting, such as the effect of a post of the employees' on ongoing employment status, providing grounds for undermining or impeaching testimony in court proceedings, and public as well as private embarrassment. The content of social media can be subpoenaed and used in criminal and civil trials to impeach the employee's testimony or to undermine the employee's character or reputation.
- H. Employees should expect that any posting or communication will become part of the worldwide electronic public domain. Privacy settings and social media sites are subject to continual modifications, and employees should never assume that personal information posted on such sites is protected or secure.
- I. Employees are encouraged to seek guidance of supervisors regarding any posting that may adversely reflect upon the MCPD or the professionalism or the integrity of the employee.

VI. Social Networking While On Duty

- A. Accessing social networking sites for personal purposes while working is permitted on a reasonable, limited basis when:
 - 1. It does not conflict with the Department's policies and procedures; and
 - 2. It does not interfere with the employee's work commitments or performance.

VII. CALEA Standards: 1.1.2, 26.1.1

VIII. Proponent Unit: Public Information Division

IX. Cancellation: None

Relevant Provisions of the Police Labor Relations Act ("PLRA")

Section 33-80 of the Montgomery County Code, Collective bargaining, states in relevant part that:

- (a) Duty to bargain; matters subject to bargaining. A certified employee organization and the employer must bargain collectively on the following subjects:
 - (1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;

- (2) Pension and retirement benefits for active employees only;
 - (3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;
 - (4) Hours and working conditions, including the availability and use of personal patrol vehicles;
 - (5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;
 - (6) Matters affecting the health and safety of employees; and
 - (7) Amelioration of the effect on employees when the employer's exercise of rights listed in subsection (b) causes a loss of existing jobs in the unit.
- (b) Employer rights. This article and any agreement pursuant hereto shall not impair the right and responsibility of the employer.
- (1) To determine the overall budget and mission of the employer and any agency of county government;
 - (2) To maintain and improve the efficiency and effectiveness of operations;
 - (3) To determine the services to be rendered and the operations to be performed;
 - (4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
 - (5) To direct or supervise employees;
 - (6) To hire, select and establish the standards governing promotion of employees and to classify positions;
 - (7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
 - (8) To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;
 - (9) To take actions to carry out the mission of government in situations of emergency;
 - (10) To transfer, assign and schedule employees.
- (c) Exemption. Nothing contained in this article shall be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in subsection 33-80(b) above, but such matters shall not be subject to bargaining. . . .

Relevant Contractual Provisions

Article 61 of the Parties' Agreement states in relevant part that:

Section B. The FOP may demand to bargain a provision of a new directive or rule or a change or amendment to a directive or rule. The demand shall be emailed to the Employer within fifteen (15) work days after the Employer emails notice to the FOP and shall include identification of the specific provision(s) of the new directive or rule (or the change or amendment to the directive or rule) that the FOP demands to bargain as a mandatory subject of bargaining. The Employer shall then proceed as follows:

...

2. If the Employer does not agree that the provision is subject to bargaining, the Employer shall email the FOP that decision within five (5) working days of the FOP's demand to bargain and the parties shall jointly seek a negotiability determination from the Permanent Umpire within five (5) working days. The parties shall request that the Permanent Umpire issue the decision within thirty (30) calendar days. If found bargainable, the parties shall begin bargaining within five (5) working days of the Permanent Umpire's decision. If the parties cannot reach agreement, the matter shall be bargained at the earlier of either the next term negotiation [per MCC §33-80(d)] or next Article 31, §G reopener date.

General Positions of the Parties

The FOP asserts that all of the substantive provisions of Draft Function Code 1402 – i.e., all of the sections except for Sections VII, VIII, and IX – are negotiable. It argues that Function Code 1402 constitutes a new and comprehensive social media policy by which the County seeks to restrict the use and content of social media activity by bargaining unit employees, with the potential for disciplinary action or other sanctions in the event that the policies violated. The FOP contends that, under the National Labor Relations Act (“NLRA”), new work rules, even those applying to conduct outside of working hours, constitute a mandatory subject of bargaining, Goya Foods of Florida, 347 NLRB 1118 (2006), as does any work rule subjecting employee to discipline, Toledo Blade Company, Inc., 343 NLRB 385 (2004), and that the Impartial Umpire should apply these NLRA precedents under the PLRA.

According to the FOP, none of the matters contained in Function Code 1402 fall within the County's Section 33-80(b) enumerated management rights. The FOP argued that, to the extent that the County cited to Appendix H of the current Agreement as an example of existing

rules concerning Internet usage by bargaining unit employees, Appendix H was bargained by the Parties.

With regard to Section I and Section II of Function Code 1402, the FOP asserts that these statements of purpose and policy should be negotiable, as discussion of the purpose and policy underlying the Social Media Policy provides an opportunity to clarify the Department's goals in issuing Function Code 1402. The FOP contends that Section III, which sets forth definitions used throughout Function Code 1402, should be subject to bargaining because the terminology defined therein is crucial to the understanding and meaning of the other Sections of the Function Code which themselves implicate mandatory subjects of bargaining. As to Section IV, which sets out procedures regarding Department sanctioned use of social media and potential uses of social media, the FOP argues that, because these procedures will affect bargaining unit employees – including as to the assignment of bargaining unit work, the posting of confidential information, the potential regulation of off duty conduct by bargaining unit employees, and the use of social media postings in the Department's hiring process – they fall within the scope of the County's obligation to bargain. The FOP asserts that Section V, which would govern the personal use of social media by bargaining unit employees, would constitute a change in working conditions for bargaining unit employees and should therefore be considered negotiable. The FOP also contends that the language of Section V appears to conflict with Supreme Court precedent concerning the constitutional rights of public employees and with decisions by the National Labor Relations Board ("NLRB") concerning employer work rules and restrictions on employee use of social media, and that the fact that both constitutional rights and rights arising under the NLRA are implicated by the County's proposed restrictions only highlights the appropriateness of bargaining over this Section. With regard to Section VI, which would address

the use of social media by bargaining unit employees while on duty, the FOP argues that this Section would impose new working conditions and, therefore, constitutes a negotiable subject matter.

The County asserts that, with the exception of Section V, Function Code 1402 is not negotiable. It maintains that the obligation to bargain exists only as to those provisions that implicate rights under Section 33-80(a) of the PLRA and which do not impair the rights and responsibilities of the County, including those set forth at Section 33-80(b). The County argues that nothing in Function Code 1402 relates to salary and wages; pension and retirement; employee benefits; hours and working conditions; grievances; employee health and safety; or the loss of any bargaining unit positions. It acknowledges, however, that portions of Section V may be negotiable, as they relate to off duty use of social media by bargaining unit employees.

The County contends that Section I of Function Code 1402 falls within management's right to outline and define policy and is, therefore, not negotiable; that Section II merely represents an outline of the content of the Function Code without containing any substance itself, and is, therefore, not negotiable; and that Section III, in defining terms used throughout the Function Code, falls within management's right to define the meaning of its policies, and is, therefore, not negotiable. The County asserts that Section IV, in setting forth the procedures governing the use of social media on the Department's official social media presences and profiles as well as potential uses of social media by the Department, does not implicate any mandatory subject of bargaining. It further argues that the procedures set forth in Section IV fall squarely within management's right to train its employees on tools that may assist in the work of the Department and its right to maintain and improve the efficiency and effectiveness of operations. As noted above, the County acknowledges its willingness to negotiate over certain

provisions of Section V, which it views as guidance for bargaining unit employees as to the use of social media while off duty. However, the County asserts that Section V is intended as an advisory notice to bargaining unit employees regarding the use of social media based on applicable precedent, see, e.g., Pickering v. Board of Education, 391 U.S. 563 (1968); McVey v. Stacy, 157 F.3d 271 (4th Cir. 1988), concerning the First Amendment rights of police officers and the balance between the rights of the employee to comment on matters of public concern and the interest of government employers in promoting the efficiency of public services. It contends further that the Department has a management right to provide guidance and to set limitations on the information that its employees make available on the Internet, as well as the right to limit the dissemination of official and confidential information into the public domain, including the Internet. With regard to Section VI, the County asserts that the restrictions on the on duty use of social media set forth therein are consistent with Chapter 19A, Ethics, of the Montgomery County Code, which requires that employees perform official duties during their official work time, as well as with the Parties' negotiated language regarding Internet usage, set forth at Appendix H of the Agreement.

General Observations on Negotiability Disputes Under the PLRA

In a Prohibited Practice Charge decision issued on October 30, 2015, addressing whether the County violated the PLRA by refusing a Union request to negotiate with respect to certain provisions of a Draft Body Worn Camera Policy, the Undersigned explained that:

The determination as to whether and to what extent a particular subject matter or proposal is subject to an obligation to bargain, upon request, under the PLRA, involves several determinations. The threshold determination concerns whether the subject matter or proposal falls within the broad categories of items set forth in Section 33-80(a)(1) through (7) of the PLRA. In substance, that question is whether the subject matter concerns wages, hours, or other terms and conditions of employment. Second, a determination must be made as to whether the subject matter or proposal with respect to the actions or proposed actions of the County may properly be deemed management rights as set forth in Section 33-80(b)(1) through (10) of the PLRA. Third, if the subject matter or proposal both falls within Section 33-80(a)(1) through (7), but would also limit in some meaningful way managerial prerogatives set forth in Section 33-80(b)(1) through

(10) of the PLRA, it is necessary to balance the interest of employees and the FOP in the right to engage in bargaining over those issues, on the one hand, with the impact on the management rights in question, on the other, in order to determine whether requiring that the items be bargained would impair those management rights to an extent that renders the matter non-negotiable.

(Decision at 41).

In a Prohibited Practice Charge decision issued on January 29, 2016, addressing the negotiability of a proposed Article relating to body worn cameras, it was further noted that:

[T]he rulings in this case relate to the negotiability or non-negotiability of specifically worded provisions. Thus, if the proposal is found to constitute a matter within the scope of Section 33-80(a) of the PLRA, the negotiability analysis focuses, of necessity, upon whether the particular proposals in question inappropriately impairs one or more Section 33-80(b) employer rights. A different proposal concerning that same general subject area that does not have the same degree of impairment may well be viewed differently under the PLRA in terms of its negotiability.

...

[T]he focus in terms of the negotiability analysis is upon whether the particular challenged proposal is bargainable, not whether it should or should not be adopted. In essence, the analysis addresses whether . . . the particular proposed language would exceed the bounds of what is a mandatory subject of bargaining under the PLRA.

(Decision at 5, 7).

In addition, it was observed that nothing precludes the County, as set forth in Section 33-80(c) of the PLRA, from voluntarily discussing with the FOP matters implicating the exercise of its management rights that fall outside of the scope of bargaining.

In this case, the sole question presented is the extent to which the County must bargain with respect to the provisions of Draft Function Code 1402. The answer to this question, in turn, depends upon application of the balancing test to the extent that the particular subjects implicate both working conditions under Section 33-80(a), on the one hand, and management rights under Section 33-80(b), on the other. The Sections of Draft Function Code 1402 will be analyzed individually in connection with the Union's request to bargain in this case.

The Disputed Function Code Language

1) Section I, Purpose, of Draft Function Code 1402 states that:

The Montgomery County Police Department endorses the secure use of social media to enhance communication, collaboration, and information exchange; streamline processes; and foster productivity. This directive sets forth policy and procedure to establish acceptable and appropriate use of social media.

HOLDING: Section I is not negotiable.

As a bare statement of the purpose of the Draft Function Code, Section I was not shown, standing alone, to implicate areas that are recognized as mandatory subjects for bargaining under Section 33-80(a) of the PLRA. Section I was not shown to impact upon working conditions and, as such, is not negotiable.

2) Section II, Policy, of Function Code 1402 states that:

Social media use by the Department is designed to enhance communication, collaboration, and information exchange about Department programs, services, and activities with the public. This policy applies to all employees using social media on behalf of the Department as part of their duties or when otherwise acting as a representative of the Department. Social media provides a potentially valuable means of assisting the Department and its personnel in meeting community outreach, problem-solving, investigative, crime prevention, and related objectives. This directive identifies potential uses that may be explored or expanded upon as deemed reasonable by the Chief of Police.

The Department also recognizes the role that social media plays in the personal lives of Department employees. As such, this policy provides information of a precautionary nature as well as prohibitions on the use of social media by Department personnel.

HOLDING: Section II is not negotiable.

The language of Section II neither proscribes any particular employee behavior, on or off duty, nor otherwise impacts working conditions. The decisions regarding the uses and limitations upon the use of social media in investigations implicates more than one management right under Section 33-80(b) and go to the heart of the County's rights under Sections 33-80(b)(2), (3), (4), (5), and (8). The County enjoys the right to determine the image that it will present to the public on its own web pages and the uses that officers may make of the County's own web pages in the context of investigations and otherwise. The Permanent Umpire

understands the reservation of authority to broaden or narrow potential uses of social media by the Chief set forth in the first paragraph as limited to the situations on-duty when officers are acting as representatives of the Department. Further, it is understood not to waive any requirement to bargain with respect to any changes that sufficiently impact working conditions.

The reference in the second paragraph of Section II does not purport to address the scope, if any, of any limitations on the personal use of social media by officers, either while on duty or when off duty. Accordingly, there is no basis to find that paragraph affects working conditions to a degree that it may be found to be subject under the PLRA to an obligation to bargain.

Finally, the right of the County to determine how it will present its public face in various forms of social media and the right of the County to establish the rules that will govern the conduct of police officers when they are acting in an official law enforcement posture on behalf of the County, does not mean that the County necessarily has the ability to discipline or impose other adverse action upon bargaining unit members who fail to comply with those County directives. The standards published regarding disciplinary action or other action that adversely impacts wages, hours, or terms and conditions of employment, are negotiable matters under the PLRA. The Impartial Umpire does not understand Section II as implicating disciplinary action or other adverse action. To the extent that Section II does so, however, it would be a mandatory subject of bargaining under the PLRA.

The first paragraph of Section II sets forth the scope of the Function Code as to the use of social media by bargaining unit employees on behalf of the Department, including when acting as a representative of the Department. While this policy statement is a matter within the scope of the Section 80-33(a)(4) duty to bargain over hours and working conditions, the imposition of the obligation to bargain over a statement of duties to be performed by bargaining unit employees in

official duty status related to the mission of the Department would inappropriately impair the Department's management rights set forth at Section 80-33(b)(2), (3), (4), and (5). The Department clearly has the right to maintain and improve the efficiency and effectiveness of operations with regard to the use of social media; to determine the operations to be performed relative to the use of social media in support of the Department's mission; to determine which employees will utilize social media in support of the Department's mission and how those employees will utilize social media while on duty; and to direct or supervise employees in their use of social media while on duty.

The issue presented in this case relates to the negotiability of Function Code 1402, and the legality of the provisions contained therein, whether under First Amendment jurisprudence, Section 33-82 of the PLRA, or other applicable law, is not before the Umpire. However, to the extent that Section II sets forth guidance and prohibitions regarding the use of social media by bargaining unit employees in their personal lives – i.e., while off duty or to the extent that personal use of social media is permitted while on duty, the obligation to bargain over this language is not shown to inappropriately impair the Department's more limited rights and interests in regulating in the off duty and/or personal conduct of its bargaining unit employees on social media, particularly in the context of the broad language used in Section II.

3) Section III, Definitions, of Function Code 1402 states that:

- A. Blog – A self-published diary or commentary on a particular topic that may allow visitors to post responses, reactions, or comments.
- B. Page – The specific portion of a social media web site where content is displayed, and managed by an individual or individuals with administrator rights.
- C. Post - Content an individual shares on a social media site or the act of publishing content on a site.
- D. Profile – Information that a user provides about himself/herself on a social media networking site.

- E. Social Media – A category of internet-based resources that integrate user-generated content and user participation (video, audio, text, or images) that is publicly available on the internet and allows viewers to publicly post their own content in response. Among the technologies that make up social media are blogs, message boards, wikis, podcasts, photo and video sharing, mashups, and virtual worlds. A few prominent examples of social media applications as of the date of this policy are Wikipedia (reference), Facebook, MySpace, SnapChat, Gather.com (social networking), Twitter, Nixie (micro-blogging), YouTube (video sharing), Second Life (virtual reality), Digg, Reddit (news sharing), and Flickr (photo sharing).
- F. Social Network – Online platforms where users can create profiles, share information, and socialize with others using a range of technologies.
- G. Wiki – Web page(s) that can be edited collaboratively.

HOLDING: Section III is not negotiable, except to the extent that the definitions used in Section III are applied to provisions in the Function Code related to the off duty use and/or personal use of social media.

As noted above, the obligation to bargain over those provisions of Function Code 1402 governing the on-duty use of social media by bargaining unit employees on behalf of the Department, while implicating rights under Section 80-33(a) of the PLRA, would inappropriately impair the Department's management rights. However, to the extent that the Section III definitions are applicable to off duty and/or personal use of social media by bargaining unit employees, then those definitions are negotiable.

4) Section IV, Procedures, of Function Code 1402 states that:

A. Department-Sanctioned Use

1. All Department social media sites or pages must be approved by the Chief of Police or designee.
2. The Director of the Police Public Information Office will designate a site administrator(s), who will administer the approved social media site and will be responsible for posting content to the site and monitoring the site for compliance with this policy.
3. Where possible, each social media page must include an introductory statement that clearly specifies the purpose and scope of the Department's presence on the website.
4. Where possible, the page(s) should link to the Department's official website.
5. Social media pages must clearly indicate they are maintained by the Department and must have Department contact information prominently displayed.

6. Social media content must adhere to applicable laws, regulations, and policies, including technology and records management policies.
 - a. Content is subject to public records laws. Relevant records retention schedules apply to social media content.
 - b. Content must be managed, stored and retrieved to comply with open records laws and e-discovery rules and policies.
7. Where possible, social media pages should state that the opinions posted by visitors to the page(s) do not reflect the opinions of the Department.
 - a. Pages must clearly indicate that posted comments will be monitored and that the Department reserves the right to remove obscenities, off-topic comments, and personal attacks.
 - b. Pages must clearly indicate that any content posted or submitted for posting is subject to public disclosure.
8. Employees representing the Department via approved social media outlets must:
 - a. Conduct themselves at all times as a representative of the Department and, accordingly, adhere to all Department policies and standards of conduct and observe conventionally accepted protocols and proper decorum. Posts should provide constructive, accurate, and factual information and be consistent with the Department's mission.
 - b. Not make statements about the guilt or innocence concerning pending prosecutions, nor post, transmit or otherwise disseminate confidential information without permission of the Chief of Police or designee.
 - c. Not conduct political activities or private business.
 - d. Not endorse commercial products, services or entities.
9. Employees shall observe and abide by all copyright, trademark, and service mark restrictions in posting materials to electronic media.

B. Potential Uses

1. Social media is a valuable investigative tool when seeking evidence or information about:
 - a. Missing and wanted persons;
 - b. Gang activities;
 - c. Crimes perpetrated online (i.e., cyberbullying, cyberstalking), and
 - d. Information, photos or videos of a crime or criminal activity posted by a participant or observer.
2. Social media can be used for community outreach and engagement by:
 - a. Providing crime prevention tips;
 - b. Sharing crime maps and data; and
 - c. Soliciting tips about unsolved crimes (i.e. Crime Stoppers, text-a-tip).
3. Social media can be used to make timely notifications related to:
 - a. Road closures;
 - b. Special events;
 - c. Weather emergencies;
 - d. Missing or endangered persons, and
 - e. Unfolding incidents.

4. Social media can be beneficial as a recruitment mechanism as persons seeking employment and volunteer positions use the internet to search for opportunities.
5. Social media content can be reviewed when conducting pre-employment background investigations of potential employees.

HOLDING: Section IV is not negotiable, except to the extent that it regulates how bargaining unit employees who are assigned to utilize social media on behalf of the Department or as a representative of the Department may use social media for their own personal use and/or when off duty.

Section IV is generally limited in its application as to how and under what circumstances social media may be used on behalf of the Department. As noted above, while the regulation of the use of social media by bargaining unit employees implicates the Department's obligation to bargain over changes in hours and working conditions, the obligation to bargain over the regulation of mission-related social media activity by bargaining unit members on behalf of the Department or as a representative of the Department would inappropriately impair the Department's exercise of its management rights. The Department has the right to direct how and under what circumstances its officers will use social media while representing the Department while on duty, including as to how postings should be made, how they should be removed, the content of postings, and the contexts in which social media may be used. The FOP's assertion that the Department's use of social media content when conducting pre-employment background investigations of potential employees is negotiable must be rejected, as there has been no showing that such use implicates the FOP's rights under the PLRA. The County has a management right under Section 33-80(b)(6) of the PLRA relative to new hires.

The Impartial Umpire does not understand the statement in the Policy that social media may be examined when conducting pre-employment background investigations of potential employees to apply to situations that may involve rehires of individuals who, for one reason or

another, were members of the bargaining unit and are attempting to return to work from inactive status – an issue that would likely be a mandatory area of bargaining. Nor does the Policy purport to identify the uses that may be made of any social media information regarding an applicant that the County may uncover. Further, there was no showing that any of the Policy's provisions in this regard conflict with any provisions of the negotiated Agreement between the Parties.

The proscriptions in Section IV.A.8. of the Policy appear to be limited to situations in which employees represent the Department via approved social media outlets. As such, it does not appear to encompass off duty and/or personal use of social media (whether on or off duty). To the extent that Section IV.A.8. is intended to constrain the off duty and/or personal use of social media by bargaining unit employees, that section is found to be negotiable under the PLRA. For the reasons noted above, the obligation to bargain over employees' off duty or personal conduct and the potential for discipline or other adverse action for claimed violations of the County's attempted restrictions of the off duty conduct of employees, is plainly a negotiable working condition and is found not to inappropriately impair the Department's exercise of its Section 33-80 management rights.

4) Section V, Personal Use of Social Media, of Function Code 1402 states that:

- A. Employees are free to express themselves as private citizens on social media sites to the degree that their speech does not impair Departmental working relationships, impede the performance of duties, or negatively affect the public perception of the Department.
- B. Employees must not post, transmit or endorse the following types of information on any social network, social media, blog, website or any other internet site, whether obtained on county owned or personal devices, without express permission of the Chief of Police or designee:
 - 1. Any information that would discredit or have adverse effect upon the reputation or efficient operation of the MCPD;
 - 2. Any information to which they have access as a result of their employment.
- C. Employees may not post, transmit, or endorse information and/or images that are obscene or sexually explicit, as well as material that is derogatory towards any protected class of

individuals, in such a way as to discredit or adversely affect the reputation or efficient operation of the Department.

- D. Employees are responsible for all postings on their personal social networking sites. Should a third party post information on an employee's social networking site which does not conform to the policies of the MCPD, it is the employee's responsibility to remove the non-compliant posting as soon as practical.
- E. Employees are not to disclose any document or information that has been designated For Official Use Only or Law Enforcement Sensitive on any social media or other internet based platforms.
- F. Employees should consider their personal safety before identifying themselves as police officers and disclosing their home address, phone number or other identifiable information on social networking sites.
- G. Employees should consider the possible adverse consequences of social media posting, such as the effect of a post of the employees' on ongoing employment status, providing grounds for undermining or impeaching testimony in court proceedings, and public as well as private embarrassment. The content of social media can be subpoenaed and used in criminal and civil trials to impeach the employee's testimony or to undermine the employee's character or reputation.
- H. Employees should expect that any posting or communication will become part of the worldwide electronic public domain. Privacy settings and social media sites are subject to continual modifications, and employees should never assume that personal information posted on such sites is protected or secure.
- I. Employees are encouraged to seek guidance of supervisors regarding any posting that may adversely reflect upon the MCPD or the professionalism or the integrity of the employee.

HOLDING: Section V is negotiable.

Section V is concerned exclusively with the personal use of social media by bargaining unit employees. In contrast to regulations regarding the use of social media by and on behalf of the Department and as a tool in connection with the fulfillment of its core law enforcement mission, Section V contains guidance and prohibitions regarding the personal use of social media by bargaining unit employees when off duty. As such Section V falls squarely within the scope of the County's duty to bargain over working conditions. Moreover, there has been no showing that requiring the County to bargain over such language would inappropriately impair the Department's limited rights and interests in regulating the off duty and/or personal conduct of its bargaining unit employees on social media.

No opinions are expressed regarding the issue of the legality of the restrictions contained in Section V (or the Function Code as a whole). Rather, this dispute is limited to the question of negotiability and the subject matter of Section V is generally negotiable.

6) Section VI, Social Networking While On Duty, of Function Code 1402 states that:

- A. Accessing social networking sites for personal purposes while working is permitted on a reasonable, limited basis when:
 - 1. It does not conflict with the Department's policies and procedures; and
 - 2. It does not interfere with the employee's work commitments or performance.

HOLDING: Section VI is negotiable.

In contrast to the other provisions of Function Code 1402 relating to the on duty use of social media, which were shown to directly relate to the Department's operations and its core mission, Section VI is a work rule governing the working conditions of bargaining unit employees as to when they may engage in the personal use of social media. "It is . . . well settled that 'work rules, especially those involving the imposition of discipline, constitute a mandatory subject of bargaining,'" Toledo Blade Company, Inc., 343 NLRB 385, 387 (2004) (citation omitted). While Section VI does not explicitly reference that disciplinary action may be taken in the event that the rule is violated, the potential for disciplinary action in the event of a breach is implicit in the County's establishment of the Policy. Moreover, the obligation to bargain over the working conditions impacted by Section VI was not shown to inappropriately impair the exercise of the Department's management rights, particularly as this rule is related to conduct rather than directly to the operations of the Department. Section VI of the Function Code is, therefore, negotiable.

ORDER

The County's Function Code 1402 is found to be negotiable in part and nonnegotiable in part consistent with the above Opinion. The County is directed to bargain upon request with respect to those provisions of Function Code 1402 found to be negotiable under the Police Labor Relations Act.

December 5, 2016

A handwritten signature in black ink, appearing to read "Ira F. Jaffe", written over a horizontal line.

Ira F. Jaffe, Esq.
Permanent Umpire

**BEFORE THE PERMANENT UMPIRE FOR THE
MONTGOMERY COUNTY POLICE LABOR RELATIONS LAW**

In the Matter of:

MONTGOMERY COUNTY, MARYLAND	Prohibited Practice Charge
Respondent	
and	Date of Filing: December 17, 2018
FRATERNAL ORDER OF POLICE, MONTGOMERY COUNTY LODGE NO. 35	Laundry and Dry Cleaning Procedures
Charging Party	Function Code 412

Permanent Umpire: Ira F. Jaffe, Esq.

APPEARANCES:

For the FOP:

Morgan E. Leigh, Esq.
(Law Office of Morgan Leigh Blackledge)

For the County:

Haley M. Roberts, Esq.
(Associate County Attorney)

BACKGROUND

The FOP filed a Prohibited Practice Charge (“PPC”) on December 17, 2018, asserting that the County’s unilateral implementation of Function Code 412, Laundry and Dry Cleaning Procedures, violated Section 33-80(a) of the Police Labor Relations Act (“PLRA”) and Article 61 of the Agreement to the extent that the newly revised Function Code 412 conflicted with Article 30 and Appendix J of the Agreement. The PPC in this case requested, by way of remedy,

that the Permanent Umpire direct the County to rescind its revised Function Code 412 to the extent that it applies to bargaining unit employees and restore the status quo ante.

The facts in this case are not in dispute. The Parties' Agreement provides in Article 30, Uniforms and Equipment, Section I., Retention of Benefits, that:

All bargaining unit members retain the following benefits and conditions previously in effect between the parties:

Laundry service as provided in DD 85-13, Appendix J of this Agreement; . . .

The Agreement includes a number of Appendices. Appendix J, of the current Agreement is a copy of DD 85-13, Laundry and Dry Cleaning Procedures. The Parties have included provisions regarding laundry service in their collective bargaining agreements since their initial Agreement in 1983-85. The provisions of DD 85-13, Function Code 305.B, became effective July 1, 1985, and was included as an Appendix to the Parties' 1985-88 Agreement. In the 1991-92 Agreement, and continuing thereafter, the Parties amended the obligation to retain "laundry service" in the Maintenance of Standards/Retention of Benefits and Conditions article of the Agreement to recognize the obligation to retain "Laundry service as provided in DD 85-13."

On September 14, 2006, a PPC was filed with respect to an alleged refusal to bargain regarding the application of Function Code 412, Laundry and Dry Cleaning Procedures, to bargaining unit members and disciplinary actions that were imposed by the County for alleged failures of officers to comply with the provisions of Function Code 412 ("2006 Laundry PPC"). PPCs were also filed at or around the same time period with respect to changes to other Function Codes that were implemented by the County allegedly unilaterally.

Function Code 412 was promulgated, effective December 23, 1999, and revised effective November 20, 2001, and revised again on April 12, 2003. It appears that the provisions of DD

85-13 were superseded by Function Code 412, but the Agreement and Appendix J were never changed to reference Function Code 412 instead of DD 85-13.

The 2006 Laundry PPC complained about the alleged unilateral implementation of the 2001 changes to Function Code 412. In the proceedings that addressed the 2006 Laundry PPC, the County asserted that the County and the FOP met on multiple occasions to discuss the 2001 changes and reached oral agreement to the contents of Function Code 412 in August 2001 that were confirmed partially in a series of emails. The County also asserted that the 2006 Laundry PPC was not timely filed. The disciplinary cases arising from charges that officers failed to comply with Function Code 412 were ultimately resolved. The 2006 Laundry PPC also ultimately was resolved.

The 2003 revision to Function Code 412 contained the following annotation:

By signature, the parties agree to present this for inclusion in the Collective Bargaining Agreement between the Fraternal Order Of Police Lodge 35, Inc. and Montgomery County Maryland. This presentation may be made by either party in the term negotiations set to begin in November 2003 and for implementation July 1, 2004.

There were signatures, dated April 17, 2003, on behalf of both the County and the FOP, affirming the agreement of the Parties to those terms. Neither Party, however, followed through on that agreement and, the text of the Agreements that were entered into beginning in 2004 and continuing through June 2018, do not reference any version of Function Code 412. Rather, the language of Article 30 and Appendix J continue to reference and include a copy of DD 85-13. The record suggested, however, that Function Code 412 and not DD 85-13 was being utilized on a day-to-day basis with respect to Laundry and Dry Cleaning Procedures, although the record was less clear as to the particular version of Function Code 412 that was being utilized.

In its February 4, 2019 Reply, the FOP indicated that: “For purposes of resolution, we agree to accept the County’s position and will replace Appendix J with the 4/17/2003 edition of

FC 412,” the signed copy of which was appended to the response as Attachment 1. The County did not reply to that offer, either accepting it or rejecting it.

Article 61, Directives and Administrative Procedures, of the Parties’ 2017-18 Agreement provided in pertinent part that:

...

Section A. Prior to implementing new directives or rules, or proposed changes or amendments to directives or rules, the Employer shall notify the FOP. The Employer shall give the FOP notice of new, changed or amended directives or rules by email no less than thirty (30) working days before implementation. The Employer shall forward draft copies of proposed new, change or amended directives or rules to the FOP along with a copy of the current directive(s), or rule (if applicable). Any new directive or rule and all changes or amendments shall be identified in the draft document.

Within ten (10) working days after the Employer emails notice to the FOP, the FOP may email comments to the Employer and/or request a meeting with the Employer to discuss the changes. The Employer shall meet with the FOP within five (5) work days of the FOP’s emailed request. Any comments shall include identification of those specific provisions of the new directive or rule (or the change or amendment to the directive or rule) that the FOP wishes to discuss.

Each party shall, in writing, designate one representative to email notices as described in Sections A and B.

Section B. The FOP may demand to bargain a provision of a new directive or rule or a change or amendment to a directive or rule. The demand shall be emailed to the Employer within fifteen (15) work days after the Employer emails notice to the FOP and shall include identification of the specific provision(s) of the new directive or rule (or the change or amendment to the directive or rule) that the FOP demands to bargain as a mandatory subject of bargaining. The Employer shall then proceed as follows:

1. If the Employer agrees that the provision is subject to bargaining, then the Employer shall email the FOP its decision to bargain within five (5) working days of the FOP’s demand to bargain and enter into collective bargaining with the FOP over that provision within five (5) working days. If the parties cannot reach agreement, the matter shall be bargained at the earlier of either the next term negotiation [per MCC §33-80(d)] or next Article 31, §G reopener date.

2. If the Employer does not agree that the provision is subject to bargaining, the Employer shall email the FOP that decision within five (5) working days of the FOP’s demand to bargain and the parties shall jointly seek a negotiability determination from the Permanent Umpire within five (5) working days. The parties shall request that the Permanent Umpire issue the decision within thirty (30) calendar days. If found bargainable, the parties shall begin bargaining within five (5) working days of the Permanent Umpire’s decision. If the parties cannot reach agreement, the matter shall be bargained at the earlier of either the next term negotiation [per MCC §33-80(d)] or next Article 31, §G reopener date.

Section C. Conflict. If a provision of a regulation, departmental directive or, rule conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. A copy of the preceding sentence will be placed on the first page of each departmental directive that is issued or reissued after July 1, 2003.

Section D. Presumption of Validity. It is presumed that any work rule, policy, directive, regulation, or procedure is valid unless challenged. If the validity of such a rule is challenged by the FOP, the County has the burden of establishing the validity of the rule in relation to the provisions of the Contract, the Police Labor Relations Law, and applicable State law. The County does not, however, have the burden of establishing the validity of work rules to which the FOP has expressly agreed or concurred.

...

The events that led to the PPC in this case took place in mid-2018. On May 4, 2018, Capt. Michael Wahl, Policy and Planning Division, wrote to Jane A. Milne, Secretary, FOP Lodge 35, providing a draft copy of a revised Function Code 412. Interestingly, despite the signatures on the April 2003 revised Function Code 412, the existing Function Code 412 was represented by the County in its 2018 revision to be the November 20, 2001 version of Function Code 412. The record did not reveal whether, prior to the June 2018 proposed revisions, the 2001 version of Function Code 412 was being used or whether the 2003 version of Function Code 412 was in place or whether some other version of Function Code 412 was in effect.

Ms. Milne replied on May 16, 2018, indicating the FOP's position that the proposed 2018 version of Function Code 412 was in conflict with the Agreement, Article 30, and Appendix J, copies of which were attached. The May 16th letter noted that, without making any substantive changes, the Union remained willing to discuss updating the procedures set forth in Appendix J (which the Union asserted were the provisions of DD 85-13 that were still being reproduced in Appendix J).

On May 23, 2018, Lee Holland of the FOP wrote to Capt. Nicholas R. Augustine, Policy and Planning, as follows:

Regarding our conversation earlier today about FOP 35's response to the police department's FC 412 Laundry and Dry Cleaning Procedures, without making substantive changes, FOP 35 is willing to meet and bargain updates to Appendix J of the CBA. I want to be clear, the already bargained procedures of Article 31 [sic], Appendix J, do not fall under Article 61, as the Laundry and Dry Cleaning procedure is a mandatory subject of bargaining and covered in the

CBA. However, FOP 35 is willing to have bargaining discussions over Laundry and Dry Cleaning if the Employer is agreeable to do so. I will send you some dates and times of our availability.

On May 31, 2018, Capt. Augustine wrote to Ms. Milne advising the FOP of the County's position that the FOP prior correspondence failed to identify specific changes to Function Code 412 that the FOP believed were mandatory subjects of bargaining and asking that the FOP "respond with the specific changes to Function Code 412 that the FOP demands to bargain." The May 31st letter also noted the County's intention to implement the revised Function Code 412 on June 18, 2018.

On June 15, 2018, Ms. Milne replied to Capt. Augustine noting the FOP's position that:

The County's claim that Laundry/Dry Cleaning falls within Article 61 procedures is not the understanding of the parties which was again confirmed by Walt De Treux during this past term negotiations. All mandatory subjects of bargaining, especially those covered by the collective bargaining agreement can only be bargained during term negotiations as defined in the PLRA, for an Article 31 reopener, or by mutual agreement of the parties. All Laundry/Dry Cleaning Procedures are covered by the collective bargaining agreement in Article 30 and appendix J. As stated on May 16, 2018, and May 23, 2018, without making any substantive changes, the FOP is willing to meet and have bargaining discussions in an effort to update the procedures set forth in Appendix J.

On June 18, 2018, the County advised the FOP of its intent to implement the revised Function Code 412 as of that date.

On June 18, 2018, Ms. Milne wrote to Capt. Augustine stating the FOP's claims that:

The entire FC412 directive is a mandatory subject of bargaining and constitutes a bargained contract provision. The collective bargaining agreement supersedes this proposed change and FOP 35 hereby asserts that Appendix J supersedes and preempts any unilateral change.

However, FOP 35 has attempted three times, May 16, 2018, May 23, 2018 and June 15, 2018, to voluntarily renegotiate Appendix J. We regret that the Employer has blatantly ignored that good faith overture.

Pursuant to Article 61 section D, the burden is on the Employer to prove that any change was negotiated. FOP 35 can easily prove that the current Appendix J was negotiated and agreed as recently March 2018. For the fourth time, without making any substantive changes, we are willing to meet and bargain Appendix J. This offer expires on Friday, June 22, 2018.

On June 20, 2018, Capt. Augustine wrote to Ms. Milne noting the County's position that:

In accordance with the Collective Bargaining Agreement (CBA), Article 61 (Directives and Administrative Procedures), the department sent a draft copy of Function Code 412, Laundry

and Dry Cleaning Procedures, on May 4, 2018. Despite numerous memoranda between the parties, the department still contends that the FOP has not met its obligation under Article 61, namely the union did not “include identification of the **specific** provision of the new directive or rule (**or the change . . . to the directive or rule**) that the FOP demands to bargain as a mandatory subject of bargaining [emphasis added].” None of the FOP’s communications with the department have identified, with any specificity, what rule changes the FOP contends is a mandatory subject of bargaining.

The FOP’s replies to the department are non-responsive. The department is implementing Function 412, Laundry and Dry Cleaning Procedures, immediately.

On December 17, 2018, FOP Lodge filed the instant PPC. The PPC alleged that the actions of the County in promulgating a revised Function Code 412 violated the PLRA because the subject matter of Uniforms and Equipment were addressed in Article 30, Section I., of the Agreement and in Appendix J and, therefore, were not subject to unilateral change or alteration during the term of the Agreement. The PPC cited a number of areas of difference between the revised Function Code 412 and the provisions of DD 85-13, including the requirement that “Employees are responsible for regularly checking the laundry room for their garments and promptly removing them from the room.” The FOP referred to an October 24, 2018 ruling of the Permanent Umpire that noted that “it is clear that the County may not unilaterally issue a new Function Code that is inconsistent with the negotiated provisions of the Agreement during the life of that Agreement.” (Ruling at 40) The PPC requested that the Permanent Umpire issue a finding that the County has committed a PPC by its issuance of revised Function Code 412 and order appropriate relief, including, but not limited to, rescission of Function Code 412 to the extent that it applies to bargaining unit employees and restoration of the status quo ante.

The County filed a Response on January 9, 2019. The County’s Response argued that the proposed change to Function Code 412 was governed by Article 61 of the Agreement and that the Union failed to identify the provisions of updated Function Code 412 that it asserted constituted changes with regard to matters that were mandatory subjects of bargaining, thereby waiving any objection to the then-proposed changes. The County further asserted that the edits

to Function Code 412 were minor and within the County's management rights to have a uniform set of rules and directives and to run the department efficiently and effectively. The County challenged the assertion of the FOP that the only time to address mandatory subjects of bargaining was at term bargaining, asserting that there was a longstanding practice of addressing a variety of mandatory subjects of bargaining mid-term. Finally, the County asserted that the PPC was not timely filed since more than six months had passed since the original notification by the County to the FOP of the proposed changes and denied that the Union had standing to bargain most of the changes to the provisions of Function Code 412.

A conference call was held with the Permanent Umpire and Counsel for the Parties on January 15, 2019. At that conference, the FOP identified what it characterized as two substantive changes that were made by the June 18, 2018 version of Function Code 412: 1) the County will be using a laundry company vendor and the County would be providing that vendor the addresses of record for all officers, including those working undercover investigations; the FOP objected to divulging the home addresses of officers to others out of concerns for both privacy and safety; and 2) the provisions that required officers to check regularly for garments and promptly remove cleaned garments from the garment room; the FOP noted its understanding that breach of this obligation could lead potentially to disciplinary action.

During the call, the County agreed to supplement its Response to the PPC and did so on January 22, 2019. With respect to the FOP's objections concerning disclosure of officer home address information, the County represented that the address disclosed was the address within the County where the employee works and acknowledged that Function Code 412 did not contemplate disclosure of personal address information and that to do so would violate State law. The County acknowledged that, notwithstanding its position that the provision was not a

mandatory subject of bargaining, the County would be willing to amend the language of Function Code 412 to provide clarity that the address referenced is the work address of the employee. With respect to the provisions of Function Code 412 that states that “Employees are responsible for regularly checking the laundry room for their garments and promptly removing them from the room” (Section V.A.), the County noted that those provisions must be read in conjunction with the provisions of Section I.C. of Function Code 412 which state that “All cleaned clothing will be removed from the laundry room within five working days of delivery.” The County noted that the language of Section I.C. was present in the 2001 version of Function Code 412 and thus did not represent a change. [Although not referenced in the County’s response, Section I.C. of the 2003 version of Function Code 412 contains identical language.]

The County also asserted that the fact that disciplinary action could possibly result from a failure to abide by the requirements of Function Code 412 did not make the entire Function Code a mandatory subject for bargaining. The County asserted that the provisions of Section 33-80(b) of the PLRA, specifically the management rights contained in Sections 33-80(b)(1), (2), (3), (4), (5), and (8), precluded a finding that the changes were a mandatory subject for bargaining.

On February 4, 2019, the FOP filed a Reply to the County’s Response and Supplemental Response. As noted previously, the February 4, 2019 Reply attached a copy of the agreed upon 2003 revision to Function Code 412 and agreed further on behalf of the FOP to substitute the 2003 revision to Function Code 412 for DD 85-13 in Appendix J to the Agreement. The February 4, 2019 Reply asserted that there were at least two significant changes to the Laundry and Dry Cleaning Procedures provision: 1) the addition in Section V.A. of the requirement that employees be responsible for regularly checking the laundry room for their garments and promptly removing them from the room; this was asserted to be a unilateral change to the benefit

and condition previously in effect between the Parties and, therefore, was asserted to be ultra vires; the FOP disputed that the provision must be read in harmony with the existing provisions of Section I.C. requiring that all clothing be removed from the laundry room within five working days of delivery, maintaining that the existing provisions are procedures whereas the new provision is a responsibility and maintaining that the cost of defending disciplinary cases are borne by all members of the bargaining unit; and 2) the change that all reimbursement checks will be mailed to the employee's address of record was not defined; the FOP asserted that the County's assertion in its Response that the address of record meant the work address of the employee makes little sense in light of the change to delivery by U.S. Mail (a change that when made in the past with respect to payroll checks or advices was bargained; see Article 36.E. of the Agreement); and the FOP argued that, while County had asserted that use of home addresses would violate state law, the County never defined the state law provision that would have prohibited use of home address information; the FOP represented that it was unaware of any such state law limitation and noted that a variety of organizations are provided with access to the home addresses of police officers; the argument was asserted to be one of convenience raised belatedly to defend an otherwise indefensible unilateral change to Function Code 412. The FOP reserved the right to assert that other provisions of revised Function Code 412 were also subject to an obligation to bargain.

DISCUSSION AND OPINION

The initial question presented for ruling relates to the assertion of the County that the PPC in this case was not timely filed. Section 33-82(e) of the PLRA provides that: "The permanent umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than six (6) months prior to the filing of the charge." The County

argued that the PPC in this case was untimely because it was filed more than six months after the County's initial notice to the Union of the County's intention to implement the revisions to Function Code 412. The assertion that the PPC is untimely is rejected. The PPC in this case was filed within six months of the date on which the revisions to Function Code 412 were implemented. It is the unilateral implementation of the Function Code revisions that were claimed to be in violation of the PLRA.

With respect to the merits, a number of issues are presented by the facts in this case. The factual predicate for the PPC changed somewhat during the period of briefing and submission. Initially, the FOP asserted that, pursuant to the language in Article 30.I. and Appendix J of the negotiated Agreement, the County was obligated to maintain the existing Laundry and Dry Cleaning Procedures for the term of the Agreement and that the County's implementation of its mid-term revision to Function Code 412 violated the PLRA. Further, the existing terms were initially asserted to have been DD 85-13 which continues to be reproduced in Appendix J, but which apparently has not been utilized for some time. Instead, the record reflects that, immediately prior to June 2018, Function Code 412 was in place, although the record failed to make clear whether the 2001 revision or the 2003 revision or some other revision was actually then being applied by the County.

The first merits question is whether Article 30, Section I., and Appendix J, rendered the June 2018 revisions to Function Code 412, changes with respect to matters that were "covered by" the terms of the existing Agreement such that the County could not, consistent with the PLRA, either unilaterally implement changes or insist upon bargaining those changes mid-term. Both Parties stipulated that they did not believe that the question of the meaning and breadth of Article 30, Section I., and Appendix J, was a question that needed to be deferred to the Parties'

grievance and arbitration procedures for determination. Both Parties further recognize that, under the PLRA, once a provision has been negotiated in a collective bargaining agreement, it remains binding on both Parties for the term of that Agreement. There is no requirement under the PLRA for either Party to bargain to change existing contract provisions mid-term. The PLRA does not prevent a Party from proposing to the other Party that they discuss mid-term modification of an existing contractual provision, but it is wholly permissive as to whether the discussions occur. Moreover, even if voluntary discussions take place, it would violate both the Agreement and the PLRA to unilaterally make changes to the existing contract provisions mid-term.

Thus, if the provisions of Article 30, Section I., and Appendix J, were designed to foreclose all changes in procedures relative to Laundry/Dry Cleaning, then the County's unilaterally imposed revisions to Function Code 412 would be violative of both the Agreement and the PLRA. If those contractual provisions were not intended to foreclose all changes in procedures relative to Laundry/Dry Cleaning, then a more detailed analysis of the changes would be required; certain language could be changed if it were shown that, first, the changes did not violate existing provisions of the Agreement and, second, that the changes did not involve a change to a mandatory subject of bargaining under the PLRA. Further, pursuant to Article 61 of the Agreement, any permissible changes would require compliance first with those negotiated procedures.

The Union has shown that the provisions of Article 30, Section I., prevented the County from unilaterally making changes to matters that were set forth in the existing Laundry and Dry Cleaning procedures during the term of the Agreement. This includes any unilateral change to the laundry service benefits described in Article 30, Section I., of the Agreement or changes to

any item that is addressed in Appendix J, which when initially bargained, represented an agreed upon set of procedures applicable to the provision of Laundry and Dry Cleaning benefits.

The application of these principles is made difficult in this case by a number of facts. First, the provisions of Appendix J (and the language of Article 30, Section I.) continue to reference DD 85-13, not Function Code 412, but the language of Article 30, Section I., makes clear the obligation of the County to retain the benefits and conditions previously in effect between the Parties, presumably referencing those immediately in effect prior to the start of the particular collective bargaining agreement. There is some divergence, therefore, between the language that was negotiated and renewed and the actual Laundry and Dry Cleaning benefits and procedures that were in place prior to the County's revisions to Function Code 412 in June 2018. Second, the record lacks detailed evidence of whether the laundry benefits and procedures actually in place as of June 30, 2017 (the last day of the collective bargaining agreement prior to the one in which the County proposed to change Function Code 412), mirrored Function Code 412 (and, if so, which revision of Function Code 412 was being utilized day to day in that regard). Third, the County's proposed revision to Function Code 412 in June 2018 included both items that did not appear to change working conditions and that implicated the exercise of management rights, as well as other items that do appear to change working conditions and/or that conflict with the existing procedures in Function Code 412 (as well as DD 85-13). The Union identified specifically the provisions in the revised Function Code 412 concerning: 1) the issuance of reimbursement checks to bargaining unit members' home addresses and the release of that information to a laundry service vendor (which conflicts with the 2001 and 2003 revisions to Function Code 412 which each contain specific language addressing the delivery of reimbursement checks that differs from that contained in the 2018 revisions to Function Code

412)¹; and 2) the obligation to check the laundry room for clothing that could conceivably lead to the imposition of discipline if not followed and that is different from, although not necessarily inconsistent with, the prior versions of Function Code 412; the record contained no evidence as to whether the new language regarding the obligation to regularly check the laundry room and promptly remove items from the room was intended to impose obligations over and above the pre-existing requirement that employees remove cleaned items from the laundry room within five working days of delivery.

These two items are sufficient to have precluded the County under the PLRA from having unilaterally imposed the 2018 revisions to Function Code 412. The County's claim that the Union effectively waived the right to object to the 2018 revisions to Function Code by not having identified to the County the specific provisions of the revised directive that the FOP wished to discuss is rejected for several reasons. The Union raised to the County its objection to any mid-term unilateral change to Function Code 412 that conflicted with the Agreement, but noted the Union's willingness to discuss changes to procedures. The County was the Party that chose not to meet unless the Union first specifically identified the provisions that it wished to discuss, and opted, instead, to implement the revisions without agreement or discussion. As reflected by the facts, the Union appropriately refused to negotiate with respect to items that were substantive changes and conflicted with the provisions of the Agreement and Appendix J, objected to the County's implementing its proposed revisions to Function Code 412, and noted

¹ The record did not reveal whether the reimbursement checks were actually sent to members' home address of record after the County implemented the June 2018 changes to Function Code 412, but the language of those revisions suggest, contrary to the assertion of the County, that the post-change reimbursements would be sent by mail to employees' home addresses directly by the laundry vendor. No other reason was shown to change the method of delivery to mailing and to provide that the checks were to be sent to the address of record.

its willingness to discuss changes in procedures – something that the County declined to accept absent preconditions that the Union chose not to accept.

Having found that the County's unilateral implementation of the revisions to Function Code 412 violated both the Agreement and PLRA, the question is presented as to the appropriate remedy. Normally, a cease and desist order and a make whole remedy, if warranted, would be appropriate in cases of this type. The issuance of a typical remedy in this case, however, is made difficult by a number of facts, including particularly the apparent disconnect between the language in the Agreement and the Laundry and Dry Cleaning Procedures that were actually being used prior to the County's changes to Function Code 412 in June 2018, and the lack of detailed record evidence concerning the status quo ante and the ways in which the County changed that situation in June 2018 and thereafter.

Accordingly, in this case, the dispute will be remanded to the Parties prior to the Impartial Umpire addressing the particular remedy. First, there are mutual benefits to affording the Parties the opportunity to conform the terms of Appendix J to the current applicable and agreed upon Laundry and Dry Cleaning Procedures. Continued inclusion of references to DD 85-13 in Article 30 and Appendix J may be confusing to bargaining unit members and to the Parties. Second, certain parts of revised Function Code 412 are not objectionable and may well involve the exercise of managerial prerogatives that do not appear to conflict with the prior revisions to Function Code 412, do not appear to adversely affect bargaining unit members, and/or could likely be agreed to if the Parties simply met and spoke about such updates. A remand will allow the Parties the initial opportunity to clarify their dispute and reach an appropriate agreement as to the terms that will be included in the Agreement going forward.

If the Parties fail to reach agreement, then upon the request of either Party, the record will be reopened to take additional evidence and allow the issuance of an appropriate final ruling with respect to the PPC in this case.

INTERIM ORDER

The County's unilateral implementation of the June 2018 revisions to Function Code 412 violated Section 33-80(a) of the Police Labor Relations Act.

For reasons noted in the foregoing Opinion, the question of the appropriate remedy is remanded initially to the Parties for possible resolution. Failing resolution, either Party may seek a final ruling with respect to the appropriate remedy from the Impartial Umpire.

February 26, 2020

A handwritten signature in black ink, appearing to read "Ira F. Jaffe", is written over a horizontal line.

Ira F. Jaffe, Esq.
Permanent Umpire

HOUSE BILL 670

E4

(11r1071)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **The Speaker (By Request – Police Reform and Accountability in MD, Workgroup to Address)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 ~~**Police Reform and Accountability Act of 2021**~~ ***Maryland Police Accountability***
3 ***Act of 2021 – Police Discipline and Law Enforcement Programs and Procedures***

4 FOR the purpose of repealing the Law Enforcement Officers' Bill of Rights; ~~providing that~~
5 ~~the Police Department of Baltimore City is an agency and instrumentality of the City~~
6 ~~of Baltimore, instead of the State; providing that certain police officers have the~~
7 ~~authority conferred under a certain provision of law; requiring that an application~~
8 ~~for a certain search warrant be approved in writing by a police supervisor and the~~
9 ~~State's Attorney; altering a certain ground for issuance of a certain search warrant;~~
10 ~~repealing a certain ground for issuance of a certain search warrant; authorizing a~~
11 ~~judge to issue a certain "no knock" search warrant only under certain circumstances;~~
12 ~~requiring that an application for a certain search warrant contain certain items;~~
13 ~~altering the number of days within which a certain search and seizure shall be made;~~
14 ~~providing that a warrant to search a residence shall be executed between certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



~~times, absent certain circumstances; imposing certain restrictions on a police officer when executing a search warrant; requiring a police officer to take a certain action and provide certain information to certain individuals at the commencement of a certain stop, with a certain exception; providing that a police officer's failure to comply with a certain requirement may be grounds for a certain disciplinary action against the officer and may not serve as the basis for the exclusion of certain evidence under a certain rule; prohibiting a police officer from prohibiting or preventing a citizen from recording the police officer's actions if the citizen is otherwise acting lawfully and safely; providing that an individual attending a certain institution of higher education is exempt from paying tuition under certain circumstances; requiring an individual who has received a certain exemption from tuition payment to pay a certain value to a certain institution under certain circumstances; establishing the Maryland Loan Assistance Repayment Program for Police Officers; requiring the Office of Student Financial Assistance in the Maryland Higher Education Commission to assist in the repayment of certain loans owed by certain eligible individuals; requiring the Office to adopt certain regulations; specifying that funds for the Program shall be provided in the State budget; requiring the Office to submit a certain report to the General Assembly on or before a certain date; establishing the Maryland Police Officers Scholarship Program; providing for the purpose of the Maryland Police Officers Scholarship; requiring the Office to publicize the availability of the Maryland Police Officers Scholarship; establishing the eligibility of the Maryland Police Officers Scholarship; requiring a certain recipient to repay the Commission under certain circumstances; establishing the amount of the annual scholarship award; requiring the Governor to include a certain appropriation in the State budget for the Maryland Police Officers Scholarship; requiring the Commission to use a certain appropriation for a certain purpose; requiring the Office to publicize the availability of the Maryland Police Officers Scholarship; requiring the Commission to submit a certain report on or before a certain date; altering the limits on liability of a local government and the State and its units for claims arising from tortious acts or omissions or violations of constitutional rights committed by a law enforcement officer; requiring the State Public Information Act Compliance Board to receive, review, and resolve certain complaints filed from a certain custodian, issue a certain decision, and issue a certain order under certain circumstances; requiring a certain custodian to allow inspection of certain records by the United States Attorney, the Attorney General, the State Prosecutor, and a State's Attorney; providing that a certain record is not a personnel record for a certain purpose, with a certain exception; authorizing a certain custodian to deny inspection of certain records; requiring a certain custodian to deny inspection of a certain record under certain circumstances; requiring a custodian to notify a certain person in interest when a certain record is inspected; prohibiting a certain custodian from disclosing the identity of a certain requestor to a certain person in interest;~~ altering the membership of the Maryland Police Training and Standards Commission; requiring the Commission to develop and administer *certain tests and* training programs ~~on certain matters for citizens individuals who intend to qualify to participate as a member of a certain administrative charging committee and citizens who are appointed to serve as members of the Commission;~~ requiring the Commission to take certain actions in response to certain violations of a certain Use

of Force Statute; ~~requiring the Commission to develop a test and training for implicit bias, require certain law enforcement agencies to use the implicit bias test at a certain time, and require certain police officers to complete implicit bias testing and training at certain times;~~ requiring the Commission to revoke the certification of a police officer under certain circumstances; requiring the Commission to create a certain database; altering a certain requirement for police officer certification that an individual submit to a psychological evaluation to require that an individual submit to a mental health screening by a certain professional; adding as a requirement for police officer certification that an individual submit to a certain physical agility assessment; requiring a police officer, as a condition of certification, to submit to a mental health assessment and a physical agility assessment at a certain time for a certain purpose; establishing that prior marijuana use is not a disqualifier for certification as a police officer and may not be the basis for disqualifying an applicant for a position as police officer; establishing certain requirements for an individual who applies for a position as a police officer; requiring, at certain intervals beginning on a certain date, a law enforcement agency that maintains a SWAT team to report certain information to the Governor's Office of Crime Prevention, Youth, and Victim Services using a certain format; requiring the Commission, in consultation with the Office, to develop a standardized format that certain law enforcement agencies shall use in reporting certain data relating to the activation and deployment of certain SWAT teams to the Office and to certain local officials; requiring a law enforcement agency to compile certain information as a report in a certain format and to submit the report to the Office no later than a certain date following the period that is the subject of the report; requiring the Office to analyze and summarize certain reports of law enforcement agencies and to submit a report of the analyses and summaries to the Governor, the General Assembly, and each law enforcement agency before a certain date each year; providing that, if a law enforcement agency fails to comply with certain reporting requirements, the Office shall report the noncompliance to the Commission; providing that the Commission shall contact a certain law enforcement agency and request that the agency comply with certain reporting requirements under certain circumstances; providing that, if a certain law enforcement agency fails to comply with certain reporting requirements within a certain period after being contacted by the Commission, the Office and the Commission jointly shall make a certain report to the Governor and the Legislative Policy Committee of the General Assembly and publish the report on its website; ~~requiring each law enforcement agency to require the use of body worn cameras on or before a certain date; requiring that a certain body worn camera automatically record and save certain video footage;~~ requiring law enforcement agencies to submit certain reports to the Commission; requiring the Commission to post certain information on its website; prohibiting the Governor's Office of Crime Prevention, Youth, and Victim Services from making certain funds available under certain circumstances; requiring each law enforcement agency to post in a certain location an explanation of certain procedures; ~~altering a certain provision of law requiring each law enforcement agency to establish a certain early intervention policy to require a system instead of a policy, repeal the requirement that the system be confidential and nonpunitive, and alter the purpose and function of the system; requiring the Commission to develop guidelines for a certain early intervention~~

~~system; establishing the Independent Investigative Agency as an independent unit of State government for a certain purpose; authorizing the Independent Investigative Agency to employ certain police officers and civilians for a certain purpose; requiring that a certain shooting or other incident be investigated by a certain investigative agency; requiring a law enforcement agency to notify a certain investigative agency of a certain shooting or other incident at a certain time and cooperate with the investigative agency in a certain investigation; requiring a certain investigative agency to submit a certain report to a certain State's Attorney and publicize the report at a certain time; requiring the Governor to annually include certain funding in the State budget; requiring each police officer to sign a certain pledge; providing that a police officer may only use certain force establishing certain use of force standards; requiring a police officer to take certain steps to gain compliance and de-escalate conflict under certain circumstances; requiring a police officer to intervene to prevent or terminate the use of certain force by a certain police officer; requiring a police officer to render certain first aid to a certain subject and request certain assistance at a certain time; requiring a police supervisor to respond to the scene of a certain incident and gather and review certain recordings; requiring a police officer to document certain incidents in a certain manner; requiring a law enforcement agency to adopt a certain policy; requiring a police officer to undergo certain training; requiring a police officer to sign a certain training completion document; providing that a police officer may only use deadly force for a certain purpose; requiring all police officers to undergo less lethal force training and be trained and equipped with certain less lethal weapons; prohibiting a police officer from shooting at a certain vehicle except under certain circumstances; prohibiting a police officer from using a chokehold, neck restraint, or a certain other type of restraint; prohibiting a law enforcement agency from acquiring a certain armored or weaponized vehicle receiving certain equipment from a surplus program; requiring a law enforcement agency to have a written de-escalation of force policy; prohibiting a police officer from knowingly and willfully violating certain provisions of this Act; prohibiting a police officer from recklessly violating certain provisions of this Act; authorizing a person to file a certain civil action for a certain use of force; requiring each law enforcement agency to develop and implement a certain program to protect the mental health of police officers; establishing certain requirements for a certain program; requiring each law enforcement agency to develop a policy to minimize certain costs to police officers; establishing certain penalties for a violation of certain provisions of this Act; requiring the Governor's Office of Crime Prevention, Youth, and Victim Services to withhold grant funding from a certain law enforcement agency; establishing that a certain provision of law shall be known as the Maryland Use of Force Statute; requiring the Maryland Police Training and Standards Commission to submit a certain annual report to the Governor and General Assembly; requiring each law enforcement agency to establish and implement a certain police discipline process with certain requirements; requiring each law enforcement agency to post the police discipline process on the agency's public website; requiring certain members of trial boards and administrative charging committees to receive certain training; prohibiting a law enforcement agency from negating or altering certain requirements of a and policies established in accordance with certain provision provisions of law through collective bargaining; providing for~~

~~the establishment, composition, and duties of an administrative charging committee; requiring that on completion of a certain investigation, a law enforcement agency forward the investigatory files for certain matters to an administrative charging committee; requiring that a certain allegation proceed in accordance with the policies and procedures of a certain law enforcement agency; providing that the meetings of an administrative charging committee are not subject to the requirements of the Open Meetings Act; requiring each county to have a police accountability board to take certain actions; providing for the membership, staffing, budget, and procedures of a police accountability board; establishing requirements for a certain complaint filed with a police accountability board~~ requiring a police accountability board to make a certain report and recommendations annually; authorizing an individual to file a certain complaint with a certain law enforcement agency; establishing requirements for a certain complaint; requiring each county to have a certain administrative charging committee; providing for the membership of certain administrative charging committees; requiring that there be at least one statewide administrative charging committee applicable to certain law enforcement agencies; requiring an individual to receive certain training prior to serving as a member of an administrative charging committee; requiring a certain law enforcement agency to forward certain investigatory files to a certain administrative charging committee at a certain time; requiring and authorizing an administrative charging committee to take certain actions at certain times; requiring an administrative charging committee to meet at certain times; requiring a member of an administrative charging committee to maintain confidentiality relating to a certain matter at a certain time; requiring the Maryland Police Training and Standards Commission to develop and adopt, by regulation, a certain disciplinary matrix for a certain purpose; requiring each law enforcement agency to adopt a certain disciplinary matrix; requiring a certain chief to offer certain discipline to a certain police officer at a certain time; ~~requiring~~ authorizing certain discipline to be imposed under certain circumstances; requiring a certain matter to be referred to a trial board under certain circumstances; requiring a police officer to be provided certain items and notified of certain information before a trial board proceeding begins; requiring each law enforcement agency to establish a certain trial board process; authorizing a small law enforcement agency to use the trial board process of another law enforcement agency under certain circumstances; providing for the membership of a trial board; requiring an individual to receive certain training prior to serving as a member of a trial board; requiring that proceedings of a trial board be open to the public, with certain exceptions; authorizing a trial board to administer oaths and issue subpoenas under certain circumstances; providing that a complainant has the right to be notified of and attend a certain hearing, with certain exceptions; providing that a law enforcement agency has the burden of proof by a preponderance of the evidence in certain proceedings; providing that a police officer may be disciplined only for cause; providing for the appeal of a trial board decision; providing that a trial board decision that is not appealed is final; authorizing and requiring a certain chief to impose a certain emergency suspension under certain circumstances; requiring and authorizing a certain chief to terminate the employment of a certain police officer; providing that a certain police officer is entitled to receive back pay under certain circumstances; providing that a police officer may be required to submit to certain

tests, examinations, or interrogations under certain circumstances; authorizing a
 certain law enforcement agency to commence an action that may lead to a certain
 punitive measure under certain circumstances; providing that the results of a certain
 test, examination, or interrogation are not admissible or discoverable in a certain
 proceeding under certain circumstances; ~~providing that forfeiture of a law~~
~~enforcement officer's pension may be imposed as a disciplinary action under certain~~
~~circumstances;~~ requiring a law enforcement agency to designate a certain victims'
 rights advocate for a certain purpose; providing for the duties of a victims' rights
 advocate; requiring each law enforcement agency to create a certain database;
~~requiring a certain investigating unit to review a certain complaint at a certain time;~~
~~requiring an administrative charging committee to take certain actions within a~~
~~certain time period; requiring a certain process of review to be completed within a~~
~~certain time period;~~ *requiring the Maryland Police Training and Standards*
Commission to adopt certain regulations; providing that a certain police officer ~~and~~
~~a complainant have the right to representation~~ *may have the assistance of a*
representative in connection with certain proceedings; prohibiting the taking of
 certain adverse employment actions against a police officer because the police officer
 took certain actions; prohibiting the denial of a police officer's right to bring suit
 arising out of certain duties; providing that a police officer has certain rights to
 engage in political activity; prohibiting a law enforcement agency from prohibiting
 secondary employment by police officers; *prohibiting certain records from being*
expunged or destroyed; authorizing a law enforcement agency to adopt certain
 regulations; ~~authorizing a court to order the forfeiture of pension benefits, in whole~~
~~or in part, for a law enforcement officer who is convicted of a qualifying crime;~~
~~requiring the Attorney General or the State's Attorney to file a certain complaint in~~
~~circuit court; establishing certain findings that shall be made when entering an order~~
~~requiring the forfeiture of benefits; requiring the forfeiture order to indicate the~~
~~amount of benefits forfeited; requiring a court to consider certain factors when~~
~~determining the amount of benefits subject to forfeiture; authorizing a court to order~~
~~a law enforcement officer subject to a forfeiture order to request a return of~~
~~accumulated contributions to be used for restitution relating to a qualifying crime;~~
~~providing that certain forfeiture provisions do not apply to certain contributions~~
~~made, service earned, or crimes committed before a certain date;~~ requiring the
 Emergency Number Systems Board to conduct a certain study and submit a certain
 report; ~~providing for the application of a certain provision of this Act;~~ requiring a
 certain publisher, in consultation with and subject to the approval of the Department
 of Legislative Services, to correct certain cross-references and terminology and
 describe a certain correction in a certain manner; *providing for the intent of the*
General Assembly that the Maryland Higher Education Commission adopt certain
regulations; providing for a delayed effective date for certain provisions of this Act;
~~providing~~ for the application of certain provisions of this Act; *making certain*
provisions of this Act contingent on the taking effect of another Act; making
 conforming changes; defining certain terms; and generally relating to police reform.

BY renumbering

Article – Public Safety

Section 1–101(c) and (d) and 3–101(e), respectively

to be Section 1–101(d) and (e) and (c), respectively
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY repealing

Article – Public Safety
Section 3–101 through 3–113 and the subtitle “Subtitle 1. Law Enforcement Officers’
Bill of Rights”
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~The Public Local Laws of Baltimore City
Section 16–2(a) and 16–3
Article 4 – Public Local Laws of Maryland
(1979 Edition and 1997 Supplement and 2000 Supplement, as amended)~~

~~BY repealing and reenacting, with amendments,~~

~~Article – Criminal Procedure
Section 1–203(a)(2)(vi) 1–203(a)
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

~~BY adding to~~

~~Article – Criminal Procedure
Section 1–203(a)(7)
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

BY adding to

Article – Criminal Procedure
Section 2–109
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Education
Section 18–101
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY adding to

Article – Education
Section ~~15–106.11~~ 18–3701 through 18–3705 to be under the new subtitle “Subtitle
37. Maryland Loan Assistance Repayment Program for Police Officers”; and
18–3801 through 18–3807 to be under the new subtitle “Subtitle 38. Maryland
Police Officers Scholarship Program”

Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

~~BY repealing and reenacting, with amendments,
Article – Public Safety
Section 3-203, 3-207(g), 3-209, 3-215, 3-511, and 3-516
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

~~BY adding to
Article – Public Safety
Section 3-207(j) and (k), 3-508, and 3-523 through 3-526
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5-303(a)
Annotated Code of Maryland
(2020 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12-104(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

~~BY repealing and reenacting, without amendments,
Article – General Provisions
Section 4-101(a) and (c)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)~~

~~BY adding to
Article – General Provisions
Section 4-101(i) and (l)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, with amendments,
Article – General Provisions
Section 4-101(i) and (j), 4-1A-04, 4-311, and 4-351
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)~~

BY adding to
Article – Public Safety

Section 3-101 through ~~3-113~~ *3-114* to be under the new subtitle “Subtitle 1. Police Accountability and Discipline”; 3-207(j) and (k), ~~3-508, 3-523, and 3-524 and 3-508~~
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Public Safety
Section 3-203, 3-207(a)(16) and (g), 3-209, 3-212, 3-215, ~~3-511, 3-514, 3-515, and 3-516~~ *3-514, and 3-515*
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

~~BY adding to~~

~~Article – State Personnel and Pensions~~
~~Section 20-210~~
~~Annotated Code of Maryland~~
~~(2015 Replacement Volume and 2020 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 1-101(c) and (d) and 3-101(e), respectively, of Article – Public Safety of the Annotated Code of Maryland be renumbered to be Section(s) 1-101(d) and (e) and (c), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 3-101 through 3-113 and the subtitle “Subtitle 1. Law Enforcement Officers’ Bill of Rights” of Article – Public Safety of the Annotated Code of Maryland be repealed.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

~~Article 4 – Baltimore City~~

~~16-2.~~

~~(a) The Police Department of Baltimore City is hereby constituted and established as an agency and instrumentality of the [State of Maryland] CITY OF BALTIMORE. The purpose generally of the department shall be to safeguard the lives and safety of all persons within the City of Baltimore, to protect property therein, and to assist in securing to all persons the equal protection of the laws. The department shall have, within the boundaries of said city, the specific duty and responsibility to preserve the public peace; to detect and prevent the commission of crime; to enforce the laws of this State, and of the Mayor and City Council of Baltimore not inconsistent with the provisions of this subtitle; to apprehend and arrest criminals and persons who violate or are lawfully accused of violating such laws and ordinances; to preserve order at public places; to maintain the orderly flow of traffic on public streets and highways; to assist law enforcement agencies of this State, any municipality of the United States in carrying out their respective duties;~~

~~and to discharge its duties and responsibilities with the dignity and manner which will inspire public confidence and respect.~~

~~16-3.~~

~~(a) All police officers of the department, including such other members thereof who may be designated by the Commissioner from time to time to exercise the powers and duties of police officers, shall [be peace officers and shall have the same powers, with respect to criminal matters, and the enforcement of the laws related thereto, as sheriffs, constables, police and peace officers possessed at common law and have in their respective jurisdictions. Any person charged with commission of crime in the City of Baltimore, or in those areas outside the corporate limits of Baltimore City owned, controlled, operated or leased by the Mayor and City Council of Baltimore, and against whom criminal process shall have issued, may be arrested upon the same in any part of the State by police officers of the department, as constituted and established by this subtitle.] HAVE THE AUTHORITY CONFERRED UNDER TITLE 2 OF THE CRIMINAL PROCEDURE ARTICLE OF THE ANNOTATED CODE OF MARYLAND.~~

~~(b) All police officers of the department shall have and enjoy all the immunities and matters of defense now available, or such as hereafter may be made available, to sheriffs, constables, police and peace officers in any suit, civil or criminal, brought against them in consequence of acts done in the course of their official duties.~~

~~Article Criminal Procedure~~

~~1-203.~~

~~(a) (2) (vi) (1) IN THIS SUBSECTION, "NO KNOCK SEARCH WARRANT" MEANS A SEARCH WARRANT THAT AUTHORIZES THE EXECUTING LAW ENFORCEMENT OFFICER TO ENTER A BUILDING, APARTMENT, PREMISES, PLACE, OR THING TO BE SEARCHED WITHOUT GIVING NOTICE OF THE OFFICER'S AUTHORITY OR PURPOSE.~~

~~(2) A circuit court judge or District Court judge may issue forthwith a search warrant whenever it is made to appear to the judge, by application as described in paragraph [(2)] (3) of this subsection, that there is probable cause to believe that:~~

~~(i) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the territorial jurisdiction of the judge; or~~

~~(ii) property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing.~~

~~[(2)] (3) (i) An application for a search warrant shall be:~~

~~1. in writing;~~

~~2. signed, dated, and sworn to by the applicant; and~~

~~3. accompanied by an affidavit that:~~

~~A. sets forth the basis for probable cause as described in paragraph (1) of this subsection; and~~

~~B. contains facts within the personal knowledge of the affiant that there is probable cause.~~

~~(ii) An application for a search warrant may be submitted to a judge:~~

~~1. by in person delivery of the application, the affidavit, and a proposed search warrant;~~

~~2. by secure fax, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted; or~~

~~3. by secure electronic mail, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted.~~

~~(iii) The applicant and the judge may converse about the search warrant application:~~

~~1. in person;~~

~~2. via telephone; or~~

~~3. via video.~~

~~(iv) The judge may issue the search warrant:~~

~~1. by signing the search warrant, indicating the date and time of issuance on the search warrant, and physically delivering the signed and dated search warrant, the application, and the affidavit to the applicant;~~

~~2. by signing the search warrant, writing the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure fax; or~~

~~3. by signing the search warrant, either electronically or in writing, indicating the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure electronic mail.~~

~~(v) The judge shall file a copy of the signed and dated search warrant, the application, and the affidavit with the court.~~

~~(vi) 1. An IF APPROVED IN WRITING BY A POLICE SUPERVISOR AND THE STATE'S ATTORNEY, AN application for a search warrant may contain a request that the search warrant authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose BE A NO KNOCK SEARCH WARRANT, on the [grounds] GROUND that there is [reasonable suspicion to believe] CLEAR AND CONVINCING EVIDENCE that, without the authorization[;~~

~~1. the property subject to seizure may be destroyed, disposed of, or secreted; or~~

~~2.] the life or safety of the executing officer or another person may be endangered.~~

~~2. AN APPLICATION FOR A NO KNOCK SEARCH WARRANT UNDER THIS SUBPARAGRAPH SHALL CONTAIN:~~

~~A. A DESCRIPTION OF THE CLEAR AND CONVINCING EVIDENCE IN SUPPORT OF THE APPLICATION;~~

~~B. AN EXPLANATION OF THE INVESTIGATIVE ACTIVITIES THAT HAVE BEEN UNDERTAKEN AND THE INFORMATION THAT HAS BEEN GATHERED TO SUPPORT THE REQUEST FOR A NO KNOCK SEARCH WARRANT;~~

~~C. AN EXPLANATION OF WHY THE AFFIANT IS UNABLE TO DETAIN THE SUSPECT OR SEARCH THE PREMISES USING OTHER, LESS INVASIVE METHODS;~~

~~D. ACKNOWLEDGMENT THAT ANY POLICE OFFICERS WHO WILL EXECUTE THE SEARCH WARRANT HAVE SUCCESSFULLY COMPLETED THE SAME TRAINING IN BREACH AND CALL OUT ENTRY PROCEDURES AS SWAT TEAM MEMBERS;~~

~~E. A STATEMENT AS TO WHETHER THE SEARCH WARRANT CAN EFFECTIVELY BE EXECUTED DURING DAYLIGHT HOURS AND, IF NOT, WHAT FACTS OR CIRCUMSTANCES PRECLUDE EFFECTIVE EXECUTION IN DAYLIGHT HOURS; AND~~

~~F. A LIST OF ANY ADDITIONAL OCCUPANTS OF THE PREMISES BY AGE AND GENDER, AS WELL AS AN INDICATION AS TO WHETHER ANY~~

~~INDIVIDUALS WITH COGNITIVE OR PHYSICAL DISABILITIES OR PETS RESIDE AT THE PREMISES, IF KNOWN.~~

~~[(3)] (4) The search warrant shall:~~

~~(i) be directed to a duly constituted police officer, the State Fire Marshal, or a full time investigative and inspection assistant of the Office of the State Fire Marshal and authorize the police officer, the State Fire Marshal, or a full time investigative and inspection assistant of the Office of the State Fire Marshal to search the suspected person, building, apartment, premises, place, or thing and to seize any property found subject to seizure under the criminal laws of the State;~~

~~(ii) name or describe, with reasonable particularity:~~

~~1. the person, building, apartment, premises, place, or thing to be searched;~~

~~2. the grounds for the search; and~~

~~3. the name of the applicant on whose application the search warrant was issued; and~~

~~(iii) if warranted by application as described in paragraph [(2)] (3) of this subsection, authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose.~~

~~[(4)] (5) (i) The search and seizure under the authority of a search warrant shall be made within [15] 7 calendar days after the day that the search warrant is issued.~~

~~(ii) After the expiration of the [15 day] 7 DAY period, the search warrant is void.~~

~~[(5)] (6) The executing law enforcement officer shall give a copy of the search warrant, the application, and the affidavit to an authorized occupant of the premises searched or leave a copy of the search warrant, the application, and the affidavit at the premises searched.~~

~~[(6)] (7) (i) The executing law enforcement officer shall prepare a detailed search warrant return which shall include the date and time of the execution of the search warrant.~~

~~(ii) The executing law enforcement officer shall:~~

~~1. give a copy of the search warrant return to an authorized occupant of the premises searched or leave a copy of the return at the premises searched; and~~

~~2. file a copy of the search warrant return with the court in person, by secure fax, or by secure electronic mail.~~

~~(7)(8) (i) IN THIS PARAGRAPH, "EXIGENT CIRCUMSTANCES" RETAINS ITS JUDICIALLY DETERMINED MEANING.~~

~~(ii) A WARRANT TO SEARCH A RESIDENCE SHALL BE EXECUTED BETWEEN 8:00 A.M. AND 7:00 P.M., ABSENT EXIGENT CIRCUMSTANCES.~~

~~(iii) WHILE EXECUTING A SEARCH WARRANT, A POLICE OFFICER SHALL BE CLEARLY RECOGNIZABLE AND IDENTIFIABLE AS A POLICE OFFICER, WEARING A UNIFORM, BADGE, AND TAG BEARING THE NAME AND IDENTIFICATION NUMBER OF THE POLICE OFFICER.~~

~~(iv) A POLICE OFFICER EXECUTING A SEARCH WARRANT SHALL USE A BODY CAMERA DURING THE COURSE OF THE SEARCH IN ACCORDANCE WITH THE POLICIES ESTABLISHED BY THE POLICE OFFICER'S LAW ENFORCEMENT AGENCY.~~

~~(v) UNLESS EXECUTING A NO KNOCK SEARCH WARRANT, A POLICE OFFICER SHALL ALLOW A MINIMUM OF 30 SECONDS FOR THE OCCUPANTS OF A RESIDENCE TO RESPOND AND OPEN THE DOOR BEFORE THE POLICE OFFICER ATTEMPTS TO ENTER THE RESIDENCE, ABSENT EXIGENT CIRCUMSTANCES.~~

~~(vi) A POLICE OFFICER MAY NOT USE FLASH BANG, STUN, DISTRACTION, OR OTHER SIMILAR MILITARY STYLE DEVICES WHEN EXECUTING A SEARCH WARRANT, ABSENT EXIGENT CIRCUMSTANCES.~~

Article – Criminal Procedure

2-109.

(A) AT THE COMMENCEMENT OF A TRAFFIC STOP OR OTHER STOP, ABSENT EXIGENT CIRCUMSTANCES, A POLICE OFFICER SHALL:

(1) DISPLAY PROPER IDENTIFICATION TO THE STOPPED INDIVIDUAL;
AND

(2) PROVIDE THE FOLLOWING INFORMATION TO THE STOPPED INDIVIDUAL:

(I) THE OFFICER'S NAME;

(II) THE OFFICER'S ~~BADGE NUMBER~~ IDENTIFICATION NUMBER
ISSUED BY THE LAW ENFORCEMENT AGENCY THE OFFICER IS REPRESENTING;

(III) THE NAME OF THE LAW ENFORCEMENT AGENCY THE POLICE
OFFICER IS REPRESENTING; AND

(IV) THE REASON FOR THE TRAFFIC STOP OR OTHER STOP.

(B) A POLICE OFFICER'S FAILURE TO COMPLY WITH SUBSECTION (A) OF THIS
SECTION;

(1) MAY BE GROUNDS FOR ADMINISTRATIVE DISCIPLINARY ACTION
AGAINST THE OFFICER; AND

(2) MAY NOT SERVE AS THE BASIS FOR THE EXCLUSION OF EVIDENCE
UNDER THE EXCLUSIONARY RULE.

(C) A POLICE OFFICER MAY NOT PROHIBIT OR PREVENT A CITIZEN FROM
RECORDING THE POLICE OFFICER'S ACTIONS IF THE CITIZEN IS OTHERWISE ACTING
LAWFULLY AND SAFELY.

Article – Education

~~15-106.11.~~

(A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.~~

(2) ~~“POLICE OFFICER” HAS THE MEANING STATED IN § 3-201 OF THE
PUBLIC SAFETY ARTICLE.~~

(3) ~~“TUITION” MEANS THE CHARGES IMPOSED BY AN INSTITUTION OF
HIGHER EDUCATION FOR ALL CREDIT BEARING COURSES REQUIRED AS A
CONDITION OF ENROLLMENT AT THE INSTITUTION.~~

(B) ~~AN INDIVIDUAL ATTENDING A PUBLIC INSTITUTION OF HIGHER
EDUCATION IS EXEMPT FROM PAYING TUITION IF THE INDIVIDUAL:~~

(1) ~~IS ENROLLED IN A 4 YEAR DEGREE PROGRAM IN CRIMINAL LAW,
CRIMINOLOGY, OR CRIMINAL JUSTICE;~~

(2) ~~IS ELIGIBLE FOR IN STATE TUITION; AND~~

~~(3) INTENDS TO BECOME A POLICE OFFICER AFTER GRADUATION.~~

~~(C) AN INDIVIDUAL WHO HAS RECEIVED AN EXEMPTION FROM TUITION PAYMENT UNDER SUBSECTION (B) OF THIS SECTION SHALL PAY TO THE INSTITUTION THE TOTAL VALUE OF THE TUITION EXEMPTION RECEIVED IF THE INDIVIDUAL FAILS TO:~~

~~(1) EARN A 4 YEAR DEGREE IN CRIMINAL LAW, CRIMINOLOGY, OR CRIMINAL JUSTICE WITHIN 7 YEARS AFTER STARTING THE PROGRAM; AND~~

~~(2) WORK AS A POLICE OFFICER FOR AT LEAST 5 YEARS DURING THE 8 YEAR PERIOD AFTER GRADUATION.~~

~~(D) THE MARYLAND HIGHER EDUCATION COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.~~

18-101.

(a) In this title the following words have the meanings indicated.

(b) "Commission" means the Maryland Higher Education Commission.

(c) "Office" means the Office of Student Financial Assistance.

(d) "Secretary" means the Secretary of Higher Education.

SUBTITLE 37. MARYLAND LOAN ASSISTANCE REPAYMENT PROGRAM FOR POLICE OFFICERS.

18-3701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ELIGIBLE EMPLOYMENT" MEANS TO WORK AS A POLICE OFFICER IN THE STATE FOR AT LEAST 2 YEARS.

(C) "HIGHER EDUCATION LOAN" MEANS A LOAN THAT IS OBTAINED FOR TUITION FOR UNDERGRADUATE STUDY LEADING TO A DEGREE IN CRIMINAL LAW, CRIMINOLOGY, OR CRIMINAL JUSTICE.

(D) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THE PUBLIC SAFETY ARTICLE.

(E) “PROGRAM” MEANS THE MARYLAND LOAN ASSISTANCE REPAYMENT PROGRAM FOR POLICE OFFICERS.

18-3702.

(A) THERE IS A MARYLAND LOAN ASSISTANCE REPAYMENT PROGRAM FOR POLICE OFFICERS IN THE STATE.

(B) THE OFFICE SHALL DISTRIBUTE FUNDS FROM THE PROGRAM TO ASSIST IN THE REPAYMENT OF A HIGHER EDUCATION LOAN OWED BY A POLICE OFFICER WHO:

(1) RECEIVES A GRADUATE, PROFESSIONAL, OR UNDERGRADUATE DEGREE FROM A PUBLIC COLLEGE OR UNIVERSITY IN THE STATE;

(2) OBTAINS ELIGIBLE EMPLOYMENT; AND

(3) SATISFIES ANY OTHER CRITERIA ESTABLISHED BY THE OFFICE.

18-3703.

(A) THE OFFICE SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.

(B) THE REGULATIONS SHALL INCLUDE A LIMIT ON THE TOTAL AMOUNT OF ASSISTANCE PROVIDED BY THE OFFICE IN REPAYING THE LOAN OF AN ELIGIBLE INDIVIDUAL, BASED ON THE INDIVIDUAL’S TOTAL INCOME AND OUTSTANDING HIGHER EDUCATION LOAN BALANCE.

18-3704.

THE GOVERNOR SHALL INCLUDE AN ANNUAL APPROPRIATION OF AT LEAST \$1,500,000 IN THE STATE BUDGET FOR THE PROGRAM.

18-3705.

SUBJECT TO § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE OFFICE SHALL REPORT TO THE GENERAL ASSEMBLY BY JANUARY 1 EACH YEAR ON THE IMPLEMENTATION OF THE PROGRAM.

SUBTITLE 38. MARYLAND POLICE OFFICERS SCHOLARSHIP PROGRAM.

18-3801.

1 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) “ELIGIBLE INSTITUTION” MEANS A PUBLIC SENIOR HIGHER EDUCATION
4 INSTITUTION IN THE STATE.

5 (C) “POLICE OFFICER” HAS THE MEANING STATED IN § 3-201 OF THE
6 PUBLIC SAFETY ARTICLE.

7 (D) “SERVICE OBLIGATION” MEANS TO WORK AS A POLICE OFFICER IN THE
8 STATE NOT LESS THAN 5 YEARS DURING THE 8-YEAR PERIOD AFTER GRADUATION.
9 18-3802.

10 (A) THERE IS A MARYLAND POLICE OFFICERS SCHOLARSHIP PROGRAM.

11 (B) THE PURPOSE OF THE PROGRAM IS TO PROVIDE TUITION ASSISTANCE
12 FOR STUDENTS:

13 (1) ATTENDING A 4-YEAR DEGREE PROGRAM ~~IN CRIMINAL LAW,~~
14 ~~CRIMINOLOGY, OR CRIMINAL JUSTICE~~ THAT WOULD FURTHER THE STUDENT’S
15 CAREER IN LAW ENFORCEMENT AT AN ELIGIBLE INSTITUTION WITH THE INTENT TO
16 BE A POLICE OFFICER AFTER GRADUATION; OR

17 (2) WHO ARE CURRENTLY POLICE OFFICERS ATTENDING A 4-YEAR
18 DEGREE PROGRAM ~~IN CRIMINAL LAW, CRIMINOLOGY, OR CRIMINAL JUSTICE~~ THAT
19 WOULD FURTHER THE POLICE OFFICER’S CAREER IN LAW ENFORCEMENT AT AN
20 ELIGIBLE INSTITUTION.

21 (C) THE OFFICE SHALL PUBLICIZE THE AVAILABILITY OF THE MARYLAND
22 POLICE OFFICERS SCHOLARSHIP.

23 18-3803.

24 (A) THE OFFICE SHALL ANNUALLY SELECT ELIGIBLE STUDENTS AND
25 OFFER A SCHOLARSHIP TO EACH STUDENT SELECTED TO BE USED AT AN ELIGIBLE
26 INSTITUTION OF THE STUDENT’S CHOICE.

27 (B) A RECIPIENT OF THE MARYLAND POLICE OFFICERS SCHOLARSHIP
28 SHALL:

29 (1) BE A MARYLAND RESIDENT OR HAVE GRADUATED FROM A
30 MARYLAND HIGH SCHOOL;

1 (2) BE ACCEPTED FOR ADMISSION OR CURRENTLY ENROLLED AT AN
2 ELIGIBLE INSTITUTION AS A FULL-TIME OR PART-TIME UNDERGRADUATE OR
3 GRADUATE STUDENT PURSUING A COURSE OF STUDY OR PROGRAM ~~IN CRIMINAL~~
4 ~~LAW, CRIMINOLOGY, OR CRIMINAL JUSTICE~~ THAT WOULD FURTHER THE
5 RECIPIENT'S CAREER IN LAW ENFORCEMENT;

6 (3) SIGN A LETTER OF INTENT TO PERFORM THE SERVICE
7 OBLIGATION ON COMPLETION OF THE RECIPIENT'S REQUIRED STUDIES; AND

8 (4) SATISFY ANY ADDITIONAL CRITERIA THE COMMISSION MAY
9 ESTABLISH.

10 (C) A CURRENT POLICE OFFICER SHALL BE ELIGIBLE FOR A MARYLAND
11 POLICE OFFICERS SCHOLARSHIP IF THEY MEET THE ELIGIBILITY CRITERIA UNDER
12 SUBSECTION (B) OF THIS SECTION.

13 18-3804.

14 THE RECIPIENT OF A MARYLAND POLICE OFFICERS SCHOLARSHIP SHALL
15 REPAY THE COMMISSION THE FUNDS RECEIVED AS SET FORTH IN § 18-112 OF THIS
16 TITLE IF THE RECIPIENT DOES NOT:

17 (1) SATISFY THE DEGREE REQUIREMENTS OF THE ELIGIBLE COURSE
18 OF STUDY OR PROGRAM OR FULFILL OTHER REQUIREMENTS AS PROVIDED IN THIS
19 SUBTITLE; OR

20 (2) PERFORM THE SERVICE OBLIGATION TO WORK AS A POLICE
21 OFFICER FOR AT LEAST 5 YEARS DURING THE 8-YEAR PERIOD AFTER GRADUATION.

22 18-3805.

23 THE ANNUAL SCHOLARSHIP AWARD SHALL BE 50% OF THE EQUIVALENT
24 ANNUAL TUITION AND MANDATORY FEES OF A RESIDENT UNDERGRADUATE
25 STUDENT AT THE ELIGIBLE INSTITUTION.

26 18-3806.

27 THE GOVERNOR SHALL ANNUALLY INCLUDE IN THE BUDGET BILL AN
28 APPROPRIATION OF AT LEAST \$8,500,000 TO THE COMMISSION TO AWARD
29 SCHOLARSHIPS UNDER THIS SUBTITLE, AND THE COMMISSION SHALL USE:

30 (1) \$6,000,000 FOR SCHOLARSHIPS TO STUDENTS INTENDING TO
31 BECOME POLICE OFFICERS AFTER GRADUATION; AND

(2) \$2,500,000 FOR SCHOLARSHIPS FOR EXISTING POLICE OFFICERS TO ATTEND AN ELIGIBLE INSTITUTION AND REMAIN A POLICE OFFICER AFTER GRADUATION.

18-3807.

THE OFFICE SHALL:

(1) PUBLICIZE THE AVAILABILITY OF MARYLAND POLICE OFFICERS SCHOLARSHIPS; AND

(2) TO THE EXTENT PRACTICABLE, AWARD SCHOLARSHIPS UNDER THIS SUBTITLE IN A MANNER THAT REFLECTS ETHNIC, GENDER, RACIAL, AND GEOGRAPHIC DIVERSITY.

~~Article Public Safety~~

~~3-523.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "EMPLOYEE ASSISTANCE PROGRAM" MEANS A WORK BASED PROGRAM OFFERED TO ALL POLICE OFFICERS THAT PROVIDES ACCESS TO VOLUNTARY AND CONFIDENTIAL SERVICES TO ADDRESS THE MENTAL HEALTH ISSUES OF A POLICE OFFICER STEMMING FROM PERSONAL AND WORK RELATED CONCERNS, INCLUDING STRESS, FINANCIAL ISSUES, LEGAL ISSUES, FAMILY PROBLEMS, OFFICE CONFLICTS, AND ALCOHOL AND SUBSTANCE ABUSE DISORDERS.~~

~~(3) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(4) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(B) EACH LAW ENFORCEMENT AGENCY SHALL PROVIDE ACCESS TO AN EMPLOYEE ASSISTANCE PROGRAM OR A MENTAL HEALTH PROGRAM FOR ALL POLICE OFFICERS THAT THE LAW ENFORCEMENT AGENCY EMPLOYS.~~

~~(C) THE EMPLOYEE ASSISTANCE PROGRAM REQUIRED BY THIS SECTION SHALL PROVIDE POLICE OFFICERS ACCESS TO CONFIDENTIAL MENTAL HEALTH SERVICES, INCLUDING:~~

~~(1) COUNSELING SERVICES;~~

~~(2) CRISIS COUNSELING;~~

~~(3) STRESS MANAGEMENT COUNSELING;~~

~~(4) RESILIENCY SESSIONS; AND~~

~~(5) PEER SUPPORT SERVICES FOR POLICE OFFICERS.~~

~~(D) IN ADDITION TO THE REQUIREMENTS OF § 3-516 OF THIS SUBTITLE, AS PART OF THE EMPLOYEE ASSISTANCE PROGRAM REQUIRED BY THIS SECTION, EACH LAW ENFORCEMENT AGENCY SHALL PROVIDE TO ALL POLICE OFFICERS THE AGENCY EMPLOYS A VOLUNTARY MENTAL HEALTH CONSULTATION OR COUNSELING SERVICES BEFORE THE POLICE OFFICER RETURNS TO FULL DUTY FOLLOWING ANY INCIDENT INVOLVING:~~

~~(1) A SERIOUS INJURY TO THE POLICE OFFICER;~~

~~(2) AN OFFICER INVOLVED SHOOTING;~~

~~(3) AN ACCIDENT RESULTING IN A FATALITY; OR~~

~~(4) ANY USE OF FORCE RESULTING IN A FATALITY OR SERIOUS INJURY.~~

~~(E) THE EMPLOYEE ASSISTANCE PROGRAM REQUIRED BY THIS SECTION SHALL INCLUDE A COMPONENT DESIGNED TO PROTECT THE MENTAL HEALTH OF POLICE OFFICERS DURING PERIODS OF PUBLIC DEMONSTRATIONS AND UNREST.~~

~~(F) EACH LAW ENFORCEMENT AGENCY SHALL DEVELOP A POLICY TO PROVIDE ACCESS TO THE SERVICES REQUIRED BY THIS SECTION AT MINIMAL COST TO A POLICE OFFICER.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

Article – Courts and Judicial Proceedings

5-303.

(a) (1) [Subject to paragraph (2)] EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3) of this subsection, the liability of a local government may not exceed \$400,000 per an individual claim, and \$800,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.

(2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

(3) IF THE LIABILITY OF A LOCAL GOVERNMENT ARISES FROM INTENTIONAL TORTIOUS ACTS OR OMISSIONS OR A VIOLATION OF A CONSTITUTIONAL RIGHT COMMITTED BY A LAW ENFORCEMENT OFFICER, THE FOLLOWING LIMITS ON LIABILITY APPLY:

(I) ~~1.~~ SUBJECT TO ~~ITEM 2 OF THIS ITEM AND~~ ITEM (II) OF THIS PARAGRAPH, THE COMBINED AWARD FOR BOTH ECONOMIC AND NONECONOMIC DAMAGES MAY NOT EXCEED A TOTAL OF \$890,000 FOR ALL CLAIMS ARISING OUT OF THE SAME INCIDENT OR OCCURRENCE, REGARDLESS OF THE NUMBER OF CLAIMANTS OR BENEFICIARIES WHO SHARE IN THE AWARD; AND

~~2. A. THE LIMITATION ON NONECONOMIC DAMAGES PROVIDED UNDER ITEM 1 OF THIS ITEM SHALL INCREASE BY \$15,000 ON OCTOBER 1 EACH YEAR BEGINNING OCTOBER 1, 2022; AND~~

~~B. THE INCREASED AMOUNT SHALL APPLY TO CAUSES OF ACTION ARISING BETWEEN OCTOBER 1 OF THAT YEAR AND SEPTEMBER 30 OF THE FOLLOWING YEAR, INCLUSIVE; AND~~

~~(II) 1. THE LIMITATION ESTABLISHED UNDER ITEM (I) OF THIS PARAGRAPH SHALL APPLY IN A PERSONAL INJURY ACTION TO EACH DIRECT VICTIM OF TORTIOUS CONDUCT AND ALL PERSONS WHO CLAIM INJURY BY OR THROUGH THAT VICTIM; AND~~

(II) ~~2.~~ IN A WRONGFUL DEATH ACTION IN WHICH THERE ARE TWO OR MORE CLAIMANTS OR BENEFICIARIES, AN AWARD FOR NONECONOMIC DAMAGES MAY NOT EXCEED 150% OF THE LIMITATION ESTABLISHED UNDER ITEM (I) OF THIS PARAGRAPH, REGARDLESS OF THE NUMBER OF CLAIMANTS OR BENEFICIARIES WHO SHARE IN THE AWARD.

Article – State Government

12–104.

(a) (1) Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.

(2) (I) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE liability of the State and its units may not exceed \$400,000 to a single claimant for injuries arising from a single incident or occurrence.

(II) IF LIABILITY OF THE STATE OR ITS UNITS ARISES FROM INTENTIONAL TORTIOUS ACTS OR OMISSIONS OR A VIOLATION OF A CONSTITUTIONAL RIGHT COMMITTED BY A LAW ENFORCEMENT OFFICER, THE FOLLOWING LIMITS ON LIABILITY SHALL APPLY:

1. ~~A.~~ SUBJECT TO ~~ITEM B OF THIS ITEM AND ITEM 2~~ OF THIS SUBPARAGRAPH, THE COMBINED AWARD FOR BOTH ECONOMIC AND NONECONOMIC DAMAGES ~~SHALL~~ MAY NOT EXCEED A TOTAL OF \$890,000 FOR ALL CLAIMS ARISING OUT OF THE SAME INCIDENT OR OCCURRENCE, REGARDLESS OF THE NUMBER OF CLAIMANTS OR BENEFICIARIES WHO SHARE IN THE AWARD; AND

~~B.~~ THE LIMITATION ON NONECONOMIC DAMAGES PROVIDED UNDER ITEM A OF THIS ITEM SHALL INCREASE BY \$15,000 ON OCTOBER 1 EACH YEAR BEGINNING OCTOBER 1, 2022; AND

~~C.~~ THE INCREASED AMOUNT SHALL APPLY TO CAUSES OF ACTION ARISING BETWEEN OCTOBER 1 OF THAT YEAR AND SEPTEMBER 30 OF THE FOLLOWING YEAR, INCLUSIVE; AND

~~2. A.~~ THE LIMITATION ESTABLISHED UNDER ITEM 1 OF THIS SUBPARAGRAPH SHALL APPLY IN A PERSONAL INJURY ACTION TO EACH DIRECT VICTIM OF TORTIOUS CONDUCT AND ALL PERSONS WHO CLAIM INJURY BY OR THROUGH THAT VICTIM; AND

~~B.~~ 2. IN A WRONGFUL DEATH ACTION IN WHICH THERE ARE TWO OR MORE CLAIMANTS OR BENEFICIARIES, AN AWARD FOR NONECONOMIC DAMAGES MAY NOT EXCEED 150% OF THE LIMITATION ESTABLISHED UNDER ITEM 1 OF THIS ITEM, REGARDLESS OF THE NUMBER OF CLAIMANTS OR BENEFICIARIES WHO SHARE IN THE AWARD.

SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article General Provisions

4-101.

(a) In this title the following words have the meanings indicated.

(c) "Board" means the State Public Information Act Compliance Board.

~~(I) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THE
PUBLIC SAFETY ARTICLE.~~

~~(i) (J) "Political subdivision" means:~~

~~(1) a county;~~

~~(2) a municipal corporation;~~

~~(3) an unincorporated town;~~

~~(4) a school district; or~~

~~(5) a special district.~~

~~(i) (K) (1) "Public record" means the original or any copy of any
documentary material that:~~

~~(i) is made by a unit or an instrumentality of the State or of a
political subdivision or received by the unit or instrumentality in connection with the
transaction of public business; and~~

~~(ii) is in any form, including:~~

~~1. a card;~~

~~2. a computerized record;~~

~~3. correspondence;~~

~~4. a drawing;~~

~~5. film or microfilm;~~

~~6. a form;~~

~~7. a map;~~

~~8. a photograph or photostat;~~

~~9. a recording; or~~

~~10. a tape.~~

~~(2) "Public record" includes a document that lists the salary of an employee
of a unit or an instrumentality of the State or of a political subdivision.~~

~~(3) "Public record" does not include a digital photographic image or signature of an individual, or the actual stored data of the image or signature, recorded by the Motor Vehicle Administration.~~

~~(L) "TECHNICAL INFRACTION" MEANS A MINOR RULE VIOLATION BY AN INDIVIDUAL SOLELY RELATED TO THE ENFORCEMENT OF ADMINISTRATIVE RULES THAT:~~

~~(1) DOES NOT INVOLVE AN INTERACTION BETWEEN A MEMBER OF THE PUBLIC AND THE INDIVIDUAL;~~

~~(2) DOES NOT RELATE TO THE INDIVIDUAL'S INVESTIGATIVE, ENFORCEMENT, TRAINING, SUPERVISION, OR REPORTING RESPONSIBILITIES; AND~~

~~(3) IS NOT OTHERWISE A MATTER OF PUBLIC CONCERN.~~

~~4-1A-04.~~

~~(a) The Board shall:~~

~~(1) receive, review, and, subject to § 4-1A-07 of this subtitle, resolve complaints filed under § 4-1A-05 of this subtitle from any applicant or the applicant's designated representative alleging that a custodian charged an unreasonable fee under § 4-206 of this title;~~

~~(2) issue a written opinion as to whether a violation has occurred; and~~

~~(3) if the Board finds that the custodian charged an unreasonable fee under § 4-206 of this title, order the custodian to reduce the fee to an amount determined by the Board to be reasonable and refund the difference.~~

~~(B) THE BOARD SHALL:~~

~~(1) RECEIVE, REVIEW, AND RESOLVE COMPLAINTS FILED FROM ANY CUSTODIAN ALLEGING THAT AN APPLICANT'S REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH;~~

~~(2) ISSUE A WRITTEN DECISION AS TO WHETHER THE APPLICANT'S REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH; AND~~

~~(3) IF THE BOARD FINDS THAT THE APPLICANT'S REQUEST OR PATTERN OF REQUESTS IS FRIVOLOUS, VEXATIOUS, OR IN BAD FAITH, BASED ON THE TOTALITY OF THE CIRCUMSTANCES INCLUDING THE NUMBER AND SCOPE OF THE~~

~~APPLICANT'S PAST REQUESTS AND THE CUSTODIAN'S RESPONSES TO PAST REQUESTS AND EFFORTS TO COOPERATE WITH THE APPLICANT, ISSUE AN ORDER AUTHORIZING THE CUSTODIAN TO:~~

~~(I) IGNORE THE REQUEST THAT IS THE SUBJECT OF THE CUSTODIAN'S COMPLAINT; OR~~

~~(II) RESPOND TO A LESS BURDENSOME VERSION OF THE REQUEST WITHIN A REASONABLE TIME FRAME, AS DETERMINED BY THE BOARD.~~

~~(b)(C) The Board shall:~~

~~(1) study ongoing compliance with this title by custodians; and~~

~~(2) make recommendations to the General Assembly for improvements to this title.~~

~~(c)(D) (1) On or before October 1 of each year, the Board shall submit a report to the Governor and, subject to § 2-1257 of the State Government Article, the General Assembly.~~

~~(2) The report shall:~~

~~(i) describe the activities of the Board;~~

~~(ii) describe the opinions of the Board;~~

~~(iii) state the number and nature of complaints filed with the Board; and~~

~~(iv) recommend any improvements to this title.~~

~~4-311.~~

~~(a) Subject to subsection (b) of this section, a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.~~

~~(b) A custodian shall allow inspection by:~~

~~(1) the person in interest;~~

~~(2) an elected or appointed official who supervises the work of the individual; or~~

~~(3) an employee organization described in Title 6 of the Education Article of the portion of the personnel record that contains the individual's:~~

~~(i) home address;~~

~~(ii) home telephone number; and~~

~~(iii) personal cell phone number;~~

~~(4) THE UNITED STATES ATTORNEY;~~

~~(5) THE ATTORNEY GENERAL;~~

~~(6) THE STATE PROSECUTOR; OR~~

~~(7) A STATE'S ATTORNEY.~~

~~(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A RECORD RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION, IS NOT A PERSONNEL RECORD FOR PURPOSES OF THIS SECTION.~~

~~(2) A RECORD OF A TECHNICAL INFRACTION IS A PERSONNEL RECORD FOR THE PURPOSES OF THIS SECTION.~~

~~4-351.~~

~~(a) Subject to [subsection (b)] SUBSECTIONS (B), (C), AND (D) of this section, a custodian may deny inspection of:~~

~~(1) records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;~~

~~(2) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; [or]~~

~~(3) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff; OR~~

~~(4) RECORDS, OTHER THAN A RECORD OF A TECHNICAL INFRACTION, RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT~~

~~BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD,
A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION.~~

~~(b) A custodian may deny inspection by a person in interest only to the extent
that the inspection would:~~

~~(1) interfere with a valid and proper law enforcement proceeding;~~

~~(2) deprive another person of a right to a fair trial or an impartial
adjudication;~~

~~(3) constitute an unwarranted invasion of personal privacy;~~

~~(4) disclose the identity of a confidential source;~~

~~(5) disclose an investigative technique or procedure;~~

~~(6) prejudice an investigation; or~~

~~(7) endanger the life or physical safety of an individual.~~

~~(C) A CUSTODIAN SHALL ALLOW INSPECTION OF A RECORD DESCRIBED IN
SUBSECTION (A)(4) OF THIS SECTION BY:~~

~~(1) THE UNITED STATES ATTORNEY;~~

~~(2) THE ATTORNEY GENERAL;~~

~~(3) THE STATE PROSECUTOR; OR~~

~~(4) A STATE'S ATTORNEY.~~

~~(D) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
CUSTODIAN SHALL DENY INSPECTION OF A RECORD DESCRIBED IN SUBSECTION
(A)(4) OF THIS SECTION:~~

~~(1) IF THE RECORD RELATES TO AN ACTIVE INVESTIGATION; OR~~

~~(2) TO THE EXTENT THAT THE RECORD REFLECTS:~~

~~(I) MEDICAL INFORMATION;~~

~~(II) PERSONAL CONTACT INFORMATION OF THE PERSON IN
INTEREST;~~

~~(HH) INFORMATION RELATING TO THE FAMILY OF THE PERSON IN INTEREST; OR~~

~~(IV) WITNESS INFORMATION.~~

~~(E) A CUSTODIAN SHALL NOTIFY THE PERSON IN INTEREST OF A RECORD DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION WHEN THE RECORD IS INSPECTED, BUT MAY NOT DISCLOSE THE IDENTITY OF THE REQUESTOR TO THE PERSON IN INTEREST.~~

~~SECTION 6. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

Article – Public Safety

SUBTITLE 1. POLICE ACCOUNTABILITY AND DISCIPLINE.

3-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “ADMINISTRATIVELY CHARGED” MEANS THAT A POLICE OFFICER HAS BEEN FORMALLY ACCUSED OF MISCONDUCT IN AN ADMINISTRATIVE PROCEEDING.

(C) “DISCIPLINARY MATRIX” MEANS A WRITTEN, CONSISTENT, PROGRESSIVE, AND TRANSPARENT TOOL OR RUBRIC THAT PROVIDES RANGES OF DISCIPLINARY ACTIONS FOR DIFFERENT TYPES OF MISCONDUCT.

(D) “EXONERATED” MEANS THAT A POLICE OFFICER ACTED IN ACCORDANCE WITH THE LAW AND AGENCY POLICY.

~~(E) “INDEPENDENT INVESTIGATIVE AGENCY” MEANS THE AGENCY ESTABLISHED UNDER § 3-102 OF THIS SUBTITLE.~~

~~(F)~~ (E) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

~~(G)~~ (F) “NOT ADMINISTRATIVELY CHARGED” MEANS THAT A DETERMINATION HAS BEEN MADE NOT TO ADMINISTRATIVELY CHARGE A POLICE OFFICER IN CONNECTION WITH ALLEGED MISCONDUCT.

~~(H)~~ (G) “POLICE MISCONDUCT” MEANS A PATTERN, A PRACTICE, OR CONDUCT BY A POLICE OFFICER OR LAW ENFORCEMENT AGENCY THAT INCLUDES:

1 (1) DEPRIVING PERSONS OF RIGHTS PROTECTED BY THE
2 CONSTITUTION OR LAWS OF THE STATE OR THE UNITED STATES;

3 (2) A VIOLATION OF A CRIMINAL STATUTE; AND

4 (3) A VIOLATION OF LAW ENFORCEMENT AGENCY STANDARDS AND
5 POLICIES.

6 ~~(H)~~ (H) “POLICE OFFICER” HAS THE MEANING STATED IN § 3-201 OF THIS
7 TITLE.

8 ~~(I)~~ (I) “SERIOUS PHYSICAL INJURY” HAS THE MEANING STATED IN §
9 3-201 OF THE CRIMINAL LAW ARTICLE.

10 ~~(J)~~ (J) “SUPERIOR GOVERNMENTAL AUTHORITY” MEANS THE
11 GOVERNING BODY THAT OVERSEES A LAW ENFORCEMENT AGENCY.

12 ~~(K)~~ (K) “UNFOUNDED” MEANS THAT THE ALLEGATIONS AGAINST A
13 POLICE OFFICER ARE NOT SUPPORTED BY FACT.

14 3-102.

15 ~~(A) THE INDEPENDENT INVESTIGATIVE AGENCY IS ESTABLISHED AS AN~~
16 ~~INDEPENDENT UNIT OF STATE GOVERNMENT FOR THE PURPOSE OF INVESTIGATING~~
17 ~~USE OF FORCE INCIDENTS INVOLVING POLICE OFFICERS.~~

18 ~~(B) THE INDEPENDENT INVESTIGATIVE AGENCY MAY EMPLOY SWORN~~
19 ~~POLICE OFFICERS AND CIVILIANS TO CONDUCT ITS WORK.~~

20 ~~(C) A SHOOTING INVOLVING A POLICE OFFICER OR ANOTHER INCIDENT~~
21 ~~INVOLVING THE USE OF PHYSICAL FORCE BY A POLICE OFFICER CAUSING DEATH OR~~
22 ~~SERIOUS PHYSICAL INJURY SHALL BE INVESTIGATED BY THE INDEPENDENT~~
23 ~~INVESTIGATIVE AGENCY.~~

24 ~~(D) A LAW ENFORCEMENT AGENCY SHALL:~~

25 ~~(1) NOTIFY THE INDEPENDENT INVESTIGATIVE AGENCY OF ANY~~
26 ~~ALLEGED OR POTENTIAL SHOOTING INVOLVING A POLICE OFFICER OR ANOTHER~~
27 ~~INCIDENT INVOLVING THE USE OF PHYSICAL FORCE BY A POLICE OFFICER CAUSING~~
28 ~~DEATH OR SERIOUS PHYSICAL INJURY AS SOON AS THE LAW ENFORCEMENT AGENCY~~
29 ~~BECOMES AWARE OF THE INCIDENT; AND~~

~~(2) COOPERATE WITH THE INDEPENDENT INVESTIGATIVE AGENCY IN THE INVESTIGATION OF THE INCIDENT.~~

~~(E) (1) ON COMPLETION OF AN INVESTIGATION UNDER THIS SECTION, THE INDEPENDENT INVESTIGATIVE AGENCY SHALL SUBMIT A REPORT CONTAINING THE FINDINGS OF THE INVESTIGATION TO THE STATE'S ATTORNEY WITH JURISDICTION OVER THE MATTER.~~

~~(2) AFTER THE STATE'S ATTORNEY MAKES A DECISION WHETHER OR NOT TO PROSECUTE, THE INDEPENDENT INVESTIGATIVE AGENCY SHALL PUBLICIZE THE REPORT.~~

~~(F) THE GOVERNOR ANNUALLY SHALL INCLUDE FUNDING IN THE STATE BUDGET SUFFICIENT TO PROVIDE FOR THE FULL AND PROPER OPERATION OF THE INDEPENDENT INVESTIGATIVE AGENCY.~~

~~3-103.~~

(A) EACH COUNTY SHALL HAVE A POLICE ACCOUNTABILITY BOARD TO:

(1) HOLD QUARTERLY MEETINGS WITH HEADS OF LAW ENFORCEMENT AGENCIES AND OTHERWISE WORK WITH LAW ENFORCEMENT AGENCIES AND THE COUNTY GOVERNMENT TO IMPROVE MATTERS OF POLICING;

(2) APPOINT CIVILIAN MEMBERS TO CHARGING COMMITTEES AND TRIAL BOARDS;

(3) RECEIVE COMPLAINTS OF POLICE MISCONDUCT FILED BY MEMBERS OF THE PUBLIC; AND

(4) (I) ON A QUARTERLY BASIS, REVIEW OUTCOMES OF DISCIPLINARY MATTERS CONSIDERED BY CHARGING COMMITTEES; AND

(II) ON OR BEFORE DECEMBER 31 EACH YEAR, SUBMIT A REPORT TO THE GOVERNING BODY OF THE COUNTY THAT:

1. IDENTIFIES ANY TRENDS IN THE DISCIPLINARY PROCESS OF POLICE OFFICERS IN THE COUNTY; AND

2. MAKES RECOMMENDATIONS ON CHANGES TO POLICY THAT WOULD IMPROVE POLICE ACCOUNTABILITY IN THE COUNTY.

(B) (1) (i) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE
MEMBERSHIP OF A POLICE ACCOUNTABILITY BOARD SHALL BE DETERMINED BY THE
LOCAL LEGISLATIVE BODY GOVERNING BODY SHALL:

1. ESTABLISH THE MEMBERSHIP OF A POLICE
ACCOUNTABILITY BOARD;

2. ESTABLISH THE BUDGET AND STAFF FOR A POLICE
ACCOUNTABILITY BOARD;

3. APPOINT A CHAIR OF THE POLICE ACCOUNTABILITY
BOARD WHO HAS RELEVANT EXPERIENCE TO THE POSITION; AND

4. ESTABLISH THE PROCEDURES FOR RECORD KEEPING
BY A POLICE ACCOUNTABILITY BOARD.

(II) AN ACTIVE POLICE OFFICER MAY NOT BE A MEMBER OF A
POLICE ACCOUNTABILITY BOARD.

(2) TO THE EXTENT PRACTICABLE, THE MEMBERSHIP OF A POLICE
ACCOUNTABILITY BOARD SHALL REFLECT THE RACIAL, GENDER, AND CULTURAL
DIVERSITY OF THE COUNTY.

(C) (1) A COMPLAINT OF POLICE MISCONDUCT FILED WITH A POLICE
ACCOUNTABILITY BOARD SHALL INCLUDE:

(I) THE NAME OF THE POLICE OFFICER ACCUSED OF
MISCONDUCT;

(II) A DESCRIPTION OF THE FACTS ON WHICH THE COMPLAINT
IS BASED; AND

(III) CONTACT INFORMATION OF THE COMPLAINANT OR A
PERSON FILING ON BEHALF OF THE COMPLAINANT FOR INVESTIGATIVE
FOLLOW-UP.

(2) A COMPLAINT NEED NOT:

~~(I) INCLUDE IDENTIFYING INFORMATION OF THE~~
~~COMPLAINANT IF THE COMPLAINANT WISHES TO REMAIN ANONYMOUS; OR~~

~~(II) BE NOTARIZED OR SWORN TO UNDER THE PENALTY OF~~
~~PERJURY.~~

1 (D) A COMPLAINT OF POLICE MISCONDUCT FILED WITH A POLICE
2 ACCOUNTABILITY BOARD SHALL BE FORWARDED TO THE APPROPRIATE LAW
3 ENFORCEMENT AGENCY WITHIN 3 DAYS AFTER RECEIPT BY THE BOARD.

4 ~~3-104.~~ 3-103.

5 (A) AN INDIVIDUAL MAY FILE A COMPLAINT OF POLICE MISCONDUCT WITH
6 THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE POLICE OFFICER WHO IS THE
7 SUBJECT OF THE COMPLAINT.

8 (B) (1) A COMPLAINT OF POLICE MISCONDUCT FILED WITH A LAW
9 ENFORCEMENT AGENCY SHALL INCLUDE:

10 (I) THE NAME OF THE POLICE OFFICER ACCUSED OF
11 MISCONDUCT;

12 (II) A DESCRIPTION OF THE FACTS ON WHICH THE COMPLAINT
13 IS BASED; AND

14 (III) CONTACT INFORMATION OF THE COMPLAINANT OR A
15 PERSON FILING ON BEHALF OF THE COMPLAINANT FOR INVESTIGATIVE
16 FOLLOW-UP.

17 (2) A COMPLAINT NEED NOT:

18 ~~(I) INCLUDE IDENTIFYING INFORMATION OF THE~~
19 ~~COMPLAINANT IF THE COMPLAINANT WISHES TO REMAIN ANONYMOUS; OR~~

20 ~~(II) BE NOTARIZED OR SWORN TO UNDER THE PENALTY OF~~
21 ~~PERJURY.~~

22 ~~3-105.~~ 3-104.

23 (A) (1) EACH COUNTY SHALL HAVE ONE ADMINISTRATIVE CHARGING
24 COMMITTEE TO SERVE COUNTYWIDE LAW ENFORCEMENT AGENCIES AND LOCAL
25 LAW ENFORCEMENT AGENCIES WITHIN THE COUNTY.

26 (2) A COUNTY ADMINISTRATIVE CHARGING COMMITTEE SHALL BE
27 COMPOSED OF:

28 (I) THE CHAIR OF THE COUNTY'S POLICE ACCOUNTABILITY
29 BOARD, OR ANOTHER MEMBER OF THE ACCOUNTABILITY BOARD DESIGNATED BY
30 THE CHAIR OF THE ACCOUNTABILITY BOARD;

~~(H) A DESIGNEE OF THE DISTRICT PUBLIC DEFENDER WHO IS:~~

~~1. A RESIDENT OF THE COUNTY;~~

~~2. NOT EMPLOYED BY THE OFFICE OF THE PUBLIC DEFENDER; AND~~

~~3. NOT CURRENTLY REPRESENTING A PARTY AS AN ATTORNEY IN A CRIMINAL MATTER PENDING IN A COURT IN THE COUNTY;~~

~~(HH) A DESIGNEE OF THE STATE'S ATTORNEY FOR THE JURISDICTION WHERE THE ALLEGED MISCONDUCT OCCURRED WHO IS:~~

~~1. A RESIDENT OF THE COUNTY;~~

~~2. NOT EMPLOYED BY THE OFFICE OF THE STATE'S ATTORNEY; AND~~

~~3. NOT CURRENTLY REPRESENTING A PARTY AS AN ATTORNEY IN A CRIMINAL MATTER PENDING IN A COURT IN THE COUNTY;~~

~~(IV) (II) ONE CIVILIAN TWO CIVILIAN MEMBERS SELECTED BY THE COUNTY'S POLICE ACCOUNTABILITY BOARD; AND~~

~~(V) (III) THE LEAD ATTORNEY FOR THE SUPERIOR GOVERNMENTAL AUTHORITY OF THE COUNTY TWO CIVILIAN MEMBERS SELECTED BY THE CHIEF EXECUTIVE OFFICER OF THE COUNTY.~~

(B) (1) THERE SHALL BE AT LEAST ONE STATEWIDE ADMINISTRATIVE CHARGING COMMITTEE TO SERVE STATEWIDE AND BI-COUNTY LAW ENFORCEMENT AGENCIES.

(2) A STATEWIDE ADMINISTRATIVE CHARGING COMMITTEE SHALL BE COMPOSED OF:

~~(I) A DESIGNEE OF THE ATTORNEY GENERAL WHO IS NOT EMPLOYED BY THE OFFICE OF THE ATTORNEY GENERAL, THE OFFICE OF THE STATE PROSECUTOR, OR THE OFFICE OF THE UNITED STATES ATTORNEY;~~

~~(II) A DESIGNEE OF THE PUBLIC DEFENDER OF MARYLAND WHO IS NOT EMPLOYED BY THE OFFICE OF THE PUBLIC DEFENDER;~~

(I) THREE CIVILIAN MEMBERS APPOINTED BY THE GOVERNOR;

1 (II) ONE CIVILIAN MEMBER APPOINTED BY THE PRESIDENT OF
2 THE SENATE; AND

3 (III) ONE CIVILIAN MEMBER APPOINTED BY THE SPEAKER OF THE
4 HOUSE.

5 ~~(III) A DESIGNEE OF THE GOVERNOR'S LEGAL COUNSEL;~~

6 ~~(IV) ONE CIVILIAN APPOINTED BY THE GOVERNOR; AND~~

7 ~~(V) ONE CIVILIAN JOINTLY APPOINTED BY THE SPEAKER OF~~
8 ~~THE HOUSE AND THE PRESIDENT OF THE SENATE.~~

9 (C) BEFORE SERVING AS A MEMBER OF AN ADMINISTRATIVE CHARGING
10 COMMITTEE, AN INDIVIDUAL SHALL RECEIVE TRAINING ON MATTERS RELATING TO
11 POLICE PROCEDURES FROM THE MARYLAND POLICE TRAINING AND STANDARDS
12 COMMISSION.

13 (D) ON COMPLETION OF AN INVESTIGATION OF A COMPLAINT MADE BY A
14 MEMBER OF THE PUBLIC AGAINST A POLICE OFFICER, THE LAW ENFORCEMENT
15 AGENCY SHALL FORWARD TO THE APPROPRIATE ADMINISTRATIVE CHARGING
16 COMMITTEE THE INVESTIGATORY FILES FOR THE MATTER.

17 (E) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL:

18 (1) REVIEW THE FINDINGS OF A LAW ENFORCEMENT AGENCY'S
19 INVESTIGATION CONDUCTED AND FORWARDED IN ACCORDANCE WITH SUBSECTION
20 (D) OF THIS SECTION;

21 (2) MAKE A DETERMINATION THAT THE POLICE OFFICER WHO IS
22 SUBJECT TO INVESTIGATION SHALL BE:

23 (I) ADMINISTRATIVELY CHARGED; OR

24 (II) NOT ADMINISTRATIVELY CHARGED;

25 (3) IF THE POLICE OFFICER IS CHARGED, RECOMMEND DISCIPLINE IN
26 ACCORDANCE WITH THE LAW ENFORCEMENT AGENCY'S DISCIPLINARY MATRIX
27 ESTABLISHED IN ACCORDANCE WITH § 3-106 3-105 OF THIS SUBTITLE;

28 (4) REVIEW ANY BODY CAMERA FOOTAGE THAT MAY BE RELEVANT TO
29 THE MATTERS COVERED IN THE COMPLAINT OF MISCONDUCT;

(5) AUTHORIZE A POLICE OFFICER CALLED TO APPEAR BEFORE AN ADMINISTRATIVE CHARGING COMMITTEE TO BE ACCOMPANIED BY A REPRESENTATIVE;

~~(4)~~ (6) ISSUE A WRITTEN OPINION THAT DESCRIBES IN DETAIL ITS FINDINGS, DETERMINATIONS, AND RECOMMENDATIONS; AND

~~(5)~~ (7) FORWARD THE WRITTEN OPINION TO THE CHIEF OF THE LAW ENFORCEMENT AGENCY, THE POLICE OFFICER, AND THE COMPLAINANT.

(F) IN EXECUTING ITS DUTIES IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION, AN ADMINISTRATIVE CHARGING COMMITTEE MAY:

(1) REQUEST INFORMATION OR ACTION FROM THE LAW ENFORCEMENT AGENCY THAT CONDUCTED THE INVESTIGATION, INCLUDING REQUIRING ADDITIONAL INVESTIGATION AND THE ISSUANCE OF SUBPOENAS;

(2) IF THE POLICE OFFICER IS NOT ADMINISTRATIVELY CHARGED, MAKE A DETERMINATION THAT:

(I) THE ALLEGATIONS AGAINST THE POLICE OFFICER ARE UNFOUNDED; OR

(II) THE POLICE OFFICER IS EXONERATED; AND

(3) RECORD, IN WRITING, A ANY FAILURE OF SUPERVISION THAT CAUSED OR CONTRIBUTED TO A POLICE OFFICER'S MISCONDUCT.

(G) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL MEET ONCE PER MONTH ~~AND ADDITIONALLY~~ OR AS NEEDED.

(H) A MEMBER OF AN ADMINISTRATIVE CHARGING COMMITTEE SHALL MAINTAIN CONFIDENTIALITY RELATING TO A MATTER BEING CONSIDERED BY THE ADMINISTRATIVE CHARGING COMMITTEE UNTIL FINAL DISPOSITION OF THE MATTER.

~~3-106, 3-105.~~

(A) THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION SHALL DEVELOP AND ADOPT, BY REGULATION, A MODEL UNIFORM DISCIPLINARY MATRIX FOR USE BY EACH LAW ENFORCEMENT AGENCY IN THE STATE.

(B) EACH LAW ENFORCEMENT AGENCY SHALL ADOPT THE UNIFORM STATE DISCIPLINARY MATRIX.

1 (C) (1) WITHIN 15 DAYS AFTER AN ADMINISTRATIVE CHARGING
2 COMMITTEE ISSUES AN ADMINISTRATIVE CHARGE AGAINST A POLICE OFFICER, THE
3 CHIEF OF THE LAW ENFORCEMENT AGENCY SHALL OFFER DISCIPLINE TO THE
4 POLICE OFFICER WHO HAS BEEN ADMINISTRATIVELY CHARGED IN ACCORDANCE
5 WITH THE DISCIPLINARY MATRIX.

6 (2) THE CHIEF MAY OFFER THE SAME DISCIPLINE THAT WAS
7 RECOMMENDED BY THE ADMINISTRATIVE CHARGING COMMITTEE OR A HIGHER
8 DEGREE OF DISCIPLINE WITHIN THE APPLICABLE RANGE OF THE DISCIPLINARY
9 MATRIX, BUT MAY NOT DEVIATE BELOW THE DISCIPLINE RECOMMENDED BY THE
10 ADMINISTRATIVE CHARGING COMMITTEE.

11 (3) IF THE POLICE OFFICER ACCEPTS THE CHIEF'S OFFER OF
12 DISCIPLINE, THEN THE OFFERED DISCIPLINE SHALL BE IMPOSED.

13 (4) IF THE POLICE OFFICER DOES NOT ACCEPT THE CHIEF'S OFFER
14 OF DISCIPLINE, THEN THE MATTER SHALL BE REFERRED TO A TRIAL BOARD.

15 (5) AT LEAST 30 DAYS BEFORE A TRIAL BOARD PROCEEDING BEGINS,
16 THE POLICE OFFICER SHALL BE:

17 (I) PROVIDED A COPY OF THE INVESTIGATORY RECORD;

18 (II) NOTIFIED OF THE CHARGES AGAINST THE POLICE OFFICER;

19 AND

20 (III) NOTIFIED OF THE DISCIPLINARY ACTION BEING
21 RECOMMENDED.

22 ~~3-107.~~ 3-106.

23 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
24 EACH LAW ENFORCEMENT AGENCY SHALL ESTABLISH A TRIAL BOARD PROCESS IN
25 ACCORDANCE WITH THIS SECTION TO ADJUDICATE MATTERS FOR WHICH A POLICE
26 OFFICER IS SUBJECT TO DISCIPLINE.

27 (2) A SMALL LAW ENFORCEMENT AGENCY MAY USE THE TRIAL BOARD
28 PROCESS OF ANOTHER LAW ENFORCEMENT AGENCY BY MUTUAL AGREEMENT.

29 (B) A TRIAL BOARD SHALL BE COMPOSED OF:

1 (1) AN ACTIVELY SERVING OR RETIRED ADMINISTRATIVE LAW JUDGE
2 OR A RETIRED JUDGE OF THE DISTRICT COURT OR A CIRCUIT COURT, APPOINTED
3 BY THE CHIEF EXECUTIVE OFFICER OF THE COUNTY;

4 (2) A CIVILIAN WHO IS NOT A MEMBER OF AN ADMINISTRATIVE
5 CHARGING COMMITTEE, APPOINTED BY THE COUNTY'S POLICE ACCOUNTABILITY
6 BOARD; AND

7 (3) A POLICE OFFICER OF EQUAL RANK TO THE POLICE OFFICER WHO
8 IS ACCUSED OF MISCONDUCT APPOINTED BY THE HEAD OF THE LAW ENFORCEMENT
9 AGENCY.

10 (C) BEFORE SERVING AS A MEMBER OF A TRIAL BOARD, AN INDIVIDUAL
11 SHALL RECEIVE TRAINING ON MATTERS RELATING TO POLICE PROCEDURES FROM
12 THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION.

13 (D) PROCEEDINGS OF A TRIAL BOARD SHALL BE OPEN TO THE PUBLIC,
14 EXCEPT TO PROTECT:

15 (1) A VICTIM'S IDENTITY;

16 (2) THE PERSONAL PRIVACY OF AN INDIVIDUAL;

17 (3) A CHILD WITNESS;

18 (4) MEDICAL RECORDS;

19 (5) THE IDENTITY OF A CONFIDENTIAL SOURCE;

20 (6) AN INVESTIGATIVE TECHNIQUE OR PROCEDURE; OR

21 (7) THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.

22 (E) A TRIAL BOARD MAY ADMINISTER OATHS AND ISSUE SUBPOENAS AS
23 NECESSARY TO COMPLETE ITS WORK.

24 ~~(F) A POLICE OFFICER WHO IS THE SUBJECT OF A TRIAL BOARD MAY BE~~
25 ~~COMPELLED TO:~~

26 ~~(1) TESTIFY;~~

27 ~~(2) PRODUCE FINANCIAL RECORDS RELATING TO INCOME AND~~
28 ~~ASSETS; AND~~

~~(3) SUBMIT TO A POLYGRAPH EXAMINATION.~~

~~(G)~~ A COMPLAINANT HAS THE RIGHT TO BE NOTIFIED OF A TRIAL BOARD HEARING AND, EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE RIGHT TO ATTEND A TRIAL BOARD HEARING.

(G) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A LAW ENFORCEMENT AGENCY HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE IN ANY PROCEEDING UNDER THIS SUBTITLE.

(H) A POLICE OFFICER MAY BE DISCIPLINED ONLY FOR CAUSE.

~~(H) (G)~~ (I) (1) WITHIN 30 DAYS AFTER THE DATE OF ISSUANCE OF A DECISION OF A TRIAL BOARD, THE DECISION MAY BE APPEALED BY THE EMPLOYEE:

(I) IF THE TRIAL BOARD IS FROM A LOCAL LAW ENFORCEMENT AGENCY, TO THE CIRCUIT COURT OF THE COUNTY IN WHICH THE LAW ENFORCEMENT AGENCY IS LOCATED; AND

(II) IF THE TRIAL BOARD IS FROM A STATEWIDE OR BI-COUNTY LAW ENFORCEMENT AGENCY, TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY.

(2) AN APPEAL TAKEN UNDER THIS SUBSECTION SHALL BE ON THE RECORD.

~~(I) (H)~~ (J) A TRIAL BOARD DECISION THAT IS NOT APPEALED IS FINAL.

~~3-108. 3-107.~~

(A) (1) PENDING AN INVESTIGATORY, ADMINISTRATIVE CHARGING COMMITTEE, AND TRIAL BOARD PROCESS, THE CHIEF MAY IMPOSE AN EMERGENCY SUSPENSION WITH OR WITHOUT PAY IF THE CHIEF DETERMINES THAT SUCH A SUSPENSION IS IN THE BEST INTEREST OF THE PUBLIC.

(2) AN EMERGENCY SUSPENSION WITHOUT PAY UNDER THIS SUBSECTION MAY NOT EXCEED 30 DAYS.

(3) A POLICE OFFICER WHO IS SUSPENDED WITHOUT PAY UNDER THIS SUBSECTION IS ENTITLED TO RECEIVE BACK PAY IF AN ADMINISTRATIVE CHARGING COMMITTEE DETERMINES NOT TO ADMINISTRATIVELY CHARGE THE POLICE OFFICER IN CONNECTION WITH THE MATTER ON WHICH THE SUSPENSION IS BASED.

~~(B) (1) PENDING AN INVESTIGATORY, ADMINISTRATIVE CHARGING COMMITTEE, TRIAL BOARD, AND CRIMINAL PROSECUTION PROCESS, THE CHIEF SHALL IMPOSE AN EMERGENCY SUSPENSION WITHOUT PAY IF THE POLICE OFFICER IN QUESTION IS CRIMINALLY CHARGED WITH:~~

~~(I) A FELONY;~~

~~(II) A MISDEMEANOR COMMITTED IN THE PERFORMANCE OF DUTIES AS A POLICE OFFICER;~~

~~(III) A MISDEMEANOR RELATED TO DOMESTIC VIOLENCE; OR~~

~~(IV) A MISDEMEANOR INVOLVING DISHONESTY, FRAUD, THEFT, OR MISREPRESENTATION.~~

(B) (1) A CHIEF OR A CHIEF'S DESIGNEE MAY SUSPEND A POLICE OFFICER WITHOUT PAY AND SUSPEND THE POLICE OFFICER'S POLICE POWERS ON AN EMERGENCY BASIS IF THE POLICE OFFICER IS CHARGED WITH:

(I) A DISQUALIFYING CRIME, AS DEFINED IN § 5-101 OF THIS ARTICLE;

(II) A MISDEMEANOR COMMITTED IN THE PERFORMANCE OF DUTIES AS A POLICE OFFICER; OR

(III) A MISDEMEANOR INVOLVING DISHONESTY, FRAUD, THEFT, OR MISREPRESENTATION.

(2) A POLICE OFFICER WHO WAS SUSPENDED WITHOUT PAY UNDER THIS SUBSECTION IS ENTITLED TO RECEIVE BACK PAY IF THE POLICE OFFICER IS FOUND NOT GUILTY OF THE CRIMINAL CHARGE OR CHARGES ON WHICH THE SUSPENSION WAS BASED CRIMINAL CHARGE OR CHARGES AGAINST THE POLICE OFFICER RESULT IN:

(I) A FINDING OF NOT GUILTY;

(II) AN ACQUITTAL;

(III) A DISMISSAL; OR

(IV) A NOLLE PROSEQUI.

(C) (1) THE CHIEF SHALL TERMINATE THE EMPLOYMENT OF A POLICE OFFICER WHO IS CONVICTED OF ~~OR~~ A FELONY.

1 (2) THE CHIEF MAY TERMINATE THE EMPLOYMENT OF A POLICE
2 OFFICER WHO:

3 (1) RECEIVES A PROBATION BEFORE JUDGMENT ~~FOR:~~ FOR

4 ~~(1)~~ A FELONY; OR

5 ~~(2)~~ (II) A IS CONVICTED OF:

6 1. A MISDEMEANOR COMMITTED IN THE PERFORMANCE
7 OF DUTIES AS A POLICE OFFICER;

8 ~~(3)~~ A MISDEMEANOR RELATED TO DOMESTIC VIOLENCE; OR

9 2. MISDEMEANOR SECOND DEGREE ASSAULT; OR

10 ~~(4)~~ 3. A MISDEMEANOR INVOLVING DISHONESTY, FRAUD,
11 THEFT, OR MISREPRESENTATION.

12 (D) (1) IN CONNECTION WITH A DISCIPLINARY MATTER UNDER THIS
13 SUBTITLE, A POLICE OFFICER MAY BE REQUIRED TO SUBMIT TO BLOOD ALCOHOL
14 TESTS, BLOOD, BREATH, OR URINE TESTS FOR CONTROLLED DANGEROUS
15 SUBSTANCES, POLYGRAPH EXAMINATIONS, OR INTERROGATIONS THAT
16 SPECIFICALLY RELATE TO THE SUBJECT MATTER OF THE INVESTIGATION.

17 (2) IF A POLICE OFFICER IS REQUIRED TO SUBMIT TO A TEST,
18 EXAMINATION, OR INTERROGATION ~~DESCRIBED IN~~ UNDER PARAGRAPH (1) OF THIS
19 SUBSECTION AND THE POLICE OFFICER REFUSES TO DO SO, THE LAW
20 ENFORCEMENT AGENCY MAY COMMENCE AN ACTION THAT MAY LEAD TO A PUNITIVE
21 MEASURE AS A RESULT OF THE REFUSAL.

22 (3) (I) IF A POLICE OFFICER IS REQUIRED TO SUBMIT TO A TEST,
23 EXAMINATION, OR INTERROGATION ~~DESCRIBED IN~~ UNDER PARAGRAPH (1) OF THIS
24 SUBSECTION, THE RESULTS OF THE TEST, EXAMINATION, OR INTERROGATION ARE
25 NOT ADMISSIBLE OR DISCOVERABLE IN A CRIMINAL PROCEEDING AGAINST THE
26 POLICE OFFICER.

27 (II) IF A POLICE OFFICER IS REQUIRED TO SUBMIT TO A
28 POLYGRAPH EXAMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE
29 RESULTS OF THE POLYGRAPH EXAMINATION ARE NOT ADMISSIBLE OR
30 DISCOVERABLE IN A CRIMINAL OR CIVIL PROCEEDING AGAINST THE POLICE
31 OFFICER.

~~(E) IN CONNECTION WITH A DISCIPLINARY MATTER UNDER THIS SUBTITLE, FORFEITURE OF A POLICE OFFICER'S PENSION MAY BE IMPOSED AS A DISCIPLINARY ACTION IN ACCORDANCE WITH § 20-210 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.~~

~~3-109, 3-108.~~

(A) (1) A LAW ENFORCEMENT AGENCY SHALL DESIGNATE AN EMPLOYEE AS A VICTIMS' RIGHTS ADVOCATE TO ACT AS THE CONTACT FOR THE PUBLIC WITHIN THE AGENCY ON MATTERS RELATED TO POLICE MISCONDUCT.

(2) A VICTIMS' RIGHTS ADVOCATE SHALL:

(I) EXPLAIN TO A COMPLAINANT:

1. THE COMPLAINT, INVESTIGATION, ADMINISTRATIVE CHARGING COMMITTEE, AND TRIAL BOARD PROCESS;

2. ANY DECISION TO TERMINATE AN INVESTIGATION;

3. AN ADMINISTRATIVE CHARGING COMMITTEE'S DECISION OF ADMINISTRATIVELY CHARGED, NOT ADMINISTRATIVELY CHARGED, UNFOUNDED, OR EXONERATED; AND

4. A TRIAL BOARD'S DECISION;

(II) PROVIDE A COMPLAINANT WITH AN OPPORTUNITY TO REVIEW A POLICE OFFICER'S STATEMENT, IF ANY, BEFORE COMPLETION OF AN INVESTIGATION BY A LAW ENFORCEMENT AGENCY'S INVESTIGATIVE UNIT;

(III) NOTIFY A COMPLAINANT OF THE STATUS OF THE CASE AT EVERY STAGE OF THE PROCESS; AND

(IV) PROVIDE A CASE SUMMARY TO A COMPLAINANT WITHIN 30 DAYS AFTER FINAL DISPOSITION OF THE CASE.

(B) EACH LAW ENFORCEMENT AGENCY SHALL CREATE A DATABASE THAT ENABLES A COMPLAINANT TO ENTER THE COMPLAINANT'S CASE NUMBER TO FOLLOW THE STATUS OF THE CASE AS IT PROCEEDS THROUGH:

(1) INVESTIGATION;

(2) CHARGING;

(3) OFFER OF DISCIPLINE;

(4) TRIAL BOARD;

(5) ULTIMATE DISCIPLINE; AND

(6) APPEAL.

~~(C) (1) THE INVESTIGATING UNIT OF A LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REVIEW A COMPLAINT BY A MEMBER OF THE PUBLIC ALLEGING POLICE OFFICER MISCONDUCT.~~

~~(2) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL REVIEW AND MAKE A DETERMINATION OR ASK FOR FURTHER REVIEW WITHIN 30 DAYS OF COMPLETION OF THE INVESTIGATING UNIT'S REVIEW.~~

~~(3) THE PROCESS OF REVIEW BY THE INVESTIGATING UNIT THROUGH DISPOSITION BY THE ADMINISTRATIVE CHARGING COMMITTEE SHALL BE COMPLETED WITHIN 1 YEAR AND 1 DAY AFTER THE FILING OF A COMPLAINT BY A CITIZEN.~~

~~3-110. 3-109.~~

A POLICE OFFICER WHO IS THE SUBJECT OF A COMPLAINT OF POLICE MISCONDUCT AND A COMPLAINANT HAVE THE RIGHT TO REPRESENTATION MAY HAVE THE ASSISTANCE OF A REPRESENTATIVE IN CONNECTION WITH PROCEEDINGS UNDER THIS SUBTITLE.

~~3-111. 3-110.~~

(A) A POLICE OFFICER MAY NOT BE DISCHARGED, DISCIPLINED, DEMOTED, OR DENIED PROMOTION, TRANSFER, OR REASSIGNMENT, OR OTHERWISE DISCRIMINATED AGAINST OR THREATENED IN REGARD TO THE POLICE OFFICER'S EMPLOYMENT BECAUSE THE POLICE OFFICER:

(1) DISCLOSED INFORMATION THAT EVIDENCES:

(I) MISMANAGEMENT;

(II) A WASTE OF GOVERNMENT RESOURCES;

(III) A DANGER TO PUBLIC HEALTH OR SAFETY; OR

(IV) A VIOLATION OF LAW OR POLICY COMMITTED BY ANOTHER
POLICE OFFICER; OR

(2) LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

(B) A POLICE OFFICER MAY NOT BE DENIED THE RIGHT TO BRING SUIT
ARISING OUT OF THE POLICE OFFICER'S OFFICIAL DUTIES.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A POLICE
OFFICER HAS THE SAME RIGHTS TO ENGAGE IN POLITICAL ACTIVITY AS A STATE
EMPLOYEE.

(2) THIS RIGHT TO ENGAGE IN POLITICAL ACTIVITY DOES NOT APPLY
WHEN THE POLICE OFFICER IS ON DUTY OR ACTING IN AN OFFICIAL CAPACITY.

(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LAW
ENFORCEMENT AGENCY MAY NOT PROHIBIT SECONDARY EMPLOYMENT BY POLICE
OFFICERS.

(2) A LAW ENFORCEMENT AGENCY MAY ADOPT REASONABLE
REGULATIONS THAT RELATE TO SECONDARY EMPLOYMENT BY POLICE OFFICERS.

~~3-112.~~ 3-111.

A LAW ENFORCEMENT AGENCY MAY NOT NEGATE OR ALTER ANY OF THE
REQUIREMENTS OF THIS SUBTITLE THROUGH COLLECTIVE BARGAINING.

~~3-113.~~ 3-112.

~~A RECORD RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION
OF MISCONDUCT BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS
INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A
DISCIPLINARY DECISION, MAY NOT BE:~~

~~(1) EXPUNGED; OR~~

~~(2) DESTROYED BY A LAW ENFORCEMENT AGENCY.~~

A RECORD RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION
OF MISCONDUCT BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS
INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A
DISCIPLINARY DECISION, MAY NOT BE:

(1) EXPUNGED; OR

(2) DESTROYED BY A LAW ENFORCEMENT AGENCY.

3-113.

(A) THE INVESTIGATING UNIT OF A LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REVIEW A COMPLAINT BY A MEMBER OF THE PUBLIC ALLEGING POLICE OFFICER MISCONDUCT.

(B) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL REVIEW AND MAKE A DETERMINATION OR ASK FOR FURTHER REVIEW WITHIN 30 DAYS AFTER COMPLETION OF THE INVESTIGATING UNIT'S REVIEW.

(C) THE PROCESS OF REVIEW BY THE INVESTIGATING UNIT THROUGH DISPOSITION BY THE ADMINISTRATIVE CHARGING COMMITTEE SHALL BE COMPLETED WITHIN 1 YEAR AND 1 DAY AFTER THE FILING OF A COMPLAINT BY A CITIZEN.

3-114.

THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE.

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Public Safety

3-203.

(a) The Commission consists of the following members:

(1) the President of the Maryland Chiefs of Police Association;

(2) the President of the Maryland Sheriffs Association;

(3) the Attorney General of the State;

(4) the Secretary of State Police;

(5) the agent in charge of the Baltimore office of the Federal Bureau of Investigation;

(6) one member representing the Maryland State Lodge of Fraternal Order of Police;

(7) one member representing the Maryland State's Attorneys' Association;

(8) ~~the~~ Chair of the Maryland Municipal League Police Executive Association;

~~(9) the President of Maryland Law Enforcement Officers, Inc.;~~

~~(10)~~ **(9)** the Police Commissioner of Baltimore City;

~~(11)~~ **(10)** the President of the Police Chiefs' Association of Prince George's County;

~~(12)~~ **(11)** a CIVILIAN representative from the Wor-Wic Program Advisory Committee – Criminal Justice; AND

~~(13) two members of the Senate of Maryland, appointed by the President of the Senate;~~

~~(14) two members of the House of Delegates, appointed by the Speaker of the House;] and~~

[(15)] (9) (12) the following individuals, appointed by the Governor with the advice and consent of the Senate:

(i) ~~three~~ police officers, representing different geographic areas of the State;

(ii) ~~one individual~~ CIVILIAN with expertise in community policing WHO DOES NOT HAVE RELATIONSHIPS TO LAW ENFORCEMENT;

~~(iii)~~ **(ii)** one ~~individual~~ CIVILIAN with expertise in policing standards WHO DOES NOT HAVE RELATIONSHIPS TO LAW ENFORCEMENT;

~~(iv)~~ **(iii)** one ~~individual~~ CIVILIAN with expertise in mental health ~~WITHOUT~~ WHO DOES NOT HAVE RELATIONSHIPS TO LAW ENFORCEMENT; and

~~(v)~~ **(iv)** [two] ~~NINE~~ THREE citizens of the State ~~without~~ WHO REPRESENT DIFFERENT GEOGRAPHIC AREAS OF THE STATE AND DO NOT HAVE relationships to law enforcement.

(b) (1) The term of an appointed member is 3 years.

(2) The terms of the appointed members are staggered as required by the terms provided for members of the Commission on October 1, 2016.

(3) At the end of a term, an appointed member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the remainder of the term and until a successor is appointed and qualifies.

(c) Except for the appointed members, a member of the Commission may serve personally at a Commission meeting or may designate a representative from the member's unit, agency, or association who may act at any meeting to the same effect as if the member were personally present.

[(d) The members of the Commission appointed from the Senate of Maryland and the House of Delegates shall serve in an advisory capacity only.]

3-207.

(a) The Commission has the following powers and duties:

(16) to require, for entrance-level police training and, as determined by the Commission, for in-service level training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include, consistent with established law enforcement standards and federal and State constitutional provisions:

(i) training in lifesaving techniques, including Cardiopulmonary Resuscitation (CPR);

(ii) training in the proper level and use of force AS SET FORTH IN THE MARYLAND USE OF FORCE STATUTE UNDER § 3-524 OF THIS TITLE;

(iii) training regarding sensitivity to cultural and gender diversity;
and

(iv) training regarding individuals with physical, intellectual, developmental, and psychiatric disabilities;

(g) The Commission shall develop and administer:

(1) a training program on [the Law Enforcement Officers' Bill of Rights and] matters relating to police procedures for ~~citizens~~ INDIVIDUALS who intend to qualify to participate as a member of a [hearing board under § 3-107 of this title] TRIAL BOARD OR ADMINISTRATIVE CHARGING COMMITTEE UNDER ~~§ 3-525~~ SUBTITLE 1 OF THIS TITLE; AND

(2) A TRAINING PROGRAM ON MATTERS RELATING TO POLICE TRAINING AND STANDARDS FOR CITIZENS WHO ARE APPOINTED TO SERVE AS MEMBERS OF THE COMMISSION.

(J) THE COMMISSION SHALL:

(1) ~~(H)~~ HOLD LAW ENFORCEMENT AGENCIES ACCOUNTABLE FOR VIOLATIONS OF THE USE OF FORCE STATUTE UNDER § 3-524 OF THIS TITLE; AND

~~(H)~~ (2) WORK WITH THE COMPTROLLER AND THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES TO ENSURE THAT STATE GRANT FUNDING IS WITHHELD FROM A LAW ENFORCEMENT AGENCY THAT VIOLATES THE USE OF FORCE STATUTE UNDER § 3-524 OF THIS TITLE;

~~(2) REVOKE THE CERTIFICATION OF A POLICE OFFICER WHO HAS BEEN:~~

~~(I) FOUND TO HAVE VIOLATED THE USE OF FORCE STATUTE UNDER § 3-524 OF THIS TITLE;~~

~~(II) CONVICTED OF A FELONY;~~

~~(III) CONVICTED OF PERJURY OR ANOTHER MISDEMEANOR RELATING TO TRUTHFULNESS AND VERACITY; OR~~

~~(IV) PREVIOUSLY FIRED OR RESIGNED WHILE BEING INVESTIGATED FOR SERIOUS MISCONDUCT OR USE OF EXCESSIVE FORCE; AND~~

~~(3) CREATE A STATEWIDE DATABASE TO TRACK POLICE OFFICER DE CERTIFICATIONS DUE TO IMPROPER USE OF FORCE.~~

(K) THE COMMISSION SHALL:

(1) DEVELOP A TEST AND TRAINING FOR IMPLICIT BIAS, SUBJECT TO THE AVAILABILITY OF IMPLICIT BIAS TESTING STANDARDS THAT ARE GENERALLY ACCEPTED BY EXPERTS IN THE FIELD OF POLICE PSYCHOLOGY;

(2) REQUIRE ALL LAW ENFORCEMENT AGENCIES TO USE THE IMPLICIT BIAS TEST IN THE HIRING PROCESS;

(3) REQUIRE ALL NEW POLICE OFFICERS TO COMPLETE IMPLICIT BIAS TESTING AND TRAINING; AND

(4) REQUIRE ALL INCUMBENT POLICE OFFICERS TO UNDERGO IMPLICIT BIAS TESTING AND TRAINING ON AN ANNUAL BASIS.

3–209.

(a) The Commission shall certify as a police officer each individual who:

(1) (i) satisfactorily meets the standards of the Commission; or

(ii) provides the Commission with sufficient evidence that the individual has satisfactorily completed a training program in another state of equal quality and content as required by the Commission;

(2) submits to a [psychological evaluation] **MENTAL HEALTH SCREENING BY A LICENSED MENTAL HEALTH PROFESSIONAL;**

(3) SUBMITS TO A PHYSICAL AGILITY ASSESSMENT AS DETERMINED BY THE COMMISSION;

[(3)] (4) submits to a criminal history records check in accordance with § 3–209.1 of this subtitle; and

[(4)] (5) (i) is a United States citizen; or

(ii) subject to subsection (b) of this section, is a permanent legal resident of the United States and an honorably discharged veteran of the United States armed forces, provided that the individual has applied to obtain United States citizenship and the application is still pending approval.

(b) The certification of a police officer who fails to obtain United States citizenship as required by subsection (a)(4)(ii) of this section shall be terminated by the Commission.

(c) The Commission may certify as a police officer an individual who is not considered a police officer under § 3–201(f)(3) of this subtitle if the individual meets the selection and training standards of the Commission.

(d) Each certificate issued to a police officer under this subtitle remains the property of the Commission.

(E) AS A CONDITION OF CERTIFICATION, A POLICE OFFICER SHALL ~~ANNUALLY~~ SUBMIT TO A MENTAL HEALTH ASSESSMENT EVERY 2 YEARS AND ~~A AN~~ ANNUAL PHYSICAL AGILITY ASSESSMENT TO ESTABLISH CONTINUING FITNESS TO CARRY OUT ~~THE DUTIES OF~~ THE OFFICER'S ASSIGNED DUTIES AS A POLICE OFFICER.

(F) PRIOR MARIJUANA USE IS NOT A DISQUALIFIER FOR CERTIFICATION AS A POLICE OFFICER.

1 3-212.

2 (a) **(1)** Subject to the hearing provisions of subsection (b) of this section, the
3 Commission may suspend or revoke the certification of a police officer if the police officer:

4 **[(1)] (I)** violates or fails to meet the Commission's standards;

5 **(II)** **VIOLATES THE MARYLAND USE OF FORCE STATUTE UNDER**
6 **§ 3-524 OF THIS TITLE; OR**

7 **[(2)] (III)** knowingly fails to report suspected child abuse in violation of §
8 5-704 of the Family Law Article.

9 **(2) THE COMMISSION SHALL REVOKE THE CERTIFICATION OF A**
10 **POLICE OFFICER WHO WAS:**

11 **(I)** **CONVICTED OF A FELONY;**

12 **(II)** **CONVICTED OF PERJURY OR ANOTHER MISDEMEANOR**
13 **RELATING TO TRUTHFULNESS AND VERACITY; OR**

14 **(III)** **PREVIOUSLY FIRED OR RESIGNED WHILE BEING**
15 **INVESTIGATED FOR SERIOUS MISCONDUCT OR USE OF EXCESSIVE FORCE.**

16 (b) (1) Except as otherwise provided in Title 10, Subtitle 2 of the State
17 Government Article, before the Commission takes any final action under subsection [(a)]
18 **(A)(1)** of this section, the Commission shall give the individual against whom the action is
19 contemplated an opportunity for a hearing before the Commission.

20 (2) The Commission shall give notice and hold the hearing in accordance
21 with Title 10, Subtitle 2 of the State Government Article.

22 (c) A police officer aggrieved by the findings and order of the Commission may
23 take an appeal as allowed in §§ 10-222 and 10-223 of the State Government Article.

24 **(D) THE COMMISSION SHALL CREATE A STATEWIDE DATABASE TO TRACK**
25 **POLICE OFFICER DECERTIFICATIONS DUE TO IMPROPER USE OF FORCE.**

26 *SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland read*
27 *as follows:*

28 *Article – Public Safety*

29 3-215.

(a) (1) In this section the following words have the meanings indicated.

(2) “Permanent appointment” means the appointment of an individual who has satisfactorily met the minimum standards of the Commission and is certified as a police officer.

(3) “Police administrator” means a police officer who has been promoted to first-line administrative duties up to but not exceeding the rank of captain.

(4) “Police supervisor” means a police officer who has been promoted to first-line supervisory duties.

(b) An individual may not be given or accept a probationary appointment or permanent appointment as a police officer, police supervisor, or police administrator unless the individual satisfactorily meets the qualifications established by the Commission.

(C) (1) AN INDIVIDUAL WHO APPLIES FOR A POSITION AS POLICE OFFICER SHALL:

(I) UNDER PENALTY OF PERJURY, DISCLOSE TO THE HIRING LAW ENFORCEMENT AGENCY ALL PRIOR INSTANCES OF EMPLOYMENT AS A POLICE OFFICER AT OTHER LAW ENFORCEMENT AGENCIES; AND

(II) AUTHORIZE THE HIRING LAW ENFORCEMENT AGENCY TO OBTAIN THE POLICE OFFICER’S FULL PERSONNEL AND DISCIPLINARY RECORD FROM EACH LAW ENFORCEMENT AGENCY THAT PREVIOUSLY EMPLOYED THE POLICE OFFICER.

(2) THE HIRING LAW ENFORCEMENT AGENCY SHALL CERTIFY TO THE COMMISSION THAT THE LAW ENFORCEMENT AGENCY HAS REVIEWED THE APPLICANT’S DISCIPLINARY RECORD.

~~(D)~~ **(D)** A probationary appointment as a police officer, police supervisor, or police administrator may be made for a period not exceeding 1 year to enable the individual seeking permanent appointment to take a training course required by this subtitle.

~~(E)~~ **(E)** A probationary appointee is entitled to a leave of absence with pay during the period of the training program.

~~(F)~~ **(F) PRIOR MARIJUANA USE MAY NOT BE THE BASIS FOR DISQUALIFYING AN APPLICANT FOR A POSITION AS A POLICE OFFICER.**

3-508.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "COMMISSION" MEANS THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION.

(3) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(4) "OFFICE" MEANS THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES.

(5) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(6) "SWAT TEAM" MEANS A SPECIAL UNIT COMPOSED OF TWO OR MORE POLICE OFFICERS WITHIN A LAW ENFORCEMENT AGENCY TRAINED TO DEAL WITH UNUSUALLY DANGEROUS OR VIOLENT SITUATIONS AND HAVING SPECIAL EQUIPMENT AND WEAPONS, INCLUDING RIFLES MORE POWERFUL THAN THOSE CARRIED BY REGULAR POLICE OFFICERS.

(B) EVERY 6 MONTHS, BEGINNING JULY 1, 2022, A LAW ENFORCEMENT AGENCY THAT MAINTAINS A SWAT TEAM SHALL REPORT THE FOLLOWING INFORMATION TO THE OFFICE USING THE FORMAT DEVELOPED UNDER SUBSECTION (C) OF THIS SECTION:

(1) THE NUMBER OF TIMES THE SWAT TEAM WAS ACTIVATED AND DEPLOYED BY THE LAW ENFORCEMENT AGENCY IN THE PREVIOUS 6 MONTHS;

(2) THE NAME OF THE COUNTY OR COUNTY AND MUNICIPAL CORPORATION AND THE ZIP CODE OF THE LOCATION WHERE THE SWAT TEAM WAS DEPLOYED FOR EACH ACTIVATION;

(3) THE REASON FOR EACH ACTIVATION AND DEPLOYMENT OF THE SWAT TEAM;

(4) THE LEGAL AUTHORITY, INCLUDING TYPE OF WARRANT, IF ANY, FOR EACH ACTIVATION AND DEPLOYMENT OF THE SWAT TEAM; AND

(5) THE RESULT OF EACH ACTIVATION AND DEPLOYMENT OF THE SWAT TEAM, INCLUDING:

(I) THE NUMBER OF ARRESTS MADE, IF ANY;

1 (II) WHETHER PROPERTY WAS SEIZED;

2 (III) WHETHER A FORCIBLE ENTRY WAS MADE;

3 (IV) WHETHER A WEAPON WAS DISCHARGED BY A SWAT TEAM
4 MEMBER; AND

5 (V) WHETHER A PERSON OR DOMESTIC ANIMAL WAS INJURED
6 OR KILLED BY A SWAT TEAM MEMBER.

7 (C) THE COMMISSION, IN CONSULTATION WITH THE OFFICE, SHALL
8 DEVELOP A STANDARDIZED FORMAT THAT EACH LAW ENFORCEMENT AGENCY
9 SHALL USE IN REPORTING DATA TO THE OFFICE UNDER SUBSECTION (B) OF THIS
10 SECTION.

11 (D) A LAW ENFORCEMENT AGENCY SHALL:

12 (1) COMPILE THE DATA DESCRIBED IN SUBSECTION (B) OF THIS
13 SECTION FOR EACH 6-MONTH PERIOD AS A REPORT IN THE FORMAT REQUIRED
14 UNDER SUBSECTION (C) OF THIS SECTION; AND

15 (2) NOT LATER THAN THE 15TH DAY OF THE MONTH FOLLOWING THE
16 6-MONTH PERIOD THAT IS THE SUBJECT OF THE REPORT, SUBMIT THE REPORT TO:

17 (I) THE OFFICE; AND

18 (II) 1. THE LOCAL GOVERNING BODY OF THE JURISDICTION
19 SERVED BY THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE SWAT TEAM
20 THAT IS THE SUBJECT OF THE REPORT; OR

21 2. IF THE JURISDICTION SERVED BY THE LAW
22 ENFORCEMENT AGENCY THAT EMPLOYS THE SWAT TEAM THAT IS THE SUBJECT OF
23 THE REPORT IS A MUNICIPAL CORPORATION, THE CHIEF EXECUTIVE OFFICER OF
24 THE JURISDICTION.

25 (E) (1) THE OFFICE SHALL ANALYZE AND SUMMARIZE THE REPORTS OF
26 LAW ENFORCEMENT AGENCIES SUBMITTED UNDER SUBSECTION (D) OF THIS
27 SECTION.

28 (2) BEFORE SEPTEMBER 1 EACH YEAR, THE OFFICE SHALL:

29 (I) SUBMIT A REPORT OF THE ANALYSES AND SUMMARIES OF
30 THE REPORTS OF LAW ENFORCEMENT AGENCIES DESCRIBED IN PARAGRAPH (1) OF
31 THIS SUBSECTION TO THE GOVERNOR, THE GENERAL ASSEMBLY AS PROVIDED IN §

1 **2-1257 OF THE STATE GOVERNMENT ARTICLE, AND EACH LAW ENFORCEMENT**
2 **AGENCY; AND**

3 (II) PUBLISH THE REPORT ON ITS WEBSITE.

4 (F) (1) IF A LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE
5 REPORTING PROVISIONS OF THIS SECTION, THE OFFICE SHALL REPORT THE
6 NONCOMPLIANCE TO THE COMMISSION.

7 (2) ON RECEIPT OF A REPORT OF NONCOMPLIANCE, THE
8 COMMISSION SHALL CONTACT THE LAW ENFORCEMENT AGENCY AND REQUEST
9 THAT THE AGENCY COMPLY WITH THE REQUIRED REPORTING PROVISIONS.

10 (3) IF THE LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE
11 REQUIRED REPORTING PROVISIONS OF THIS SECTION WITHIN 30 DAYS AFTER BEING
12 CONTACTED BY THE COMMISSION WITH A REQUEST TO COMPLY, THE OFFICE AND
13 THE COMMISSION JOINTLY SHALL REPORT THE NONCOMPLIANCE TO THE
14 GOVERNOR AND THE LEGISLATIVE POLICY COMMITTEE OF THE GENERAL
15 ASSEMBLY.

16 ~~§ 511.~~

17 ~~(A) On or before January 1, 2016, the Maryland Police Training and Standards~~
18 ~~Commission shall develop and publish online a policy for the issuance and use of a~~
19 ~~body worn camera by a law enforcement officer that addresses:~~

20 ~~(1) the testing of body worn cameras to ensure adequate functioning;~~

21 ~~(2) the procedure for the law enforcement officer to follow if the camera~~
22 ~~fails to properly operate at the beginning of or during the law enforcement officer's shift;~~

23 ~~(3) when recording is mandatory;~~

24 ~~(4) when recording is prohibited;~~

25 ~~(5) when recording is discretionary;~~

26 ~~(6) when recording may require consent of a subject being recorded;~~

27 ~~(7) when a recording may be ended;~~

28 ~~(8) providing notice of recording;~~

29 ~~(9) access to and confidentiality of recordings;~~

~~(10) the secure storage of data from a body worn camera;~~

~~(11) review and use of recordings;~~

~~(12) retention of recordings;~~

~~(13) dissemination and release of recordings;~~

~~(14) consequences for violations of the agency's body worn camera policy;~~

~~(15) notification requirements when another individual becomes a party to the communication following the initial notification;~~

~~(16) specific protections for individuals when there is an expectation of privacy in private or public places; and~~

~~(17) any additional issues determined to be relevant in the implementation and use of body worn cameras by law enforcement officers.~~

~~(B) ON OR BEFORE JANUARY 1, 2025, EACH LAW ENFORCEMENT AGENCY SHALL REQUIRE THE USE OF BODY WORN CAMERAS.~~

~~(C) A BODY WORN CAMERA THAT POSSESSES THE TECHNOLOGICAL CAPABILITY SHALL AUTOMATICALLY RECORD AND SAVE AT LEAST 60 SECONDS OF VIDEO FOOTAGE IMMEDIATELY PRIOR TO THE OFFICER ACTIVATING THE RECORD BUTTON ON THE DEVICE.~~

~~(D) A LAW ENFORCEMENT AGENCY MAY NOT NEGATE OR ALTER ANY OF THE REQUIREMENTS OR POLICIES ESTABLISHED IN ACCORDANCE WITH THIS SECTION THROUGH COLLECTIVE BARGAINING.~~

3-514.

(A) Each law enforcement agency shall require a [law enforcement] POLICE officer who was involved in a use of force incident in the line of duty to file an incident report regarding the use of force by the end of the officer's shift unless the officer is disabled.

(B) (1) ON OR BEFORE MARCH 1 EACH YEAR, EACH LAW ENFORCEMENT AGENCY SHALL SUBMIT TO THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION THE NUMBER OF USE OF FORCE COMPLAINTS MADE AGAINST ITS POLICE OFFICERS DURING THE PREVIOUS CALENDAR YEAR, AGGREGATED BY NUMBERS OF COMPLAINTS ADMINISTRATIVELY CHARGED, NOT CHARGED, UNFOUNDED, AND EXONERATED.

(2) ON OR BEFORE JULY 15 EACH YEAR, THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION SHALL POST ON ITS WEBSITE AND SUBMIT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, A COMPENDIUM OF THE INFORMATION SUBMITTED BY LAW ENFORCEMENT AGENCIES UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) IF A LAW ENFORCEMENT AGENCY HAS NOT SUBMITTED THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION BY JULY 1 FOR THE PREVIOUS CALENDAR YEAR, THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES MAY NOT MAKE ANY GRANT FUNDS AVAILABLE TO THAT LAW ENFORCEMENT AGENCY.

~~3-515.~~

(a) (1) Except as provided in [subsection (b) of this section] PARAGRAPH (2) OF THIS SUBSECTION, each law enforcement agency shall post all of the official policies of the law enforcement agency, including public complaint procedures and collective bargaining agreements:

[(1)] (I) on the website of the Maryland Police Training and Standards Commission; and

[(2)] (II) on the agency's own website, if the agency maintains a website.

[(b)] (2) A chief may prohibit the posting under this [section] SUBSECTION of administrative or operational policies that if disclosed would jeopardize operations or create a risk to public or officer safety, including policies related to high-risk prisoner transport security measures, operational response to active shooters, or the use of confidential informants.

(B) EACH LAW ENFORCEMENT AGENCY SHALL POST IN A PROMINENT PUBLIC LOCATION AN EXPLANATION OF THE PROCEDURES FOR FILING:

(1) A COMPLAINT OF POLICE OFFICER MISCONDUCT; AND

(2) A REQUEST TO OBTAIN RECORDS RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT BY A POLICE OFFICER UNDER THE PUBLIC INFORMATION ACT.

~~3-516.~~

~~**(a) Each law enforcement agency shall establish a [confidential and nonpunitive] DATA-BASED early intervention [policy for counseling officers who receive three or more citizen complaints within a 12-month period] SYSTEM, BASED ON GUIDELINES DEVELOPED BY THE COMMISSION, TO IDENTIFY POLICE OFFICERS WHO ARE AT RISK**~~

~~FOR ENGAGING IN THE USE OF EXCESSIVE FORCE AND TO PROVIDE ALL OFFICERS WHO ARE IDENTIFIED WITH RETRAINING AND BEHAVIORAL INTERVENTIONS, REASSIGNMENTS, OR OTHER APPROPRIATE RESPONSES TO REDUCE THE RISK OF THE USE OF EXCESSIVE FORCE.~~

~~(b) THE COMMISSION SHALL DEVELOP GUIDELINES FOR AN EARLY INTERVENTION SYSTEM REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.~~

~~(c) A policy described in this section may not prevent the investigation of or imposition of discipline for any particular complaint.~~

~~§ 523.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "INDEPENDENT INVESTIGATIVE AGENCY" MEANS AN INDEPENDENT UNIT OF STATE GOVERNMENT THAT MAY EMPLOY SWORN POLICE OFFICERS AND CIVILIANS FOR THE PURPOSE OF INVESTIGATING USE OF FORCE INCIDENTS INVOLVING POLICE OFFICERS.~~

~~(3) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(4) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(5) "SERIOUS INJURY" HAS THE MEANING STATED IN § 3-201 OF THE CRIMINAL LAW ARTICLE.~~

~~(B) A SHOOTING INVOLVING A POLICE OFFICER OR OTHER INCIDENT INVOLVING THE USE OF PHYSICAL FORCE BY A POLICE OFFICER CAUSING DEATH OR SERIOUS INJURY SHALL BE INVESTIGATED BY THE INDEPENDENT INVESTIGATIVE AGENCY.~~

~~(C) A LAW ENFORCEMENT AGENCY SHALL:~~

~~(1) NOTIFY THE INDEPENDENT INVESTIGATIVE AGENCY OF ANY ALLEGED OR POTENTIAL SHOOTING INVOLVING A POLICE OFFICER OR OTHER INCIDENT INVOLVING THE USE OF PHYSICAL FORCE BY A POLICE OFFICER CAUSING DEATH OR SERIOUS INJURY AS SOON AS THE LAW ENFORCEMENT AGENCY BECOMES AWARE OF THE INCIDENT; AND~~

~~(2) COOPERATE WITH THE INDEPENDENT INVESTIGATIVE AGENCY IN THE INVESTIGATION OF THE INCIDENT.~~

~~(D) (1) ON COMPLETION OF AN INVESTIGATION UNDER THIS SECTION, THE INDEPENDENT INVESTIGATIVE AGENCY SHALL SUBMIT A REPORT CONTAINING THE FINDINGS OF THE INVESTIGATION TO THE STATE'S ATTORNEY WITH JURISDICTION OVER THE MATTER.~~

~~(2) AFTER THE STATE'S ATTORNEY MAKES A DECISION WHETHER OR NOT TO PROSECUTE, THE INDEPENDENT INVESTIGATIVE AGENCY SHALL PUBLICIZE THE REPORT.~~

~~(E) THE GOVERNOR ANNUALLY SHALL INCLUDE FUNDING IN THE STATE BUDGET SUFFICIENT TO PROVIDE FOR THE FULL AND PROPER OPERATION OF THE INDEPENDENT INVESTIGATIVE AGENCY.~~

~~3-524.~~

~~(A) THIS SECTION SHALL BE KNOWN AS THE MARYLAND USE OF FORCE STATUTE.~~

~~(B) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "DEADLY FORCE" MEANS ANY FORCE THAT IS LIKELY TO CAUSE DEATH OR SERIOUS INJURY.~~

~~(2) "DESTRUCTIVE DEVICE" HAS THE MEANING STATED IN § 4-501 OF THE CRIMINAL LAW ARTICLE.~~

~~(3) "FIREARM SILENCER" HAS THE MEANING STATED IN § 5-621 OF THE CRIMINAL LAW ARTICLE.~~

~~(3) (4) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(4) (5) "LESS LETHAL WEAPON" MEANS A WEAPON THAT IS EXPECTED TO CREATE LESS RISK OF CAUSING SERIOUS INJURY OR DEATH.~~

~~(5) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(6) "SERIOUS INJURY" MEANS PERMANENT IMPAIRMENT OR DISFIGUREMENT.~~

~~(6) (i) "LETHAL FORCE" MEANS ANY FORCE THAT CREATES A
SUBSTANTIAL RISK OF DEATH OR SERIOUS PHYSICAL INJURY, WHETHER OR NOT
INTENDED TO CAUSE DEATH OR SERIOUS PHYSICAL INJURY.~~

~~(ii) "LETHAL FORCE" INCLUDES:~~

~~1. THE DISCHARGE OF A FIREARM AT A PERSON;~~

~~2. A STRIKE TO A PERSON'S HEAD, NECK, STERNUM,
SPINE, GROIN, OR KIDNEYS USING ANY HARD OBJECT;~~

~~3. A STRIKE TO A PERSON'S HEAD AGAINST A HARD,
FIXED OBJECT;~~

~~4. A KICK OR STRIKE TO A PERSON'S HEAD USING A KNEE
OR FOOT;~~

~~5. A STRIKE TO A PERSON'S THROAT;~~

~~6. A KNEE DROP ON THE HEAD, NECK, OR TORSO OF A
PERSON IN A PRONE OR SUPINE POSITION;~~

~~7. A MANEUVER THAT RESTRICTS BLOOD OR OXYGEN
FLOW TO THE BRAIN, INCLUDING CHOKEHOLDS, STRANGLEHOLDS, NECK
RESTRAINTS, NECK HOLDS, AND CAROTID ARTERY RESTRAINTS;~~

~~8. ANY CONTACT WITH THE NECK THAT MAY INHIBIT
BREATHING OR BLOOD FLOW, OR THAT APPLIES PRESSURE TO THE FRONT, SIDE, OR
BACK OF THE NECK;~~

~~9. THE DISCHARGE OF A LESS LETHAL KINETIC IMPACT
PROJECTILE LAUNCHER AT A PERSON'S HEAD, NECK, CHEST, OR BACK; AND~~

~~10. MORE THAN ONE DISCHARGE OF AN ELECTRONIC
CONTROL DEVICE ON A PERSON.~~

~~(7) "POLICE OFFICER" MEANS:~~

~~(i) A POLICE OFFICER AS DEFINED IN § 3-201 OF THIS TITLE;
OR~~

~~(ii) A SPECIAL POLICE OFFICER AS DEFINED IN § 3-301 OF THIS
TITLE.~~

~~(8) "PROPORTIONAL" MEANS NOT EXCESSIVE IN RELATION TO A
DIRECT AND LEGITIMATE LAW ENFORCEMENT OBJECTIVE.~~

~~(9) "SERIOUS PHYSICAL INJURY" HAS THE MEANING STATED IN §
3-201 OF THE CRIMINAL LAW ARTICLE.~~

~~(10) "TOTALITY OF THE CIRCUMSTANCES" MEANS ALL CREDIBLE
FACTS KNOWN TO A POLICE OFFICER, OR THAT COULD HAVE BEEN ASCERTAINED BY
THE POLICE OFFICER THROUGH VISUAL OBSERVATION, TOUCH, OR AUDIBLE
MECHANISMS UNDER THE CIRCUMSTANCES CONFRONTING THE POLICE OFFICER
LEADING UP TO AND AT THE TIME OF THE USE OF FORCE, INCLUDING:~~

~~(I) ACTIONS OF A PERSON AGAINST WHOM THE POLICE
OFFICER USES FORCE; AND~~

~~(II) ACTIONS OF THE POLICE OFFICER.~~

~~(C) (1) EACH POLICE OFFICER SHALL SIGN AN AFFIRMATIVE WRITTEN
SANCTITY OF LIFE PLEDGE TO RESPECT EVERY HUMAN LIFE AND ACT WITH
COMPASSION TOWARD OTHERS.~~

~~(2) A POLICE OFFICER MAY ONLY USE THE FORCE THAT IS
OBJECTIVELY REASONABLE AND APPEARS TO BE NECESSARY UNDER THE
CIRCUMSTANCES IN RESPONSE TO THE THREAT OR RESISTANCE BY ANOTHER
PERSON.~~

~~(2) (I) A POLICE OFFICER MAY NOT USE FORCE AGAINST A PERSON
UNLESS THE FORCE IS NECESSARY FORCE AND PROPORTIONAL TO:~~

~~1. PREVENT AN IMMINENT THREAT OF PHYSICAL INJURY
TO A PERSON; OR~~

~~2. EFFECTUATE AN ARREST OF A PERSON WHO THE
OFFICER HAS PROBABLE CAUSE TO BELIEVE HAS COMMITTED A CRIME, TAKING
INTO CONSIDERATION THE SERIOUSNESS OF THE ALLEGED CRIME.~~

~~(II) A POLICE OFFICER MAY USE FORCE ONLY AFTER
EXHAUSTING REASONABLE ALTERNATIVES TO THE USE OF FORCE, AND ONLY UNTIL
THE USE OF FORCE ACCOMPLISHES A LEGITIMATE LAW ENFORCEMENT OBJECTIVE.~~

~~(III) A POLICE OFFICER SHALL CEASE THE USE OF FORCE AS
SOON AS:~~

~~1. THE PERSON ON WHOM FORCE IS USED:~~

~~A. IS UNDER THE POLICE OFFICER'S CONTROL; OR~~

~~B. NO LONGER POSES AN IMMINENT THREAT OF
PHYSICAL INJURY OR DEATH TO THE POLICE OFFICER OR TO ANOTHER PERSON; OR~~

~~2. THE POLICE OFFICER DETERMINES THAT FORCE WILL
NO LONGER ACCOMPLISH, OR IS NO LONGER REASONABLE AND PROPORTIONAL TO
ACCOMPLISH, A LEGITIMATE LAW ENFORCEMENT OBJECTIVE.~~

~~(3) A POLICE OFFICER MAY NOT USE LETHAL FORCE AGAINST A
PERSON UNLESS:~~

~~(I) LETHAL NECESSARY FORCE IS USED AS A LAST RESORT TO
PREVENT IMMINENT THREAT OF DEATH OR SERIOUS PHYSICAL INJURY TO THE
POLICE OFFICER OR ANOTHER PERSON;~~

~~(II) THE USE OF LETHAL FORCE PRESENTS NO SUBSTANTIAL
RISK OF INJURY TO A THIRD PERSON; AND~~

~~(III) ALL REASONABLE ALTERNATIVES TO THE USE OF DEADLY
FORCE HAVE BEEN EXHAUSTED.~~

~~(3) (4) A POLICE OFFICER SHALL:~~

~~(I) WHEN TIME, CIRCUMSTANCES, AND SAFETY ALLOW, TAKE
STEPS TO GAIN COMPLIANCE AND DE ESCALATE CONFLICT WITHOUT USING
PHYSICAL FORCE;~~

~~(II) INTERVENE TO PREVENT OR TERMINATE THE USE OF FORCE
BY ANOTHER POLICE OFFICER BEYOND WHAT IS OBJECTIVELY REASONABLE UNDER
THE CIRCUMSTANCES AUTHORIZED UNDER PARAGRAPHS (2) AND (3) OF THIS
SUBSECTION;~~

~~(III) RENDER BASIC FIRST AID TO A PERSON INJURED AS A
RESULT OF POLICE ACTION AND PROMPTLY REQUEST MEDICAL ASSISTANCE; AND~~

~~(IV) FULLY DOCUMENT ALL USE OF FORCE INCIDENTS THAT THE
OFFICER OBSERVED OR WAS INVOLVED IN.~~

~~(4) (5) A POLICE SUPERVISOR SHALL:~~

~~(I) RESPOND TO THE SCENE OF ANY INCIDENT DURING WHICH
A POLICE OFFICER USED PHYSICAL FORCE AND CAUSED PHYSICAL INJURY; AND~~

~~(II) GATHER AND REVIEW ALL KNOWN VIDEO RECORDINGS OF A
USE OF FORCE INCIDENT.~~

~~(5) (6) A LAW ENFORCEMENT AGENCY SHALL:~~

~~(I) HAVE A WRITTEN DE-ESCALATION OF FORCE POLICY; AND~~

~~(II) ADOPT A WRITTEN POLICY REQUIRING SUPERVISORY AND
COMMAND-LEVEL REVIEW OF ALL USE OF FORCE INCIDENTS.~~

~~(6) (7) A POLICE OFFICER SHALL:~~

~~(I) UNDERGO TRAINING ON WHEN A POLICE OFFICER MAY OR
MAY NOT DRAW A FIREARM OR POINT A FIREARM AT A PERSON AND ENFORCEMENT
OPTIONS THAT ARE LESS LIKELY TO CAUSE DEATH OR SERIOUS INJURY, INCLUDING
SCENARIO-BASED TRAINING, DE-ESCALATION TACTICS AND TECHNIQUES, AND
REASONABLE ALTERNATIVES TO DECREASE PHYSICAL INJURY; AND~~

~~(II) SIGN A TRAINING COMPLETION DOCUMENT STATING THAT
THE OFFICER UNDERSTANDS AND SHALL COMPLY WITH THE MARYLAND USE OF
FORCE STATUTE.~~

~~(7) A POLICE OFFICER MAY ONLY USE DEADLY FORCE TO STOP AN
IMMINENT THREAT OF DEATH OR SERIOUS INJURY TO THE OFFICER OR ANOTHER
PERSON.~~

~~(8) ALL POLICE OFFICERS SHALL:~~

~~(I) UNDERGO LESS LETHAL FORCE TRAINING; AND~~

~~(II) BE TRAINED AND EQUIPPED WITH LESS LETHAL WEAPONS
THAT MAY ASSIST THE OFFICER IN CONTROLLING RESISTANT OR ASSAULTIVE
BEHAVIOR.~~

~~(9) A POLICE OFFICER MAY NOT:~~

~~(I) DISCHARGE A FIREARM AT A MOVING VEHICLE UNLESS:~~

~~1. THE VEHICLE IS BEING USED AS A DEADLY WEAPON
TOWARD THE OFFICER OR ANOTHER PERSON; AND~~

~~2. DEADLY FORCE IS THE ONLY REASONABLE MEANS
AVAILABLE TO STOP THE THREAT; OR~~

~~(H) USE A CHOKEHOLD, NECK RESTRAINT, OR ANY OTHER TYPE
OF RESTRAINT THAT RESTRICTS BLOOD FLOW OR BREATH ON ANOTHER PERSON.~~

~~(10) (9) A LAW ENFORCEMENT AGENCY MAY NOT ACQUIRE A
SURPLUS ARMORED OR WEAPONIZED VEHICLE RECEIVE THE FOLLOWING,
WHETHER ASSEMBLED OR IN PARTS, FROM A SURPLUS PROGRAM:~~

~~(I) AN ARMORED OR WEAPONIZED:~~

~~1. AIRCRAFT;~~

~~2. DRONE; OR~~

~~3. VEHICLE;~~

~~(II) A DESTRUCTIVE DEVICE;~~

~~(III) A FIREARM SILENCER; OR~~

~~(IV) A GRENADE LAUNCHER.~~

~~(D) (1) A POLICE OFFICER MAY NOT KNOWINGLY AND WILLFULLY
VIOLATE SUBSECTION (C) OF THIS SECTION.~~

~~(2) A POLICE OFFICER WHO KNOWINGLY AND WILLFULLY VIOLATES
SUBSECTION (C) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON
CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS.~~

~~(E) (1) A POLICE OFFICER MAY NOT RECKLESSLY VIOLATE SUBSECTION
(C) OF THIS SECTION.~~

~~(2) A POLICE OFFICER WHO RECKLESSLY VIOLATES SUBSECTION (C)
OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT
TO IMPRISONMENT NOT EXCEEDING 5 YEARS.~~

~~(D) (1) A POLICE OFFICER WHO USES LETHAL FORCE AGAINST A PERSON
IN A MANNER INCONSISTENT WITH SUBSECTION (C)(2) OR (3) OF THIS SECTION THAT
RESULTS IN DEATH MAY BE CHARGED WITH MANSLAUGHTER OR MURDER UNDER
TITLE 2, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE.~~

~~(2) A POLICE OFFICER WHO USES LETHAL FORCE AGAINST A PERSON IN A MANNER INCONSISTENT WITH SUBSECTION (C)(2) OR (3) OF THIS SECTION THAT DOES NOT RESULT IN DEATH MAY BE CHARGED WITH RECKLESS ENDANGERMENT OR ASSAULT UNDER TITLE 3, SUBTITLE 2 OF THE CRIMINAL LAW ARTICLE.~~

~~(E) (1) A PERSON MAY SEEK RELIEF BY FILING WITH ANY COURT OF COMPETENT JURISDICTION A CIVIL ACTION FOR DAMAGES ARISING OUT OF THE USE OF FORCE BY A POLICE OFFICER IN A MANNER INCONSISTENT WITH SUBSECTION (C)(2) OR (3) OF THIS SECTION.~~

~~(2) A PERSON IS NOT LIMITED TO OR PRECLUDED FROM PURSUING ANY OTHER LEGAL REMEDY BY PROCEEDING UNDER THIS SUBTITLE.~~

~~(F) THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL WITHHOLD GRANT FUNDING FROM A LAW ENFORCEMENT AGENCY THAT VIOLATES SUBSECTION (C) OF THIS SECTION.~~

~~(G) ON OR BEFORE DECEMBER 1 EACH YEAR, THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION SHALL SUBMIT A REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THAT:~~

~~(1) LISTS THE LAW ENFORCEMENT AGENCIES THAT VIOLATED SUBSECTION (C) OF THIS SECTION DURING THE PRECEDING 1 YEAR PERIOD; AND~~

~~(2) DESCRIBES THE NATURE OF EACH VIOLATION.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~Article Public Safety~~

~~§ 525.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(3) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH LAW ENFORCEMENT AGENCY SHALL ESTABLISH AND IMPLEMENT A DISCIPLINE PROCESS THAT:~~

~~(1) IS OPEN AND TRANSPARENT;~~

~~(2) INCLUDES AN ADMINISTRATIVE CHARGING COMMITTEE AS SPECIFIED IN § 3-201 OF THIS TITLE;~~

~~(3) INCLUDES THE USE OF A TRIAL BOARD THAT INCLUDES AT LEAST ONE THIRD MEMBERSHIP BY CIVILIANS WITH VOTING POWER;~~

~~(4) BEFORE DISCIPLINARY ACTION IS TAKEN AGAINST A POLICE OFFICER, PROVIDES THE RIGHT TO A TRIAL BOARD FOR THE POLICE OFFICER;~~

~~(5) PROHIBITS THE USE OF A TRIAL BOARD FOR THE DISCIPLINE OF A POLICE OFFICER WHO HAS RECEIVED A CONVICTION OR PROBATION BEFORE JUDGMENT FOR A CRIME; AND~~

~~(6) REQUIRES THE CHIEF OF THE AGENCY TO DETERMINE DISCIPLINE FOR A POLICE OFFICER WHO HAS RECEIVED A CONVICTION OR PROBATION BEFORE JUDGMENT FOR A CRIME.~~

~~(C) EACH LAW ENFORCEMENT AGENCY SHALL POST THE POLICE DISCIPLINE PROCESS ESTABLISHED IN ACCORDANCE WITH THIS SECTION ON THE AGENCY'S PUBLIC WEBSITE.~~

~~(D) CIVILIAN MEMBERS OF EACH TRIAL BOARD AND ADMINISTRATIVE CHARGING COMMITTEE SHALL RECEIVE TRAINING ADMINISTERED BY THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION ON MATTERS RELATING TO POLICE PROCEDURES.~~

~~(E) EACH COUNTY SHALL HAVE AN INDEPENDENT AGENCY THAT INVESTIGATES AND REVIEWS COMPLAINTS OF POLICE MISCONDUCT FILED BY MEMBERS OF THE PUBLIC.~~

~~(F) A LAW ENFORCEMENT AGENCY MAY NOT NEGATE OR ALTER ANY OF THE REQUIREMENTS OF THIS SECTION THROUGH COLLECTIVE BARGAINING.~~

~~§ 526.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(2) "ADMINISTRATIVELY CHARGED" MEANS THAT A POLICE OFFICER HAS BEEN FORMALLY ACCUSED OF MISCONDUCT IN AN ADMINISTRATIVE PROCEEDING.~~

~~(3) "EXONERATED" MEANS THAT A POLICE OFFICER ACTED IN ACCORDANCE WITH THE LAW AND AGENCY POLICY.~~

~~(4) "LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(5) "NOT ADMINISTRATIVELY CHARGED" MEANS THAT A DETERMINATION HAS BEEN MADE NOT TO ADMINISTRATIVELY CHARGE A POLICE OFFICER IN CONNECTION WITH ALLEGED MISCONDUCT.~~

~~(6) "POLICE OFFICER" HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.~~

~~(7) "SUPERIOR GOVERNMENTAL AUTHORITY" MEANS THE GOVERNING BODY THAT OVERSEES A LAW ENFORCEMENT AGENCY.~~

~~(8) "UNFOUNDED" MEANS THAT THE ALLEGATIONS AGAINST A POLICE OFFICER ARE NOT SUPPORTED BY FACT.~~

~~(B) (1) AN ADMINISTRATIVE CHARGING COMMITTEE CONSISTS OF:~~

~~(I) THE DIRECTOR OF INTERNAL AFFAIRS OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE OFFICER WHO IS SUBJECT TO INVESTIGATION, OR THE DIRECTOR'S DESIGNEE;~~

~~(II) THE HEAD ATTORNEY FOR THE SUPERIOR GOVERNMENTAL AUTHORITY OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE OFFICER OR THE HEAD ATTORNEY'S DESIGNEE, IF THE DESIGNEE IS A MEMBER OF THE MARYLAND BAR;~~

~~(III) A DESIGNEE OF THE DISTRICT PUBLIC DEFENDER WHO IS A MEMBER OF THE MARYLAND BAR;~~

~~(IV) A DESIGNEE OF THE STATE'S ATTORNEY FOR THE JURISDICTION WHERE THE ALLEGED MISCONDUCT OCCURRED WHO IS A MEMBER OF THE MARYLAND BAR; AND~~

~~(V) ONE CIVILIAN REPRESENTATIVE SELECTED BY THE POLICE ACCOUNTABILITY BOARD FOR THE JURISDICTION WHERE THE ALLEGED MISCONDUCT OCCURRED.~~

~~(2) THE HEAD ATTORNEY FOR THE SUPERIOR GOVERNMENTAL AUTHORITY OR THE HEAD ATTORNEY'S DESIGNEE SHALL SERVE AS THE CHAIR OF AN ADMINISTRATIVE CHARGING COMMITTEE.~~

~~(C) (1) ON COMPLETION OF AN INVESTIGATION OF A COMPLAINT AGAINST A POLICE OFFICER, THE LAW ENFORCEMENT AGENCY SHALL FORWARD TO AN ADMINISTRATIVE CHARGING COMMITTEE THE INVESTIGATORY FILES FOR ALL MATTERS INVOLVING:~~

~~(I) ALLEGATIONS OF MISCONDUCT MADE BY A MEMBER OF THE PUBLIC; AND~~

~~(II) ANY ALLEGATION RELATING TO DISHONESTY, THE VIOLATION OF A CRIMINAL STATUTE, SEXUAL HARASSMENT, OR RACIAL HARASSMENT.~~

~~(2) AN ALLEGATION NOT SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROCEED IN ACCORDANCE WITH THE POLICIES AND PROCEDURES OF THE LAW ENFORCEMENT AGENCY.~~

~~(D) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL:~~

~~(1) REVIEW THE FINDINGS OF A LAW ENFORCEMENT AGENCY'S INVESTIGATION CONDUCTED AND FORWARDED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION;~~

~~(2) MAKE A DETERMINATION THAT THE POLICE OFFICER WHO IS SUBJECT TO INVESTIGATION SHALL BE:~~

~~(I) ADMINISTRATIVELY CHARGED; OR~~

~~(II) NOT ADMINISTRATIVELY CHARGED;~~

~~(3) IF THE POLICE OFFICER IS CHARGED, RECOMMEND DISCIPLINE IN ACCORDANCE WITH THE LAW ENFORCEMENT AGENCY'S DISCIPLINARY MATRIX;~~

~~(4) ISSUE A WRITTEN OPINION THAT DESCRIBES IN DETAIL ITS FINDINGS, DETERMINATIONS, AND RECOMMENDATIONS; AND~~

~~(5) FORWARD THE WRITTEN OPINION TO THE CHIEF OF THE LAW ENFORCEMENT AGENCY.~~

~~(E) IN EXECUTING ITS DUTIES IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION, AN ADMINISTRATIVE CHARGING COMMITTEE MAY:~~

~~(1) REQUEST INFORMATION OR ACTION FROM THE LAW ENFORCEMENT AGENCY THAT CONDUCTED THE INVESTIGATION, INCLUDING REQUIRING ADDITIONAL INVESTIGATION AND THE ISSUANCE OF SUBPOENAS; AND~~

~~(2) IF THE POLICE OFFICER IS NOT CHARGED, MAKE A DETERMINATION THAT:~~

~~(I) THE ALLEGATIONS AGAINST THE POLICE OFFICER ARE UNFOUNDED; OR~~

~~(II) THE POLICE OFFICER IS EXONERATED.~~

~~(F) NOTWITHSTANDING TITLE 3 OF THE GENERAL PROVISIONS ARTICLE, THE MEETINGS OF AN ADMINISTRATIVE CHARGING COMMITTEE ARE NOT SUBJECT TO THE REQUIREMENTS OF THE OPEN MEETINGS ACT.~~

~~Article State Personnel and Pensions~~

~~20-210.~~

~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:~~

~~(2) "ACCUMULATED CONTRIBUTIONS" MEANS THE AMOUNTS CREDITED, INCLUDING INTEREST, TO A LAW ENFORCEMENT OFFICER'S INDIVIDUAL ACCOUNT IN THE STATE POLICE RETIREMENT SYSTEM, THE LAW ENFORCEMENT OFFICERS' PENSION SYSTEM, OR A LOCAL PENSION SYSTEM.~~

~~(3) "FINAL ADJUDICATION" MEANS FINAL DISPOSITION OF ALL CHARGES THAT CONSTITUTE A QUALIFYING CRIME FROM WHICH NO FURTHER RIGHT TO APPEAL OR REVIEW EXISTS.~~

~~(4) "LAW ENFORCEMENT OFFICER" MEANS AN INDIVIDUAL WHO IS A MEMBER, FORMER MEMBER, OR RETIREE OF:~~

~~(I) THE STATE POLICE RETIREMENT SYSTEM;~~

~~(II) THE LAW ENFORCEMENT OFFICERS' PENSION SYSTEM; OR~~

~~(III) A LOCAL PENSION SYSTEM FOR EMPLOYMENT AS A SWORN LAW ENFORCEMENT OFFICER.~~

~~(5) "QUALIFYING CRIME" MEANS ANY OF THE FOLLOWING CRIMINAL OFFENSES THAT WERE COMMITTED IN THE COURSE OF THE PERFORMANCE OF A LAW ENFORCEMENT OFFICER'S DUTIES:~~

~~(I) A FELONY; OR~~

~~(II) PERJURY OR ANOTHER MISDEMEANOR RELATING TO TRUTHFULNESS AND VERACITY.~~

~~(B) THIS SECTION DOES NOT APPLY TO:~~

~~(1) ACCUMULATED CONTRIBUTIONS MADE BEFORE JULY 1, 2022;~~

~~(2) ANY SERVICE EARNED BEFORE JULY 1, 2022; OR~~

~~(3) A QUALIFYING CRIME COMMITTED BEFORE JULY 1, 2022.~~

~~(C) BENEFITS UNDER THIS DIVISION II OF THIS ARTICLE OR A LOCAL PENSION SYSTEM PAYABLE TO A LAW ENFORCEMENT OFFICER ARE SUBJECT TO FORFEITURE IN WHOLE OR IN PART IN ACCORDANCE WITH THIS SECTION IF THE LAW ENFORCEMENT OFFICER IS FOUND GUILTY OF, PLEADS GUILTY TO, OR ENTERS A PLEA OF NOLO CONTENDERE TO A QUALIFYING CRIME.~~

~~(D) (1) IF THE FINAL ADJUDICATION OF CHARGES RESULTS IN CONVICTION OF A LAW ENFORCEMENT OFFICER, THE LAW ENFORCEMENT OFFICER'S RETIREMENT ALLOWANCE MAY BE FORFEITED IN WHOLE OR IN PART IN ACCORDANCE WITH THIS SECTION.~~

~~(2) ON CONVICTION OF A LAW ENFORCEMENT OFFICER, THE ATTORNEY GENERAL OR THE STATE'S ATTORNEY SHALL FILE A COMPLAINT IN CIRCUIT COURT TO FORFEIT THE LAW ENFORCEMENT OFFICER'S BENEFITS IN WHOLE OR IN PART.~~

~~(E) THE COURT MAY ENTER AN ORDER REQUIRING THE FORFEITURE, IN WHOLE OR IN PART, OF THE LAW ENFORCEMENT OFFICER'S BENEFITS IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT:~~

~~(1) THE LAW ENFORCEMENT OFFICER WAS CONVICTED OF A QUALIFYING CRIME;~~

~~(2) THE LAW ENFORCEMENT OFFICER WAS A MEMBER OF THE STATE POLICE RETIREMENT SYSTEM, THE LAW ENFORCEMENT OFFICERS' PENSION SYSTEM, OR A LOCAL PENSION SYSTEM; AND~~

~~(3) THE QUALIFYING CRIME FOR WHICH THE LAW ENFORCEMENT OFFICER WAS CONVICTED WAS COMMITTED WHILE THE LAW ENFORCEMENT OFFICER WAS AN ACTIVE MEMBER OF THE STATE POLICE RETIREMENT SYSTEM, THE LAW ENFORCEMENT OFFICERS' PENSION SYSTEM, OR A LOCAL PENSION SYSTEM.~~

~~(F) (1) AN ORDER REQUIRING FORFEITURE OF BENEFITS SHALL INDICATE THE AMOUNT OF BENEFITS TO BE FORFEITED.~~

~~(2) WHEN DETERMINING THE AMOUNT OF BENEFITS TO BE FORFEITED, THE COURT SHALL CONSIDER:~~

~~(I) THE SEVERITY OF THE CRIME;~~

~~(II) THE AMOUNT OF MONETARY LOSS SUFFERED BY THE STATE, A COUNTY, A POLITICAL SUBDIVISION, OR A PERSON AS A RESULT OF THE CRIME;~~

~~(III) THE DEGREE OF PUBLIC TRUST PLACED IN THE LAW ENFORCEMENT OFFICER; AND~~

~~(IV) ANY OTHER FACTORS THE COURT DETERMINES RELEVANT.~~

~~(G) A COURT MAY ORDER A LAW ENFORCEMENT OFFICER SUBJECT TO A FORFEITURE ORDER ISSUED UNDER THIS SECTION TO REQUEST A RETURN OF THE LAW ENFORCEMENT OFFICER'S ACCUMULATED CONTRIBUTIONS, IN WHOLE OR IN PART, TO BE USED FOR RESTITUTION RELATING TO A QUALIFYING CRIME.~~

SECTION ~~5~~ 7 ~~6~~. AND BE IT FURTHER ENACTED, That on or before December 31, ~~2021~~ 2022, the Emergency Number Systems Board shall study and report to the House Judiciary Committee and the Senate Judicial Proceedings Committee, in accordance with § 2-1257 of the State Government Article, regarding whether certain types of calls for 9-1-1 service should be diverted to a person or entity other than law enforcement agencies.

SECTION ~~8~~ 7. AND BE IT FURTHER ENACTED, That ~~Section 4 of this Act § 5-303 of the Courts and Judicial Proceedings Article, as enacted by Section 3 of this Act, and § 12-103 of the State Government Article, as enacted by Section 3 of this Act,~~ shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from a tortious act or omission *or violation of a constitutional right* committed by a law enforcement officer on or before ~~September 30, 2021~~ June 30, 2022.

~~SECTION 9. AND BE IT FURTHER ENACTED, That Section 5 of this Act shall be construed to apply prospectively to any Public Information Act request made on or after~~

~~the effective date of this Act regardless of when the record requested to be produced was created.~~

SECTION ~~6, 10, 8~~. AND BE IT FURTHER ENACTED, That ~~Section 4-6 of this Act shall~~ *Title 3, Subtitle 1 of the Public Safety Article, as enacted by Section 3 of this Act, shall* be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to:

(1) any bona fide collective bargaining agreement entered into on or before ~~September 30, 2021~~ 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 ~~the effective date of this Act~~ July 1, 2022.

SECTION ~~7, 11, 9~~. AND BE IT FURTHER ENACTED, That the publishers of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross-references and terminology rendered incorrect by this Act. Cross-references to the term "law enforcement officer" as formerly stated under § 3-101(e) of the Public Safety Article of the Annotated Code of Maryland shall be redesignated as cross-references to the term "law enforcement officer" as stated under § 1-101(c) of the Public Safety Article. The publishers shall adequately describe any such correction in an editor's note following the section affected.

SECTION ~~12, 10~~. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the Maryland Higher Education Commission adopt similar regulations for determining award calculations for the Maryland Police Officers Repayment Program under Title 18, Subtitle 38 of the Education Article as the award calculation regulations in COMAR 13B.08.02.06 for the Janet L. Hoffman Loan Assistance Repayment Program under Title 18, Subtitle 15 of the Education Article.

~~SECTION 8, 13. AND BE IT FURTHER ENACTED, That Sections 1, 2, and 6 of this Act shall take effect October 1, 2021. July 1, 2022.~~

~~SECTION 14. AND BE IT FURTHER ENACTED, That, except as provided in Section 13 of this Act, this Act shall take effect October 1, 2021.~~

SECTION 11. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall take effect July 1, 2022, contingent on the taking effect of Chapter (S.B. 71) of the Acts of the General Assembly of 2021, and if Chapter (S.B. 71) does not take effect, Section 4 of this Act, with no further action required by the General Assembly, shall be null and void.

SECTION 12. AND BE IT FURTHER ENACTED, That, except as provided in Section 11 of this Act, this Act shall take effect July 1, 2022.



POLICING ADVISORY COMMISSION

To: Montgomery County Council
Cc: County Executive Marc Elrich
From: Policing Advisory Commission
Date: February 23, 2021
Re: Request for the PAC to Review Bill 34-20E - Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain - Amendments

Dear County Council,

The Policing Advisory Commission (PAC) respectfully submits our comments on Bill 34-20E. We welcome this opportunity to comment on matters referred to us by the Council, per our authorizing statute (Montgomery County Code §35-6(f)4). After careful review, consultation with relevant stakeholders and experts, and deliberation amongst PAC members, **we recommend that the Council vote in favor of the bill in its current form.**

The PAC believes that the Maryland Law Enforcement Officers' Bill of Rights (LEOBR) needs to be repealed or significantly reformed, especially with respect to disciplinary measures. Bill 34-20E represents an effort by the Council to respond to the community's concerns about inadequate police discipline and while LEOBR embodies the larger obstacle to ensure police oversight, Bill 34-20E would move Montgomery County towards a system of greater accountability, even absent LEOBR repeal or reform.

Background

The PAC received your request to review bill 34-20E on October 7, 2020. We convened a special meeting to discuss the bill at our meeting on October 19, 2020 and referred it to our subcommittee on Hiring & Discipline for further review. The members of the subcommittee have met numerous times to discuss the bill. They have researched, reviewed and discussed a copious amount of material, including: the legislative history of Bill 34-20E; Professor Christy Lopez's presentation regarding LEOBR; the Executive Director of the Department of Public Safety and Correctional Services Mr. Albert Liebno's memo response to subcommittee member Eric Sterling's pointed questions regarding training of citizens for the LEOBR hearing panel; Montgomery County Police Department (MCPD) FC300 Department Rules; and the 2019-20 Collective Bargaining Agreement between the Fraternal Order of the Police Lodge 35 and Montgomery County Government. The subcommittee presented their findings to the full PAC on January 11, 2021, and their statement is available on the PAC website. On January 25, 2021, **the PAC voted in favor of the subcommittee's recommendation to support Bill 34-20E with a vote of 11-1 with one abstention** (out of the 13 voting members of the PAC).



POLICING ADVISORY COMMISSION

Rationale

The ability for officers to choose a hearing by a board comprised of mostly officers is not a luxury afforded to any other government employee in the County. If we are to rebuild trust between our community and MCPD, we need to ensure that there is meaningful accountability for officers. The current process simply does not work, as illustrated by the following examples:

- An MCPD officer was convicted by a jury in December for use of excessive force in July of 2019. However, this officer remained on the MCPD payroll awaiting a final determination on their disciplinary charge for over a year.
- An officer who used the N-word in White Oak also waited over a year to receive any disciplinary action.
- An officer was once on paid administrative leave for four years while waiting for the appeal of their termination to be resolved.

Bill 34-20E addresses some of the concerns that have been raised by the community: this bill would mandate a traditional hearing board with two voting public members in cases of citizens' complaints alleging excessive force; and would authorize the Police Chief to issue a final order based on the hearing board's recommendations and to exercise their right as an employer to terminate the officer's employment. Finally, the Bill would exclude collective bargaining over the composition of a police hearing board, the right of the Chief to make a final decision on discipline, and the right of the Chief to issue a directive or administrative order implementing an employer's right. This bill would simply move the County back to the traditional hearing board authorized by the LEOBR, including the additional public members for a case originating from a citizen complaint alleging excessive force. Bill 34-20E would not deny officers any appropriate due process protections but would rather restore a system that accords full but not excessive protections to law enforcement. This Commission believes that voting members of the public should be enough in number that the public (by and through the public voting members) would have a real impact on what disciplinary measure should be recommended for an accused officer.

Please feel free to contact us if you have any questions or requests for clarification.

Sincerely,

Shabab Ahmed Mirza, Chair & Dalbin Osorio, LMSW, Vice Chair

On behalf of the Policing Advisory Commission

Expedited Bill No. 34-20
Concerning: Police – [[Disciplinary Procedures]] - Police Labor Relations – Duty to Bargain - Amendments
Revised: 5-24-21 Draft No. 7
Introduced: July 21, 2020
Expires: January 21, 2022
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Riemer and Rice
Co-Sponsors: Councilmembers Jawando and Navarro

AN EXPEDITED ACT to:

- (1) amend ~~[[the disciplinary procedures for a police officer and the membership of a hearing board]]~~ the Police Labor Relations Law to exempt from bargaining a directive issued by the Chief of Police to implement an employer right; and
- (2) ~~[[remove negotiation of an alternative method of forming a hearing board and issuing a directive to implement an employer right from the scope of collective bargaining under the Police Labor Relations Law;~~
- (3) authorize the Chief of Police to issue a final order on employee discipline based on the recommendations of a hearing board;]] and
- (4)]] generally amend the ~~[[disciplinary procedures for a police officer and the]]~~ scope of collective bargaining under the Police Labor Relations Law.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Section 33-80

[[Montgomery County Code
Chapter 35, Police
Section 35-9]]

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 33-80 is amended as follows:**

2 **33-80. Collective bargaining.**

3 (a) *Duty to bargain; matters subject to bargaining.* Except as limited in
 4 subsections (b) and (c), [A] a certified employee organization and the
 5 employer must bargain collectively on the following subjects:

- 6 (1) Salary and wages, provided, however, that salaries and wages
 7 shall be uniform for all employees in the same classification;
- 8 (2) Pension and retirement benefits for active employees only;
- 9 (3) Employee benefits such as, but not limited to, insurance, leave,
 10 holidays and vacation;
- 11 (4) Hours and working conditions, including the availability and use
 12 of personal patrol vehicles;
- 13 (5) Provisions for the orderly processing and settlement of
 14 grievances concerning the interpretation and implementation of
 15 the collective bargaining agreement, which may include binding
 16 third party arbitration and provisions for exclusivity of forum;
- 17 (6) Matters affecting the health and safety of employees; and
- 18 (7) Amelioration of the effect on employees when the employer's
 19 exercise of rights listed in subsection (b) causes a loss of existing
 20 jobs in the unit.

21 (b) *Employer rights.* This article and any agreement pursuant hereto shall
 22 not impair the right and responsibility of the employer.

- 23 (1) To determine the overall budget and mission of the employer and
 24 any agency of county government;
- 25 (2) To maintain and improve the efficiency and effectiveness of
 26 operations;

- (3) To determine the services to be rendered and the operations to be performed;
- (4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;
- (5) To direct or supervise employees;
- (6) To hire, select and establish the standards governing promotion of employees and to classify positions;
- (7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;
- (8) [To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;
- (9)] To take actions to carry out the mission of government in situations of emergency;

[(10)] (9) To transfer, assign and schedule employees for any reason.

(c) *[Exemption] Exemptions from bargaining.*

- (1) [[An alternative method of forming a hearing board to provide a hearing required by the Law Enforcement Officers' Bill of Rights (LEOBR), as codified in §§3-101 to 3-113 of the Public Safety Article of the Annotated Code of Maryland must not be subject to bargaining.
- (2) The authority of the Chief of Police to issue a final order based on a review of the findings, conclusions, and recommendations of a hearing board under the LEOBR must not be subject to bargaining.

(3) The authority of the Chief of Police to issue a directive or administrative procedure to implement an employer right must not be subject to collective bargaining.

(4)] Nothing contained in this [article shall] Article must be construed to limit the discretion of the employer voluntarily to discuss with the representatives of its employees any matter concerning the employer's exercise of any of the enumerated rights set forth in subsection 33-80(b) above, but such matters [shall] must not be subject to bargaining.

(2) The minimum standards of the policies adopted by the Police Chief under Section 35-22 must not be subject to bargaining.

(3) The authority of the Chief of Police to issue a directive or administrative procedure to implement an employer right must not be subject to collective bargaining.

* * *

35-9. [Reserved] [[Police Officer Accountability Act]] Reserved.

[(a) Definitions. As used in this Section:

Chief of Police or Chief means the Director of the County Department of Police.

Department means the County Department of Police.

Hearing board or board means a temporary board created to provide a hearing for a police officer under the LEOBR.

Law Enforcement Officers' Bill of Rights or LEOBR means §§3-101 to 3-113 of the Public Safety Article of the Annotated Code of Maryland.

Police officer means a member of the Department who is a law enforcement officer as defined in the LEOBR.

Public member means a member of the public who has received training administered by the Maryland Police Training and Standards Commission, or any successor agency, on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.]]

[(b) Right to hearing. If a police officer requests a hearing required by the LEOBR, the Chief must appoint the members of the hearing board.]]

[(c) Membership of the board. The Chief must appoint three law enforcement officers from the Department or another law enforcement agency that have had no part in the investigation or interrogation of the police officer who is the subject of the statement of charges. At least one member must be of the same rank as the police officer who is the subject of the statement of charges.]]

[(d) Additional public members.

(1) The Chief must appoint two additional voting public members for each case originating from a citizen complaint alleging an excessive use of force.

(2) The Chief may appoint one or two voting or nonvoting public members for any other case.]]

[(e) Conduct of hearing. The board must conduct the hearing pursuant to the procedural provisions of the LEOBR.]]

[(f) Disposition of administrative action. Within 30 days after receipt of the recommendations of the hearing board, the Chief must:

(1) review the findings, conclusions, and recommendations of the hearing board; and

(2) issue a final order.]]

Sec. 2. Expedited Effective Date.

105 The Council declares that this legislation is necessary for the immediate
 106 protection of the public interest. This Act takes effect on the date on which it
 107 becomes law. Notwithstanding any provision in a collective bargaining agreement
 108 executed by the Executive and the exclusive representative under the Police Labor
 109 Relations Law, the amendments in Section 1 must apply to any employer action
 110 taken after this law takes effect, including issuing a [[statement of charges against a
 111 police officer,]] a directive, or an administrative order.

112 *Approved:*

113

Sidney Katz, President, County Council

Date

114 *Approved:*

115

Marc Elrich, County Executive

Date

116 *This is a correct copy of Council action.*

117

Selena Mendy Singleton, Esq., Clerk of the Council

Date