

 <p>BEL AIR POLICE DEPARTMENT</p> <p>POLICIES AND PROCEDURES</p> <p>CHARLES A. MOORE CHIEF OF POLICE</p>	CHAPTER: 6
	TITLE: Discipline
	No. Pages: 31

6:100 Purpose

The purpose of this policy is to establish rules, regulations, and procedures necessary to insure competent and efficient operation and management of the Agency. To ensure fair and equitable punishment by use of a Discipline Matrix. (See Discipline Matrix Addendum)

6: 101 Definitions

For the purpose of this Chapter, the following definitions will apply:

Administrative Investigation - Any inquiry initiated by command or supervisory personnel of this Department, into alleged inappropriate or wrongful actions of another employee, which inquiry is intended to lead to an objective finding.

Adverse Material - "A law enforcement agency may not insert any adverse material into any file of the officer, except the file of the internal investigation, unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing upon the adverse material, unless the officer waives these rights." Public Safety Article, Title 3-104(o), of the Annotated Code of Maryland. Therefore, in accordance with the Law Enforcement Officers' Bill of Rights, adverse material relating to a Department police employee which the employee has not had an opportunity to review, sign, receive a copy of, and comment in writing upon, may only be maintained in the Internal Affairs files.

Alternative Disciplinary Procedure – When the alleged violations are serious enough to compel formal disciplinary action but an administrative investigation is not conducted, the facts constituting the violations are not in question, and the officer agrees to the punishment recommended by the Chief of Police or his designee.

Brutality - Is considered to include any situation wherein a law enforcement officer, while acting in his official capacity, resorts to the use of force which is unnecessary in its origin and application; or if force is deemed necessary, is excessive in its application

Complaint - An allegation of misconduct or a violation of Department rules of conduct, policy, or procedures against an employee of the Agency.

Complainant - The aggrieved person, a member of the aggrieved person's immediate family, or a parent or guardian in the case of a minor child, or any person with firsthand knowledge obtained through his presence at and observation of the alleged incident.

Counseling - Supervisory counseling of subordinates is non disciplinary action.

Department – Bel Air Police Department

Emergency Suspension - A temporary suspension of police powers imposed against a law enforcement officer, with or without loss of compensation, on authority of the Chief of Police, by a supervisory officer superior in rank when it appears that such action is in the best interest of the public and the Department.

Formal Hearing - Any proceeding conducted by a Hearing Board for the purpose of taking or adducing testimony or receiving other evidence in connection with charges filed against a Department employee.

Hearing Board - A board authorized by the Chief of Police to conduct a hearing on a complaint. Members of a board will be selected from the total uniformed complement of the Department or from another agency with the approval of the chief of that other agency. Board members may not have participated in the investigation or interrogation of the accused law enforcement officer.

Incompetence - Evidence of incompetence may include, but need not be limited to, a history of poor performance appraisals and promotional potential ratings; an aggregate of infractions of Department rules, regulations, procedures, directives or orders; a demonstrated lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; failure to conform to work standards established for the employee's rank or position; negligence resulting in duties not being performed or performed in an unacceptable manner; failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; absence without leave; unnecessary absence from the assigned patrol or place of work during a tour of duty. The repeated inability to perform assigned duties due to physical incapacitation brought about by an employee's excessive use of alcohol shall also be considered evidence of incompetence

Law Enforcement Officer - Any employee of the Department, who in his official capacity, is authorized by law to make arrests but not including any law enforcement officer serving in a probationary status, except when allegations of brutality in the execution of his duties are made. The term "law enforcement officer," as used in this Chapter, will include all police employees employed by the Bel Air Police Department. The term "probationary status" includes only a police employee who is in that status upon initial entry into the Department.

Loss of Police Powers - The act by which a police employee of the Department is temporarily deprived of the powers and immunities granted him as a law enforcement officer.

Non Enforcement Duty Status - The status during which a police employee of the Department is temporarily deprived of the powers and immunities granted to him as a law enforcement officer. For purposes of compensation, he shall retain his status as an employee of the Department, but shall be assigned administrative, clerical or other non-enforcement duties.

Non Sustained - The investigation fails to disclose sufficient evidence to clearly prove the allegations made in the complaint. This includes unfounded, exonerated, and not involved complaints.

Party - The accused, his representative or the prosecutor.

Penalties - Except for summary punishment, the Department's final disciplinary authority rests with the Chief of Police. Any supervisor or Hearing Board may recommend disciplinary action. Recommended penalties may include, but are not limited to:

- a. Written Reprimand
- b. Loss of Regular Leave
- c. Transfer
- d. Fine
- e. Suspension
- f. Loss of Annual Leave
- g. Other action which would be considered a punitive measure

- h. Loss of Police powers
- I. Demotion
- j. Dismissal

Summary Punishment - Formal disciplinary action which may be taken for minor violations of Department rules, policy, or procedure when:

- a. The officer accepts the punishment recommended by his supervisor and approved by the Chief of Police.
- b. The facts which constitute the minor violation are not disputed.
- c. The employee waives the formal hearing provided for in this Chapter by completing the Waiver of Hearing Board and Acceptance of Summary Punishment Form (BAPD Form 303).

Suspension - The penalty by which a police employee of the Department is, for the purposes of compensation, deprived of his status as an employee of the Department for one or more consecutive calendar days. Consecutive days may be interrupted as required, by mandatory appearances before courts, regulatory agencies or administrative bodies.

Sustained - A finding that an investigation disclosed sufficient evidence to substantiate the allegations made in the complaint.

Transfer - The Chief of Police has the authority "...to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including, but not limited to, transfer and reassignment where the action is not punitive in nature and where the chief determines that action to be in the best interest of the internal management of the law enforcement agency..." (Public Safety Article, title 3-102(c), of the Annotated Code of Maryland. Transfers resulting from the imposition of disciplinary action must be administered only in accordance with the provisions of the Law Enforcement Officers' Bill of Rights.

Nothing in this policy shall be construed to limit the authority of the Chief of Police to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including transfer and reassignment if that action is not punitive in nature and the Chief of Police determines that action to be in the best interest of the internal management of the law enforcement agency.

6-101 Citizen Complaints

1. All citizen complaints, originating outside of the Department, against employees of the Department shall be processed as directed in this Section.
2. A complaint may be received by any employee (Officer or civilian) at any time. (*It is preferred that the initial complaint be taken by a supervisor*)
3. It shall be imperative that all complainants are met with respect, courtesy, and understanding. (*A cynical or negative attitude only aggravates the situation and does nothing to further the core values or mission of the BAPD*).

4. The employee first acquiring knowledge of the complaint will immediately notify his/her supervisor or the patrol supervisor on duty. The supervisor on duty will contact the Deputy Chief of Police.

Citizen Complaint Processing

1. BAPD employees upon receiving a complaint shall:
 - a. Not delay the initiation or documentation of the complaint.
 - b. Record complaints on a typed Complaint Against Personnel Form (BAPD 311).
 - c. Make every effort to identify the complainant.
 - d. Record anonymous complaints regardless of where the alleged violation occurred
 - e. Supervisors may be immediately assigned to investigate serious complaints.
 - f. Employees receiving the complaint will not discuss the nature of the complaint with the involved member or other unauthorized persons.
2. Complaints registered against an employee of the Department by either civilians or Department employees not authorized to exercise supervisory or administrative control over the employee involved, shall be recorded on a Complaint against Personnel Report. Supervisory personnel may initiate an immediate investigation if such is warranted.
3. The Complaint against Personnel Form will then be placed in an envelope, sealed, and given to the Deputy Chief. The Deputy Chief will review the Complaint against Personnel Report and any additional related reports or statements and if appropriate forward the complaint for assignment of an Internal Affairs case number and investigation. The Deputy Chief will advise the Chief of Police of any complaints against personnel. The Deputy Chief will contact the complainant and advise him that the complaint has been received and will be reviewed.
 4. Verbal complaints of misconduct by citizens will be documented by the receiving officer as if such complaints were made in writing. Serious complaints should be supported by a written statement by the complainant. If the complainant refuses to document the complaint, and the allegation, if factual, would constitute misconduct, the receiving officer will document the complaint in writing, on the Complaint Against Police Personnel Form.
 5. All alleged acts of misconduct or violations of any Department rule, policy, or procedure must be investigated and the results of such investigation acted upon, consistent with the Chief of Police's prerogative to disregard trivial or chronic complaints which he / she deems unsubstantiated.
 6. Nothing precludes the Department from investigating allegations against employees from whatever source received, consistent with the law when it is determined that such investigation is in the best interest of the Department.
 7. Anonymous complaints should not, per se, be excluded from investigation. Efforts should be made to gain the cooperation of the complainant. Many anonymous complaints, by their very nature, are difficult to substantiate; yet, this should not preclude a preliminary inquiry into the matter. Where possible, a preliminary investigation into the complaint will be made. The investigation will be terminated

when no additional evidence can be obtained. The case will be documented and the officer may be informed of the nature of the complaint and the result of the investigation.

8. Any Department employee who subjects a complainant or witness to harassment shall be subject to appropriate disciplinary action. This in no way, however, prohibits the right of an officer to bring suit arising out of his duties as a police officer.

Completion of the Investigation

1. The investigator will recommend for each violation, based upon a preponderance of evidence, a finding of:
 - a. **Non-Sustained** if the investigation fails to disclose sufficient information to clearly prove the allegation;
 - b. **Sustained** if the investigation disclosed sufficient information to substantiate the allegation; or
 - c. **Unfounded** if the investigation revealed that the reported incident did not occur.
2. The Deputy Chief, upon receipt of the completed investigation, will prepare an endorsement.
 - a. The endorsement will include whether the Deputy Chief agrees with the investigator's findings.
 - b. If the Deputy Chief disagrees with the findings, he will state the factual basis for not accepting the investigator's conclusions.
 - c. The completed internal investigation will then be submitted to the Chief of Police for further review and final endorsements.

Time Limitations

Except in cases of criminal activity or excessive force, administrative charges must be brought against an officer within one year after the act that gives rise to the charges comes to the attention of the Department.

6-102 Employee Complaint Processing

1. Any employee desiring to file a complaint against another employee of the Department of the same or superior rank or classification, may submit the complaint directly to the Deputy Chief. Such complaints must be submitted in writing on a Complaint Against Personnel Form and signed by the employee initiating the complaint.
2. Any employee desiring to file a complaint against another employee of the Department of lower rank or classification may submit the complaint directly to the employee's immediate supervisor. Such complaints must be submitted in writing on a Complaint Against Personnel Form.

6-103 Brutality Complaint Processing

1. A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint is signed and sworn to (Under penalty of perjury) by the aggrieved person, a member of the aggrieved person's immediate family, or by any person with firsthand knowledge obtained through presence at and observation of the alleged incident and / or has a video recording of the incident that, to the best of the individual's knowledge, is unaltered, or by the parent or guardian in the case of a minor child. An investigation which could lead to disciplinary action for brutality may not be initiated and an action may not be taken unless the complaint is filed within three hundred and sixty six (366) days of the alleged brutality.
2. When a complainant fails to swear to a brutality complaint, he will be advised that pursuant to law, the Department may not investigate an allegation of brutality unless sworn to, and an effort will be made to obtain the cooperation of the complainant. If the complainant still refuses to swear to the complaint of brutality and the allegation, if factual, would constitute misconduct, the receiving officer will document the complaint on a Complaint against Police Officer-Brutality Form (BAPD 300). The form will contain a notation that the complainant refused to swear to the complaint of brutality and will allege a specific act of misconduct other than brutality, i.e. unbecoming conduct, mistreatment of persons in custody, unnecessary use of force, etc. Such complaints will be processed in the same manner as other citizen complaints.

6-104 Supervisory Disciplinary Action Procedures

1. Before taking disciplinary action against an employee, the Chief of Police will be certain that:
 - a. The problem is documented in writing.
 - b. The employee is provided a completed Notification of Investigation Form and Waiver of Hearing Board Form prior to requesting a written report, and the opportunity to consult with counsel or other responsible representative of his choice prior to submitting the report. The Notification of Investigation Form should clearly state that the recipient is the subject of an investigation, and clearly include the nature of the investigation.
 - c. A detailed report is obtained from the employee, if necessary.
 - d. A supervisor has obtained additional information when needed and either prepared a report or an endorsement to the employee's report assessing essential facts and identifying chargeable violations that have been substantiated.
 - e. The Deputy Chief will review all related reports and if charges are to be preferred, ensure that an Internal Affairs case number has been obtained before preparing charge sheets.
2. The Notification of Charges Form (BAPD 302) will be completed with only one charge on each sheet. Each charge will be supported by a reference to a rule of conduct or a

policy or procedure in the Department Manual or to some other official order or directive of the Department. Each charging document must be numbered sequentially and referred to by number in all related documents.

To the extent that specific language in Chapter 5 of this Manual, "Conduct," accurately describes the offense allegedly committed by an employee, that language should be used in all documents used to process a disciplinary action and in any subsequent personnel orders. Offenses not specifically cited in the Chapter 6 Matrix should be described in the language of the particular procedure, directive, etc., violated.

The charge should describe only the offense committed; portions of the rule, procedure, or directive containing irrelevant or extraneous language will not be cited. For example, employees are prohibited from divulging information or acting as an official spokesman for the Department in matters affecting the official business of the Department without prior approval. Supposing an employee had given investigative information to the local newspaper without first obtaining permission and as a result, his supervisor chose to initiate disciplinary action, the text of the charge being brought against the employee should appear as follows: "An employee shall not divulge investigative information, either in an official or unofficial capacity without first having obtained permission from his commanding officer." The charge addresses the specific offense committed by the employee and excludes other offenses included within the rule but not relevant to the instant case.

3. The facts of the case will be reviewed in depth by the Chief of Police and he will determine whether to proceed with summary punishment / Alternative Discipline Procedures or to defer the case to the hearing board.

Responsibilities of the Deputy Chief / Chief of Police

1. When the complainant does not want an investigation but merely seeks an explanation, the Deputy Chief and Chief of Police, will determine whether or not a formal investigation is warranted.
2. Should it be determined that an investigation is warranted, the Deputy Chief will inform the complainant of such and that the complainant will be notified.
3. The Chief of Police, after conferring with the Deputy Chief, will decide whether to proceed under the guidelines of the Alternative Disciplinary Procedure.
4. The Deputy Chief or Chief of Police will assign supervisors to investigate complaints.
5. The Deputy Chief or Chief of Police will, within 30 days of the completion of an internal investigation, notify the officer in writing of the findings.
6. When an investigation includes multiple allegations resulting from the same incident, notification concerning the outcome may be deferred until the completion of the entire investigation.
- 7.

6-105 Formal Counseling of Police Employees

1. Inappropriate behavior or minor infractions of Department policy by a Department police employee which if continued or repeated may result in disciplinary action, will be documented by using a Personnel Counseling Record at a formal counseling session.
2. As a general rule, a formal counseling session will be held as soon as possible following such inappropriate behavior or the conclusion of an investigation disclosing a minor infraction of Department policy. The session may be conducted by the person assigned as the employee's supervisor at the time of infraction or may be conducted by the Chief of Police or his designee with the employee's supervisor present. The particular incident will be discussed with the employee, pointing out the deficiencies in the employee's actions. The employee will be given the opportunity to state his views on the matter and to suggest corrective action to prevent future occurrences. At the completion of the counseling session, the employee's supervisor, the Chief of Police or his designee will recommend a course of action designed to help the employee improve in the specific areas addressed or avoid recurrence.
3. At the conclusion of the formal counseling session, the employee's supervisor will prepare the Personnel Counseling Record in duplicate. The police employee will be given the opportunity to review, sign, receive a copy of, and comment in writing upon the Personnel Counseling Record. If an employee refuses to acknowledge receipt of the form, "Refused to Sign" will be recorded thereon. The original will be placed in the employee's personnel file and a copy will be given to the employee.

6-106 Records and Files

1. A Complaint Against Personnel Master File, titled for purposes of the Law Enforcement Officers' Bill of Rights, the "Internal Investigation File," will be securely maintained by the Lead Investigator in case control number sequence. The file will contain the following:
 - a. Complaint Against Personnel Master Ledger containing the following:
 - (1) Case Control Number
 - (2) Name of employee involved
 - (3) Date and time received
 - (4) Name of complainant
 - (5) Nature of complaint
 - (6) Date and time of incident
 - (7) Final disposition
 - b. Copies of Complaint against Personnel Reports, and all related investigative reports and forms concerning findings.

2. In determining whether any portions of a file should be excluded from review, one must consider whether the disclosure of that portion of the investigation would:
 - a. Interfere with a valid and proper law enforcement proceeding.
 - b. Deprive another person of a right to a fair trial or to an impartial adjudication.
 - c. Constitute an unwarranted invasion of personal privacy.
 - d. Disclose the identity of a confidential source.
 - e. Disclose investigative techniques and procedures.
 - f. Prejudice an ongoing investigation.
 - g. Endanger the life or safety of any person.
3. The Internal Investigative files are available for review, but only to the employee who is the principal in an investigation and those employees who supervise that employee's work.

6-107 Confidentiality

1. All records, forms, files, correspondence and related material that are part of an administrative investigation are confidential. Only those personnel concerned with the actual process of the administrative hearing and report review shall have access to information developed during an Internal Affairs investigation.
2. Inquiries from the news media or other interested persons concerning routine Department disciplinary matters will be referred to the Chief of Police. The Chief of Police may release the employee's name, the nature of the charges and their resolution, the recommended penalty. Those cases likely to generate a high level of public interest, those involving life threatening situations, criminal charges, and those in which the Department is seeking demotion or dismissal will be referred to the Chief of Police.

6-108 Expungement of Files

1. The Law Enforcement Officers' Bill of Rights provides for expungement of any record of a formal complaint if:
 - a. the officer has been exonerated of all charges in the complaint or the charges are determined to be un-sustained or unfounded; and
 - b. three years have passed since the findings were rendered by the law enforcement agency.
2. To comply with the expungement requirements of State law, the following procedure will govern expungements from Internal Affairs files:

- a. The Department will expunge records of formal complaints which are classified as non-sustained as soon as practical after the termination of the three year time limit.
- b. Any member who does not want his non sustained records of formal complaints expunged must notify the Chief of Police no later than thirty (30) days after the end of the three year time limit.
- c. A record of a formal complaint will be expunged when there is civil litigation pending, if the officer makes a written request.

6-109 Investigative Process

An internal investigation is considered to be completed when the complainant and witnesses have been thoroughly interviewed, Department members have been questioned, all the physical evidence has been competently examined, all logical leads have been fully explored and the case has been comprehensively, accurately and clearly reported.

1. Complainant

- a. The complainant should be personally interviewed and all possible identifiers recorded.
- b. The primary goal of any interview is to arrive at the truth. Every relevant fact known to the complainant should be determined.
- c. Those questions so often mentioned in the investigative process: who, what, when, where, why and how, should be precisely addressed.
- d. Formal tape recorded statements of the complainant's interview should be taken whenever possible.
- e. Determine if the complainant can be satisfied at the initial stage of the investigation. Frequently, the complainant does not wish an investigation, but merely an explanation. When an explanation is sufficient, the Chief of Police will decide whether or not to continue processing the complaint; otherwise,
- f. Leave the complainant with the knowledge that a full and fair investigation will be conducted, and that the complainant will be notified of the results.

2. Witnesses

- a. Whenever possible, all witnesses involved in the matter under investigation should be personally interviewed, and depending on the type or severity of the complaint, tape recorded statements should be obtained.
- b. Specific and detailed questions should be asked.
- c. The motivation of the witness should be sought, such as his relationship with the complainant or Department employee.

d. Personal identifiers should be obtained.

3. **The Investigation**

a. Gathering Reports

4. **Department Records**

a. All original reports, Department records, and related documents relevant to the investigation will be gathered and preserved by the investigator in an expeditious manner. Written permission or a subpoena may be required to obtain certain records, i.e. physician, hospital. Where written permission is required, the individual whose records are desired will be requested to complete an Authorization Release of Information. A copy of all documents obtained by the investigator under this subsection will remain with the original case file.

b. The examination of Department records by the investigator is basic to any investigative effort. Numerous leads may be found in Department records:

1. Offense Report
2. Arrest Report
3. Incident Reports
4. Department Logs Radio, Telephone, etc.
5. Patrol Schedules
6. Personnel Records
7. Field Observation Reports

5. **Non Department Records**

a. The investigator should examine the records and documents of all agencies and organizations that may furnish investigative information:

1. Reports from Other Police Departments
2. Hospital Records
3. Physicians Reports
4. Jail Records
5. Court Transcripts

6. **Physical Evidence**

The investigative effort expended on all internal investigations should at least be equal to the effort expended in the investigation of crimes where a suspect is known. The investigators should employ all available investigative tools that can be reasonably used to determine the facts and secure necessary evidence during the internal investigation.

a. Alcohol Blood, Breath, Urine Department employees may be required to submit to blood alcohol tests, blood, breath or urine tests, for controlled dangerous substances. (Public Safety Article, Title 3-104).

- b. Clothing accepted investigative techniques shall be followed; however, when the officer is the victim, damaged uniforms or Department equipment should be preserved.
- c. Documents and records:
 - 1 Motor Vehicle Administration
 - 2 Telephone Bills
 - 3 State Licenses; i.e., real estate, medical, banking, etc.
 - 4 Search warrants and affidavits
 - 5 Department Records
- d. Photographs:
 - 1 Of Complainant ID photos at the time of the complaint (brutality), etc.
 - 2 Department Employees If the employee is the victim, or is injured
 - 3 For Identification A six photo spread for identification of Department employees. Retain photo spread as evidence. (Photos used should be recent ones)
 - 4 Of the scene, if it is considered necessary.

7. Polygraph/CVSA

- a. Polygraph/CVSA examinations of Department members will be in accordance with (Public Safety Article, Title 3-104)
 - 1 Employees may voluntarily submit to polygraph/CVSA examinations. However, results of voluntary exams are not admissible in administrative hearing.
 - 2 Employees may be ordered to submit to polygraph/CVSA examinations. On these occasions, the results of the examinations cannot be used as evidence in any administrative hearing.
 - 3 The results of polygraph/CVSA examinations are not admissible in criminal proceedings, even by stipulation.
 - 4 The law enforcement officer's representative need not be present during the actual administration of a polygraph/CVSA examination by a certified polygraph/CVSA examiner, if the questions to be asked are reviewed with the

law enforcement officer or his representative prior to the administration of the examination, the representative is allowed to observe the administration of the polygraph/CVSA examination, and if a copy of the final report of the examination by the certified polygraph/CVSA operator is made available to the law enforcement officer or his representative within a reasonable time, not to exceed ten days after the completion of the examination. (Public Safety Article 3-10).

8. **Sketches**

- a. May be appropriate to supplement photographs

9. **Statements**

- a. Statements are evidence and must be preserved as such.

10. **Department Employees**

Generally the interview of Department employees is accomplished after the complainant and all witnesses have been interviewed. However, this is determined by the character of the complaint and remains the option of the investigator.

Department employees subject to interrogation will be notified in writing of the nature of the investigation before any interrogation. The interrogation of Department members will be conducted in compliance with the provisions of the Law Enforcement Officers Bill of Rights, (Public Safety Article, and Title 3-104).

Department employees may be required to submit reports detailing the facts concerning their involvement in an incident.

When an employee of the Department is required to submit a detailed report concerning an incident in which he is alleged to have been involved and the authority ordering the report knows or should have known, the report is likely to contain information that may be used as evidence against the employee in a disciplinary hearing, the report is considered a form of interrogation. For this reason, guarantees provided by the Law Enforcement Officer's Bill of Rights regarding interrogation are applicable. The authority ordering the report will, at the time of such order, provide the employee with a completed copy of Notification of Investigation, Waiver of Rights, and Garrity Warning, and allow sufficient time for the employee to consult with counsel or other responsible representative of his choice prior to submitting the report. The form should clearly state that the recipient is the subject of an investigation, and clearly include the nature of the investigation. Excepted are certain procedural reports required by Department rule or policy. The original form will be attached to the report of investigation.

If the officer ordering the report has reason to believe that criminal charges could be brought against the employee, then the official shall, at the time of such order, also provide the employee with an Explanation of Miranda Rights. The original of this form will be attached to the report of investigation concerning the incident.

11. Weapons

All evidence regarding firearms will be treated in accordance with established procedures. However, if a weapon is used by an employee, the following should be determined:

- a. Is it an approved weapon?
 1. Department issue
 2. Primary or secondary weapon
- b. Is the ammunition Department approved?
- c. Condition of the weapon
 1. Complete description of weapon: i.e. make, model, caliber, serial number, etc.
- d. Was the officer qualified to use that particular weapon?

6-110 Interrogation Procedures

1. All interrogations must be conducted in accordance with the Law Enforcement Officer's Bill of Rights.
 - a. Prior to any interrogation, the investigator assigned the case shall be responsible for completing a Notification of Investigation and Waiver of Rights Forms. The original copy will be signed by the officer being interrogated and placed in the original case file. A copy will be given to the accused.
 - b. Every officer under investigation, who is to be interrogated for any incident which could lead to disciplinary action, will first be allowed to read or will have read to him a completed copy of a Notification of Investigation and a Waiver of Rights Form. The form should clearly state that the recipient is the subject of an investigation, and clearly include the nature of the investigation. It shall be the responsibility of the investigating officer to complete the form prior to any interrogation of the accused. If the employee desires to waive the rights afforded him by the LEOBR, he shall so indicate by signing his name, rank, and ID number in the place provided. Also, those rights which the employee chooses to retain shall be noted in the space provided on the form. The investigating officer must be certain that the employee is given this opportunity to waive or retain his rights before any statement can be taken. The original copy of form will be signed by the accused and placed in the original case file. A copy will be given to the accused.
 - c. Every police employee under investigation for a violation of Department rules, policy or procedure may be required to submit to blood alcohol tests; blood, breath, or urine tests for controlled dangerous substances; polygraph/CVSA examinations; interrogations; or submit detailed reports which specifically relate to the subject matter of the investigation. (Some

reports may have to be prefaced by a "Notification of Complaint/Waiver of Rights.") The results of such blood alcohol test; blood, breath, or urine test for controlled dangerous substances; polygraph/CVSA examination; interrogation; or contents of a detailed report, are not admissible in any criminal proceedings against the police employee when he has been ordered to comply. The results of a polygraph/CVSA examination may not be used as evidence in any administrative hearing when the police employee has been ordered to submit to such an examination by the Department unless the Department and the police employee mutually agree to the admission of the results. Such an interrogation, examination, or test must be prefaced by advising the accused of certain rights:

- (1) Information supplied through his answers will not be used against him in subsequent criminal proceedings
- (2) His refusal to cooperate in the investigation could ultimately lead to his dismissal.

The accused must be advised that failure to cooperate in the investigation or to submit to a blood alcohol test; a blood, breath, or urine test for controlled dangerous substances; a polygraph/CVSA examination; an interrogation; or submit a detailed report which specifically relates to the subject matter of the investigation is itself a violation of the rules of conduct of the Bel Air Police Department and constitutes grounds for disciplinary action.

- d. A law enforcement officer's representative may be permitted to be present during the administration of a polygraph/CVSA examination if the physical facilities will allow for it and if his presence will not, in the opinion of the polygraph/CVSA examiner, disrupt the examination. For the purposes of this subsection, "presence" means that the representative may be constructively present during the examination, viewing it from outside the examination room, e.g. through a one way mirror, or physically present in the room.

If the facilities are such that the law enforcement officer's representative cannot be present without disrupting the examination, then he may be excluded, but in these instances:

- (1) All substantive questions concerning the offense which will be asked during the examination will be made available, on request, to the accused or his representative.
- (2) The polygraph/CVSA examination shall be tape recorded and the tape, including pretest and posttest phases, shall be made available on request to either the law enforcement officer or his representative, and
- (3) The polygraph/CVSA examiner will make available to the accused or his representative within a reasonable time, but not more than ten days following the completion of the examination, a copy of all reports written by the examiner concerning the examination.
- (4) A post polygraph / CVSA examination will require the issuance of a new form notification of Investigation (BAPD 301) briefly detailing the nature of the investigation, and a Wavier of Rights (Garrity

Warning) directing the member when and where to appear for the interrogation.

- e. During an internal investigation, any officer, regardless of rank, may be required by the investigator to submit a statement and answer all questions which specifically relate to the subject matter of the investigation.
- f. If the police employee under interrogation is also under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation. The words "all his rights" include his constitutional rights, the Miranda Warnings, as well as any other right granted by statute, ordinance, or Department regulation.
- g. At the request of any law enforcement officer under interrogation, the officer shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present and available for consultation at all times during the interrogation, unless waived by the law enforcement officer. The interrogation shall be suspended for a period of time not to exceed five (5) business days until representation is obtained. Within that five (5) business day period, the Chief of Police, for good cause may extend the period for obtaining representation. Counsel may be an attorney, employee of this Department, or any other responsible individual or employee organization chosen to represent the accused, excluding members of the hearing board, or the Chief of Police.
- h. During the interrogation, the law enforcement officer's counsel or representative may; (1) request a recess at any time to consult with the law enforcement officer, (2) object to any questions posed, and (3) state on the record outside the presence of the law enforcement officer, the reason for the objection.
- i. The law enforcement officer under investigation shall be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator during any one interrogating session.
- j. The interrogation shall be conducted at a reasonable hour, preferably at a time when the accused is on duty, unless the seriousness of the investigation is such that an immediate interrogation is required, but these conditions may be waived by the accused.
- k. The interrogation shall take place either at the police department or at any other reasonable and appropriate place designated by the investigating officer unless otherwise waived by the accused.
- l. The date and time that the interrogation is begun, all interruptions, and the time the questioning is terminated shall be recorded. Interrogation sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as may be reasonably necessary.

- m. The law enforcement officer under interrogation may not be threatened or coerced (e.g., with transfer or dismissal) in any manner whatsoever.
- n. A complete record, written, taped, or transcribed, shall be kept of the complete interrogation, including all recess periods. After the investigation has been completed, and upon request of the police employee under investigation or his counsel, a copy of the record of his interrogation shall be made available, not less than ten days prior to any hearing.

6-111 Report Format

To assure uniformity of internal investigation reports, the following format will be used.

- 1. Internal investigative reports will be prepared using the detailed report format illustrated in Chapter 3 of the manual.
- 2. The completed investigation case file will be compiled in the following manner:
 - a. Complaint against Police Personnel Report.
 - b. Report of Investigation
 - c. Appendices:
 - (1) Statement of complainant, if different from that of the victim.
 - (2) Statement of victim, if different from that of the complainant.
 - (3) Statements of witnesses.
 - (4) Notification of Complaint Form, if applicable.
 - (5) Detailed Report.
 - (6) Explanation of "Miranda" Rights if applicable.
 - (7) Other statements/detailed reports.
 - (8) Additional Exhibits Photographs, diagrams, charts, etc.
 - d. Completion of Investigation

6-112 Report Flow

An investigation should be completed and the initial report prepared within thirty days of assignment. Certain classes of cases will require more prompt attention, while others may justify an extension.

6-113 General Provisions

- 1. The Chief of Police will be responsible to administer disciplinary action against police employees within the Department as described below.

2. An emergency suspension of an employee's police powers may be imposed when it is deemed to be in the best interests of the public and the law enforcement agency Public Safety Article, (Title 3-112 of the Annotated Code of Maryland.) Such a suspension may be imposed against a law enforcement officer only by a supervisor superior in rank. Concurrence of the Chief of Police of such an action will be obtained as soon as possible through channels. When an employee's police powers have been suspended his Department issued firearm, badge, Bel Air Police Department identification card, Maryland police officer certification card, and assigned vehicle will remain in the custody of the Chief of Police and the employee will not exercise police authority.
3. Actions involving the suspension of police powers are generally related to disciplinary matters; however such a suspension may also be imposed in the best interest of the employee, the Department and the public for issues related to medical and/or psychological considerations. Where an employee's police powers are suspended for medical/ psychological reasons, not associated with the disciplinary process, an emergency suspension review hearing is not required. Instead, these cases will be promptly reviewed by the Department Physician and, when necessary, referred to an appropriate specialist to obtain a fitness for duty evaluation.
4. The Chief of Police shall arrange for the convening of an emergency suspension review hearing board in all cases relating to suspensions involving the disciplinary process. The suspended employee will be ordered to appear for the suspension review hearing to determine if the suspension will be terminated or continued pending disposition of the charges(s). This suspension review is in addition to the hearing on the merits of the charges as provided for in Public Safety Article, Title 3-107, of the Annotated Code of Maryland.
 - a. The Chief of Police or his designee shall promptly conduct an emergency suspension review hearing.
 - b. An employee whose police powers have been suspended may choose to waive the review hearing. This waiver must be documented in writing, utilizing an Emergency Suspension/Waiver of Hearing Form and submitted to the Chief of Police or his designee prior to the review hearing.
 - c. The review board will be comprised of three members, at least one of which shall be the same rank as the suspended employee.
 - d. The review board shall conduct the hearing in order to formulate recommendations to the Chief of Police regarding the emergency suspension. The Board shall limit the subject of its review to determining if the continuation of the suspension of police powers is necessary to protect the interests of the public or the Department pending final disposition of the charge(s). The Board shall also consider whether other assignment of leave status alternatives should be considered. At this review the employee may:
 - (1) Be accompanied by counsel; however only matters dealing directly with the determination of the suspension will be heard.

- (2) Rebut the reason(s) given for the suspension.
 - (3) Present mitigating testimony.
 - (4) Suggest alternatives to suspension.
 - e. The presenter of facts will present information to the review board and will make recommendations concerning the employee's leave status, temporary assignment during the period of suspension and/or whether the suspension should continue with or without pay.
 - f. An emergency suspension of police powers without pay may only be imposed when the suspended employee has been charged with the commission of a felony.
 - g. The hearing will be tape recorded. At the conclusion of the hearing the tape will be sealed in an envelope and forwarded to the Detective Sergeant for retention and inclusion in the investigative case file if any.
 - h. At the conclusion of the hearing the commissioned officer conducting the review will advise the employee that the suspension will continue pending the Chief of Police's decision and that the employee will be notified of the decision in writing.
 - i. The Chairman of the Review Board will ensure that the report containing the Board's recommendations will be completed and forwarded to the Chief of Police expeditiously.
5. After reviewing the Board's report the Chief of Police may concur, amend or reverse the recommendation. The Chief of Police shall decide whether to continue the suspension and whether it will be with or without pay. When the decision has been made, the Chief of Police will ensure that a copy of a personnel order containing the details of his decision will be issued and promptly delivered to the employee.
 6. The original Review Board report, along with the Chief of Police's endorsement, shall be placed in the Internal Affairs case file for retention.
 7. An employee whose police powers have been suspended shall not exercise police authority until those powers have been restored by the authority of the Chief of Police.
 8. In any case of disciplinary action arising out of supervisory responsibilities, an Internal Affairs case control number will be assigned before charges are placed.
 9. Charges may be preferred by the Chief of Police or a supervisor under his command. Notification of Charges Form will be completed with only one charge on each sheet. Each charge will be supported by a reference to a rule of conduct or a policy or procedure in the Department manuals or to some other official order or directive of the Department. Each charging document will be numbered and charges referred to by their corresponding number in all related documents. To the extent that specific

language in Chapter 5 of this Manual "Conduct" accurately describes the offense allegedly committed by an employee, that language should be used in all documents used to process a summary action and in any subsequent Personnel Orders. Offenses not specifically cited in the Chapter 6 (Matrix) should be described in the language of the particular procedure, directive, etc., violated.

Charges should describe only the offense committed; portions of the rule, procedure, or directive containing irrelevant or extraneous language will not be cited.

10. The facts of the case will be reviewed in depth by the Chief of Police and a determination made by him whether to proceed with summary punishment or to defer the case to the hearing board. All charges arising out of a single incident shall be disposed of in the same manner.
11. A hearing arising from administrative charges must commence promptly after the date of the order assigning the members of the hearing board. After the initial hearing has been set, the date may only be postponed by the chairman of the hearing board on presentment of good and substantial reason by either party.

6-114 Summary Punishment

1. Procedure
 - a. In all cases when a law enforcement officer is charged with a violation of Department rules, policy, or procedure, such charges may be heard by the hearing board. If the Chief of Police considers the charge placed against one of his subordinates to be minor, he may allow the accused to elect to have these charges disposed of by summary punishment. In no instance, however, may the accused choose summary punishment unless the Chief of Police approves of such a course of action.
 - b. The authority to impose summary punishment charges the Chief of Police with the responsibility of exercising his authority in a fair and judicious manner. The Chief of Police must ensure that the case investigator promptly provides sufficient information to make an appropriate disposition of the incident. The investigation should reveal:
 - (1) Whether an offense was committed.
 - (2) Whether the employee was involved in the offense.
 - (3) The disciplinary record of the employee.
 - (4) Recommendations as to sustained or non-sustained findings.
 - c. Any decision, order or action taken as a result of summary punishment shall be accompanied by findings of fact. The findings shall consist of a concise statement of each issue in the case.
 - d. If the accused is given the option of choosing the hearing authority, he must make his choice within three days after he receives the Notification of Charges (Form BAPD 302) and if he elects summary punishment, he shall complete the Waiver of Hearing and Acceptance of Summary Punishment

Form (Form BAPD 303). The failure of the accused to select the hearing authority and to submit within three days shall be considered his waiver of summary punishment and the Chief of Police shall process the case in accordance with the procedure specified in the subsection entitled "Hearing Board."

2. Penalty Assessment Guide

- a. In order to assure uniformity and objectivity in the assessment of penalties for summary punishment offenses, the Chief of Police has established a Penalty Assessment Guide. Penalty ranges for such offenses are limited to a maximum of \$150 fine or loss of leave for three days (for summary punishment). The guide will list all of the various offenses, along with the recommended penalty for each infraction.
- b. The Penalty Assessment Guide provides the following categories of offenses and corresponding penalties:
- c. Supervisors should adhere to the penalties listed for each offense. The guide is structured to take into account such factors as repeat offenders and the frequency of offenses committed by an individual. However, the Penalty Assessment Guide is just as its name implies a guide, and not an absolute directory. Although occasions to deviate from the guide should be rare, supervisors may, with adequate justification, choose a penalty assessment different from that recommended by the guide, after consulting with the Chief of Police. If an employee has been charged with two violations of the same offense within one year, he should be subjected to the penalties of the next higher category or the case should be sent to a hearing board, whichever is appropriate.

3. Penalty Selection

- a. If the offer of summary punishment is considered appropriate, following current investigative and administrative procedures then the Chief of Police will determine an appropriate penalty.
- b. Once a decision is made, the Chief of Police or his designee will properly complete the Notification of Charges Form including the specific charge and facts used to support that allegation. A copy of the completed Notification of Charges Form will be presented to the accused. At this time, the accused may be offered summary punishment or advised summary punishment is not appropriate and the case will be heard by a hearing board.
- c. The accused is not compelled to accept summary punishment and penalty and may demand the case be heard by a hearing board. The accused employee's decision will be made according to policy contained in this subsection.
- d. In cases where summary punishment is not offered or where it is offered and refused, the case file and completed Notification of Charges Form will be forwarded directly to the Department's Legal Advisor for processing and review.

4. Case Flow
 - a. After the Chief of Police's disposition, the original case file, Notification of Charges, Waiver of Hearing and Acceptance of Punishment Form, will be filed in the Internal Affairs case file.
 - b. The Chief of Police shall prepare an appropriate order announcing the disciplinary action and designate dates of suspension or loss of leave in accordance with dates specified on Form 302.
 - c. Records of Disciplinary Action of any case disposed of through summary punishment may be filed in the affected employee's personnel file without his consent.
 - d. After final disposition, the Chief of Police shall give a completed copy of Form 302 to the accused.

6-115 Hearing Board

The rules and regulations in this subsection define policy for the imposition of discipline within the Department. These rules and regulations are guides for handling disciplinary actions and generally should be followed. In unusual situations not covered by these rules and regulations, or where strict adherence to these rules would work an injustice, deviations from the rules and regulations are permitted. The hearing board chairman and the other members of the board should be flexible and should not apply these rules, regulations and rules of evidence mechanically.

1. Jurisdiction
 - a. It shall be the function of the hearing board to hear all charges against a law enforcement officer not disposed of by summary punishment. If an investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes action.

Charges should describe only the offense committed; portions of the rule, procedure, or directive containing irrelevant or extraneous language shall not be cited. Charges should be prepared as described in the example appearing in the subsection relating to summary punishment.
2. Organization
 - a. As designated by the Chief of Police the Administrative Captain will serve as the permanent chairman of the hearing board.
 - b. The permanent chairman of the hearing board shall, with the Chief of Police's authority, appoint from the total uniformed complement of the Department, or from another agency with the approval of the chief of that other agency, not less than three voting member hearing board, one of whom shall be of a rank equal to the accused. The permanent chairman, in his discretion, may serve as a sitting member of any such board. No member of

the hearing board may have participated in the investigation or interrogation of the accused law enforcement officer.

- c. The Chief may appoint as a non-voting member of the hearing board, one member of the public who has received training administered by the Maryland Police Training and Standards Commission on the LEOBR's and matters relating to police procedures.
- d. When an employee has been offered summary punishment, but elects to have a hearing, the permanent chairman will convene a one member or more hearing board. If a single member hearing board is convened, that member need not be of the same rank as the accused. The prosecutor for a single member hearing board shall be appointed by the Chief of Police.

3. Case Preparation

- a. If the accused elects to have the case tried before a hearing board, the case file, including the Notification of Charge will be forwarded to the Department Legal Advisor for review, with a recommendation from the Chief of Police to appoint a prosecutor. The investigating officer must not be recommended for prosecutor if he will be a witness at the hearing. In every instance in which the recommended penalty is dismissal, the case will be prosecuted in conjunction with the Department Legal Advisor.
- b. After reviewing the case file, the Department Legal Advisor may indicate that the facts contained in the investigation are insufficient to sustain the charge being filed against the accused, and so state the reasons for such insufficiency. The case file and a copy of the Legal Advisor's endorsement will be maintained in the Internal Affairs file. In any instance when the Department Legal Advisor decides not to proceed with a case, the accused shall be notified by the Chief of Police of this decision.
- c. The Department Legal Advisor may, after reviewing the case file, find that, although sufficient merit exists for prosecution, additional information is needed to further prepare the case for the Hearing Board. In this instance, the case file with an endorsement by the Department Legal Advisor requesting supplementary information shall be returned through channels to the Chief of Police with an indication that it should be resubmitted when the investigation has been completed.
- d. When a case is reviewed by the Department Legal Advisor and considered sufficient for prosecution, the Legal Advisor will forward the case file to the permanent chairman of the hearing board and shall forward the Notification of Charges to the Chief of Police or his designee for presentation to the employee. After the employee has signed the Notification of Charges, the Chief of Police or his designee will provide the employee with a copy of each charge and forward the original and remaining copies to the permanent chairman of the hearing board. Notification of Charges will not be presented to the employee until after they have been reviewed by the Legal Advisor.
- e. Upon receipt of the case from the Department Legal Advisor and the signed Notification of Charges from the Chief of Police or his designee, the permanent chairman of the hearing board shall, by special order, appoint a

prosecutor and hearing board. The special order accompanied by the case file and copy of the Notification of Charges, shall be given to the prosecutor. A copy of the special order and Form 302 shall also be given to the accused.

- f. Neither the chairman, nor the members of the hearing board, may have access to, be given a copy of, nor in any other way be apprised of the contents of the investigative file prior to the commencement of the hearing. Hearing board members shall be privileged only to information contained in the Notification of Charges, which will be forwarded to them by the permanent chairman of the hearing board. When the permanent hearing board chairman elects not to participate in a hearing, he will forward his copy of the Notification of Charges to the appointed chairman of the hearing board. However, the accused shall be furnished with a copy of the investigatory file, excluding the identity of confidential sources and recommendations as to charges, disposition or punishment, not less than thirty days before any hearing if the officer and the officer's representative agree:
- (1) To execute a confidentiality agreement with the law enforcement agency to not disclose any of the material contained in the record for any purpose other than to defend the officer; and
 - (2) To pay any reasonable charge for the cost of reproducing the material involved.

A fee schedule has been set by Town Code for the reproduction of materials for use by the accused, and is as follows:

- (a) Transcribe tape recordings \$4.50 per page;
- (b) Photocopy existing documents \$.50 per page;
- (c) Duplicate cassette tape recordings (both sides included) \$5.00 per tape;
- (d) Duplicate DVD tape recordings \$7.00 per recording.

Fees collected for the aforementioned reproductions must be forwarded to the Finance Office of the Town of Bel Air for deposit in the general fund. When the hearing is concluded, the prosecutor shall deliver the case file to the Chief of Police.

4. Hearing Procedures

- a. When the permanent chairman of the hearing board has received from the Department Legal Advisor a memorandum approving prosecution, he shall act promptly to select a hearing board and shall appoint one member of that board as its chairman.
- b. Both prosecution and defense must exchange the names of all witnesses to be called and a copy of all documents and any other evidence to be used at least ten days in advance of the hearing date. To facilitate this exchange, the chairman of the hearing board will complete the Notification of Hearing Board, and attach to it a copy of an Evidence Report. Oral statements or tape recorded interviews of witnesses to be called at the hearing will be listed on

- the Evidence Report and made available to the other party, upon request, at least ten days in advance of the hearing.
- c. The chairman of the hearing board shall forward copies of the Notification of Hearing Board and the Evidence Report to both the prosecutor and to the Chief of Police for service on the accused at least fifteen days prior to the hearing date.
 - d. Copies of the completed Evidence Report and copies of all documents and items listed therein will be delivered by the prosecution and defense to each other and each will certify delivery of the material by signing the appropriate section of the Evidence Report. If an item of evidence cannot be duplicated, the other party shall be given the right to examine it at a time mutually convenient to both parties. The parties, by agreement, may extend the time for exchanging exhibits. The prosecution and defense shall return a completed copy of the Evidence Report to the chairman at least ten days prior to the hearing date. Failure to exchange the required information, documents and other evidence or to return the required forms to the chairman within the specified time without good and substantial reason may result in evidence being excluded.
 - e. It will be the responsibility of the accused to contact the chairman of the hearing board if he does not completely understand the information contained on the Notification of Hearing Board Form, or the Evidence Report.
 - f. Postponements will be made by the hearing board chairman and all requests shall be directed to him.
 - g. At any time before the verdict, the hearing board chairman may grant a motion to amend charges to conform to the evidence or new charges to be filed. In either case, the accused, if requested, will be granted a continuance to prepare for the amended or new charges.
 - h. The chairman of the hearing board shall administer an oath to witnesses who will testify at the hearing. He may also issue Order to Appear summonses (BAPD Form 316) to compel the attendance and testimony of witnesses, and the production of books, paper, records and documents as may be relevant or material. These summonses may be served in accordance with the Maryland Rules of Procedure pertaining to service of process issued by a Court, without cost. However, whenever possible, Department personnel will serve such summonses according to Department procedures. Either party may request the chairman of the hearing board to issue a summons. The acknowledgment of the summons will be returned to the chairman of the hearing board and be made a part of the case file.
 - i. All preliminary motions shall be filed with the chairman at least ten days (excluding weekends and holidays) before the hearing date. The parties must respond to these motions in writing within seven days of the date received. The chairman, in consultation with other members of the board, shall rule on the motion before or at the hearing. Absent a showing of good and substantial reason, preliminary motions will not be considered on or after the hearing date. The chairman in his discretion will decide on a continuance requested as a result of board rulings on preliminary motions.

- j. Plea Bargaining: The prosecutor may engage in plea bargaining at any time prior to or during a hearing. If a plea bargain agreement is reached, approval will be obtained from the Chief of Police and the prosecutor will prepare the Waiver of Rights/Acceptance of Punishment portion of the Form 303 acknowledging the waiver of rights and acceptance of punishment as described. The prosecutor will then notify the hearing board chairman so that further proceedings may be canceled and will sign and forward the Form 303 to the Chief of Police. The Chief of Police will then sign and process the Form 303 following procedures outlined in this chapter.
- k. If the accused employee expresses a desire to plead guilty and proceed on a statement of facts, but desires the hearing board to decide the penalty, the prosecutor will notify the hearing board chairman as to that fact. If time permits, the chairman of the hearing board will notify nonessential witnesses that they will no longer be required to testify. The hearing board will then convene to hear the statement of facts, receive the guilty plea, and conduct the penalty phase of the proceeding.
- l. The hearing will be conducted in accordance with the procedures set forth on Disciplinary Hearing Procedures Form.
- m. The chairman conducting the hearing shall administer oaths or affirmations and examine any individual under oath concerning the subject of any hearing conducted pursuant to these procedures.
- n. Cases presented to a hearing board are administrative proceedings and as such are not subject to the same rules of evidence which govern the conduct of criminal proceedings. Although testimony must bear only on facts concerning the instant case, the restrictions applicable to hearsay evidence, written statements, and other forms of evidence in criminal actions, do not apply to administrative hearings.
- o. Evidence which possesses probative value, commonly accepted by reasonable and prudent men in the conduct of their affairs, shall be admissible and shall be given probative effect. The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and be made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- p. Every party has the right to cross examine witnesses who testify, and may submit rebuttal evidence.
- q. The hearing board may take notice of judicially cognizable facts and of general, technical, and scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity and reasonable time to contest the facts so noticed. A hearing board may use its experience, technical competence, and specialized knowledge in evaluating the evidence presented.

- r. An administrative hearing is not a judicial proceeding and requires, on appeal, only that the Department's findings be supported by competent, material and substantial evidence and that the action of the board is not arbitrary, capricious or illegal. A majority of the board shall decide the verdict on each charge and any order or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement of each issue in the case. A finding of not guilty terminates the action. If a finding of guilt is made, the hearing board shall reconvene the hearing, receive evidence of the employee's past job performance, matters of extenuation and mitigation and other relevant information and recommend a penalty to the Chief of Police. The prosecutor will be responsible for providing the accused's personnel files to the chairman for board consideration. The findings and conclusion and the written recommendations for action shall be recorded on a Disciplinary Hearing Procedures Form (BAPD Form 306) and a copy shall be delivered or mailed promptly to the law enforcement officer. In the case of multiple charges, a separate Form 302 will be completed for each charge.
- s. The chairman of the hearing board shall keep an official record of each hearing, which shall become a part of the original case file. The record shall include testimony, exhibits, the exact times the hearing was convened and terminated and the exact times of the beginning and termination of each recess taken during the hearing. The chairman of the hearing board is also responsible for tape recording all hearings. The tapes shall become a permanent part of the record.
- t. No firearms will be permitted in the hearing board room.

5. Disposition

In any proceeding before a hearing board, the accused may be found not guilty on any specified charge and informed of the decision or he may be found guilty on any specified charge and informed of the sentence recommended.

6. Disciplinary Recommendations

- a. After a finding of guilt, the hearing board may review the accused's personnel file and thereafter recommend penalties as it considers appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, and loss of pay, reassignment, or other similar action which would be considered punitive. A hearing board convened because the accused refused summary punishment may recommend only those penalties permitted for summary punishment.
- b. If the decision of the hearing board is not unanimous, in either the verdict or the penalty, the dissenting member may, but is not required to, submit a minority report expressing his views. If the dissenting member elects to submit a minority report, it will be submitted to the board chairman, who will forward it along with the hearing board report.
- c. If the Chief of Police is an eyewitness to the incident which led to the charges being placed, the decision of the hearing board, both as to findings of fact and

punishment is final. This decision may only be appealed to the Circuit Court.

7. Remedial Training

- a. Remedial in service training may be included as part of a hearing board recommendation for an employee found guilty of violating Department policies and procedures.
- b. Remedial in-service training shall be included as part of a hearing board recommendation for an employee found guilty of violating Department policy and procedures concerning discrimination or harassment incidents, except where termination is recommended by the board and imposed by the Chief of Police.

8. Case Flow

- a. After adjudication, and upon completion and signing by the board members of Department administrative hearing board reports, the reports are to be forwarded in the following manner:
 - (1) Department one man administrative hearing board reports are to be promptly forwarded directly to the Chief of Police without further endorsement.
 - (2) Department three man administrative hearing board reports are to be forwarded directly to the Department Legal Advisor without further endorsement, where they will be reviewed for legal sufficiency. Upon completion of this review, the Legal Advisor shall promptly forward the reports directly to the Chief of Police.
 - (3) The Chief of Police will ensure that involved Department personnel and counsel of record are forwarded a copy of the administrative hearing board report.
- b. After the Chief of Police has reviewed the board's recommendation, he shall record the final disposition. In cases in which the disposition is "Not Guilty," the Chief of Police shall place the original copy of all exhibits directly into the Internal Affairs file. In cases in which the disposition is "Guilty," the Chief of Police shall make the following distribution:
 - (1) The original copy of all relevant forms and all exhibits to the Internal Affairs file and an appropriate Personnel Order will be prepared.
 - (2) One copy of the relevant documents will be given to the convicted employee.

9. Review Procedure

- a. The board's recommendation for penalty is not binding on the Chief of Police. Within thirty days after receiving the hearing board's recommendation, the Chief of Police shall review the findings and recommendation, and indicate his concurrence or non-concurrence. Reasons for non-concurrence must be

explained under the caption "Remarks" on the form. The Chief of Police's decision is binding and may be appealed only to the courts. Before the Chief of Police may increase the recommended penalty of the hearing board, he personally shall review the entire record of the hearing board proceedings, shall give the law enforcement officer an opportunity to be heard, and shall respond in writing the reasons for increasing the penalty.

- b. Appeal from decisions rendered in accordance with the Law Enforcement Officers' Bill of Rights shall be taken to the Circuit Court pursuant to the Maryland Rules of Procedure, Chapter 1100, Rule B 2, Annotated Code of Maryland. Any party aggrieved by a decision of a court under this Section may appeal to the Court of Special Appeals. For the purpose of appeals to the Circuit Court the final action shall be the date of the Chief of Police's decision on the hearing board's recommendations.

6-114 Waiver of Law Enforcement Officers' Bill of Rights

1. Defined

When a police employee is charged with a violation of Department rules, policy, or procedure, and it is inappropriate to dispose of such case by summary punishment, or a plea agreement has been reached after the appointment of a hearing board, he may waive all rights afforded him by the Law Enforcement Officers' Bill of Rights. Specifically, the employee by this waiver chooses to accept both the Department's assessment of his culpability and penalty without the right to appeal either.

2. Procedure

- a. When the facts in the case are not disputed by the employee, and it would be to the mutual benefit of the employee and the Department to expeditiously dispose of the charges, the Chief of Police will establish an appropriate penalty.
- b. The Chief of Police will present the employee with the Waiver of Law Enforcement Officers' Bill of Rights and Acceptance of Punishment Form, stating the specific charge and the recommended penalty. If the penalty includes suspension or loss of leave, the specific dates must be stated. The Chief of Police will then advise the employee that in this case, the process is an appropriate way of dealing with the charges, advise them of the penalty, and ask if they choose to accept this option. The employee does not have to accept this option and may demand a hearing before the hearing board.

3. Case Flow

- a. Any decision, order, or action taken as a result of a waiver of rights will be accompanied by a finding of fact; which will consist of a concise statement of each issue in the case.
- b. After the final disposition, the Chief of Police will place the original case file with the original copy of the Notification of Charges, Waiver of Law Enforcement Officers Bill of Rights and Acceptance of Punishment (BAPD

Form 303a) in the Internal Affairs file. The Chief of Police will prepare a Personnel Order announcing the disciplinary action. The Personnel Order shall designate dates of suspension or loss of leave in accordance with the dates specified on the Form 303a. The Personnel Order, a copy of the Notification of Charges/Waiver of Law Enforcement Officers' Bill of Rights and Acceptance of Punishment Form will be filed in the law enforcement officer's personnel file.

- c. Records of disciplinary action of any case disposed of through a waiver of rights may be filed in the affected employee's personnel file without his consent.

6-115 Disciplinary Procedures for Probationary Officers

1. Complaint processing, investigations, and disciplinary action involving probationary officers resulting from allegations of brutality shall be administered in accordance with Section III, this Section, and the Law Enforcement Officers' Bill of Rights. All other complaint processing, investigations, and disciplinary action involving probationary officers shall be in accordance with Section III and this subsection without regard for the provisions of the Law Enforcement Officers' Bill of Rights.
2. Procedure
 - a. When a probationary officer is the subject of an internal investigation, the Chief of Police shall decide, based on all available evidence, (including, but not limited to investigative reports and endorsements, interviews and interrogations with the probationary officer, detailed written reports by the probationary officer, witness accounts, etc.) whether the probationary officer should or should not be disciplined for the alleged misconduct and advise the officer of his decision.
 - b. The Chief of Police will then consider the penalty and may impose any penalty he feels appropriate under the circumstances, including, but not limited to, dismissal, suspension, transfer, loss of pay, loss of regular leave, or other similar action.
 - c. The Chief of Police or designee will complete a Probationary Officer Record of Disciplinary Action (BAPD Form 321) specifying the particular charge, as well as the facts used to substantiate the charge. The Chief of Police will then contact the accused give him a copy of Form 321 and advise him of the penalty.
3. Disposition

Any decision, order, or action taken as a result of disciplinary action involving a probationary officer shall be accompanied by a brief resume of the facts. The resume shall consist of a concise statement of each issue in the case.
4. Case Flow

- a. In cases where the probationary officer is not disciplined, the case file will be filed in the Internal Affairs File only. In cases where the probationary officer is disciplined, the Chief of Police will prepare an appropriate Personnel Order and designate the effective dates of suspension or loss of leave.
- b. The Chief of police will give a copy of the completed Form 90 to the accused and place a copy of the Personnel Order in the affected employees personnel file.

6-116 Form Titles

The following applicable forms, reports, and memos can be used to administer Department disciplinary action.

1. Complaint against Personnel Report
2. Complaint of Brutality
3. Notification of Complaint
4. Waiver of Rights
5. Investigative Report (detailed report format) and related endorsements
6. Witnesses' statements
7. Explanation of "Miranda" Rights
8. Notification of Charges
9. Waiver of Law Enforcement Officers Bill of Rights and Acceptance of Punishment (Form
10. Memorandum to be disseminated by the Department Legal Advisor approving prosecution and designating a prosecutor Memorandum to be disseminated by the permanent hearing board chairman designating the hearing board members
11. Notification of Hearing
12. Evidence Report Form
13. Disciplinary Hearing Procedures Probationary Officer Record of Disciplinary Action.
14. Witness Summons/Duces Tecum

6:117 Public Safety Article, Title 3- Law Enforcement Officers' Bill of Rights)

See Addendum # 2

Date: February 28, 2017

Approved: _____


Charles A. Moore, Chief of Police

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