

# INTEROFFICE MEMORANDUM

Equal Opportunity Employer



<b>TO:</b>	Board of Charles County Commissioners
<b>FROM:</b>	Charles County Police Accountability Board
<b>SUBJECT:</b>	2023 Annual Report- Police Accountability Board
<b>DATE:</b>	December 31, 2023 (Revised February 1, 2024)

The Police Accountability Act of 2021, codified at Maryland Annotated Code, Public Safety Article, Title 3, Subtitle 1 (the "Act"), requires that the Police Accountability Board ("PAB") for each county submit a report to the governing body of the county by December 31 for each year 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.

Eleven (11) meetings of the PAB were convened during CY2023, four (4) of which included representatives of the Charles County Sheriff's Office ("CCSO") and the La Plata Police Department ("LPPD").<sup>1</sup> In addition to the perfunctory agenda items, such as scheduling meetings, selection of a vice chairperson, etc., the first two quarterly meetings with CCSO and LPPD were also used to address several key components of the legislation, to include discussion of the process for transmitting investigative files to the Administrative Charging Committee ("ACC"), as well as statutory deadlines for completion of review by the investigating unit and disposition by the ACC within 1 year and 1 day.

Fortunately, the process for accessing investigative files by the ACC from CCSO and LPPD has been straightforward for the ACC, however, the PAB is concerned about the use by ACC members of their personal devices for accessing documents that may be sensitive and confidential in nature. Use of county-issued devices would provide additional security and ensure encryption from end to end. Currently, ACC members are accessing documents on their personal devices with varying levels of protection against malware and unauthorized redisclosure.

The PAB developed a complaint form to be used by members of the public to submit complaints of police misconduct. The form is available on the PAB webpage of the Charles County Government website. Complaints may also continue to be submitted directly to CCSO and LPPD, as was the previous process before the Act. To date, the PAB has not received any complaints of police misconduct utilizing its form; all investigations transmitted to the ACC were the result of complaints filed directly with CCSO and LPPD.

*Administrative Charging Committee Statistics<sup>2</sup>*

<sup>1</sup> Md. Public Safety Code Ann. § 3-102(a)(1) mandates PAB hold quarterly meetings of law enforcement agencies.

<sup>2</sup> The complaint statistics included in this section were revised from those provided in the original report dated 12-31-23.

To our knowledge, the Charles County ACC was the first in the State of Maryland to begin reviewing cases in accordance with the Act. The ACC received 52 complaints that include 117 violations of police misconduct as of December 31, 2023. Each case requires review of the investigative file prepared by the agency in response to the complaint. The types of offenses alleged against officers is vast, but the most frequently complained of offenses include the following: 1. Performance of Duty; 2. Courtesy; 3. Traffic Stops; and 4. Bias.

Of the 117 violations contained in 52 cases, the ACC administratively charged the law enforcement officer for 26 violations. The officer was deemed exonerated or the violations alleged were deemed unfounded in 91 instances. As of December 31, 2023, no complaint of bias or excessive force has been sustained by the ACC. A failure of supervision was identified by the ACC as causing or contributing to the officer's misconduct in 2 cases.

On average, the ACC considers 4-5 cases of police misconduct per month, and determines to administratively charge or to not administratively in approximately 23 days from receipt of the case. The PAB is especially appreciative of the hard work and dedication exhibited by the ACC, as they review investigative files outside of their scheduled meetings that may range from 40-100 pages, in order to be prepared to discuss and decide cases as a body on a monthly basis. The PAB recommends the compensation for ACC members be increased to better account for seriousness and time-consuming nature of the work completed by the ACC.

### Traffic Accidents

The ACC has also received 23 cases through the first 11 months of the year that CCSO determined were "traffic accidents;" in other words, cases involving an officer where it is undisputed that the officer, during the course of operating their employer-issued vehicle, was involved in a vehicular accident. The ACC requested in writing to CCSO that accident cases not be referred to the ACC unless they met a specific criteria involving "serious neglect, personal injury and/or driving while under the influence that involve citizen complaints." Despite this request, the ACC continues to receive traffic accident cases from CCSO. LPPD does not forward traffic accident cases, per the request of the ACC.

Traffic accident cases from earlier this year were reviewed by the ACC, but the ACC has since begun to return these cases without review and disposition. The PAB concurs with the position of the ACC with respect to declining consideration of accident cases that do meet an objective criteria. We believe review of traffic accidents is inconsistent with the purpose of the ACC - to consider police misconduct- which by its very nature includes a level of willfulness/intent not ordinarily found in traffic accidents. Additionally, ACC review of traffic accidents does not, in our opinion, serve to value the time and attention volunteered by ACC members.

The disagreement between CCSO and the ACC concerning the latter's' responsibility to consider traffic accident cases may stem from the Act's definition of "police misconduct" as "a pattern, a practice, or conduct by a police officer or law enforcement agency that includes: being (1) depriving persons of rights protected by the constitution or laws of the State or the United States; (2) a violation of a criminal statute; and (3) a violation of law enforcement agency standards and policies." *Pub. Safety §3-101(g)*. An unofficial opinion by the Office of the Attorney General interpreted the enumerated subparts of the definition as being as three independent predicates for misconduct, therefore allowing even the most minor violation of agency standards and policies to qualify for consideration by the ACC.

The additional requirement that the police misconduct involve a "member of the public" may be accomplished by something as tenuous as an officer accidentally striking an inanimate object with his

vehicle that is owned by a "member of the public." Therefore, a minor traffic accident may qualify in the technical sense as "police misconduct involving a member of the public," but it remains difficult to square this interpretation with the common sense understanding of what is commonly thought of as "police misconduct."

Under the new landscape created by the repeal of the Law Enforcement Officers' Bill of Rights ("LEOBR"), and adoption of the Act, some agencies have erred on the side of transmitting virtually everything to the ACCs for fear of *getting it wrong*, while others have reserved only certain types of accidents for review by their ACCs. Both approaches, when left to the discretion of the agencies, may present problems for ACCs and the broader communities they serve. We are concerned that at least one of our county's agencies has taken the former approach without consideration for the ACC's request to refrain from inundating them with accidents that do not include allegations of the criteria identified by the ACC. Additionally, the PAB is concerned that we may face challenges in the future with keeping the ACC properly appointed if ACC members determine the amount of added work from accident is not reasonable or fulfilling, and no longer choose to volunteer. Lastly, the ACC is currently receiving traffic accidents from CCSO, while not receiving them from LPPD, creating a lack of consistency in our own county that does not advance our efforts to establish clear processes and protocols around implementing this new law.

### *Trial Board Processes*

The Act provides that if an officer declines discipline as recommended by the ACC pursuant to administrative charges, or higher discipline, as may be offered by the chief of the agency, the officer may request a trial board. As of November 2023, 8 requests for trial boards were received by officers.

According to the Act, the trial board process is determined by the affected agency. The trial board is constituted based upon the Act, and consists of 3 members who have each completed trial board training provided by the Maryland Police Training and Standards Commission. Charles County Government has negotiated agreements for the use of both administrative law judges through the Maryland Office of Administrative Hearings, and a retired District Court judge. Additionally, the PAB appointed member Jamila Smith as the civilian member to the trial board. The PAB is also in the process of appointing a second civilian member in order to ensure additional availability for holding trial boards when requested. The third member of the trial board, an officer of equal rank to the officer at issue, is appointed by the agency.

To our knowledge, Charles County was the first county in the State of Maryland to conduct a trial board under the Act. To date, Charles County has completed 6 trial board hearings, each of which were requests by CCSO officers. During the process of coordinating the hearings, it came to the attention of the PAB that when CCSO makes an offer of discipline based upon the decision of the ACC, the written policy of CCSO is to include and CCSO's recommended disposition and discipline. Additionally, if CCSO is of the opinion that the findings of the ACC are not supported by evidence or law, it is their written policy to prepare a memorandum to the officer explaining the position of CCSO to attach to the ACC charging document.<sup>3</sup> The PAB is very concerned about this process and the obvious impact of undermining the charges and discipline determined by the ACC. We do not believe this policy is consistent with the intent of the General Assembly when mandating the establishment of an independent ACC to review and decide complaints of police misconduct.

Pursuant to the Act, the agency is responsible for proving police misconduct by a preponderance

---

<sup>3</sup> CCSO Administrative and Operational Manual, §3-716.

of the evidence before the trial board. In instances where CCSO does not agree with the ACC charges, CCSO has determined it will not argue a case contrary to its position, understandably. Yet, according to the Act, it is their case to prove, not that of the ACC. There is no party to the trial board proceedings advocating the position of the ACC. In fact, once the trial board is requested, the agency may choose to negotiate lesser charges and discipline than what was decided by the ACC, or may choose to not put on any evidence before the trial board whatsoever, rendering the work of the ACC nothing more than an exercise in futility.

In all 6 cases decided to date by the trial board, CCSO and the officer have offered a negotiated settlement, or CCSO has not put on the evidence, and the trial board was left to find the officer not in violation of the charges found by the ACC. The Act is written in such a way that the trial board does not have the benefit of hearing the argument in support of the ACC's determination and the evidence relied upon to sustain an administrative charge of police misconduct, unless it is the will of the agency to share such information before the trial board. This, in our opinion, is counterproductive to the development of an independent and neutral third party to consider complaints of police misconduct, because if the officer requests a trial board, we are right back to pre-police reform days, with the agency deciding what to hold officers accountable for and what accountability looks like in terms of discipline. In the opinion of the PAB, there must be a mechanism for the ACC to intervene through legal counsel or become the primary party defending their charges in trial board proceedings, otherwise the Act will never be the transformative legislation the legislature envisioned.

### *PAB Membership and Training*

When fully appointed, the PAB is comprised of 9 members. To date, 3 members resigned prior to the term expiration, of which 1 member was recently replaced. The PAB currently has 2 vacancies to include representatives from District 2 and District 4. The PAB would appreciate additional advertising of vacancies on the board to ensure the county is properly represented and the board will have the diversity of thought and background necessary to complete its objectives.

The PAB and ACC were recently invited by CCSO to attend a training titled *Human Perception vs Digital Video* intended to increase attendee's knowledge of body worn camera footage, as CCSO begins to equip officers with body worn cameras.

### *Recommendations*

- County to issue 5 county-owned laptops to ACC members to better ensure proper security of confidential documents.
- County to adjust ACC members' compensation to an hourly rate rather than an annual stipend to better reflect the seriousness of their responsibilities and the time commitment required to dispose of complaints of police misconduct.
- CCSO to cease transmitting traffic accident cases to the ACC unless the traffic accident includes claims of willful neglect, personal injury, driving while under the influence, or complaints submitted by a member of the public.
- County to request a State legislative amendment to clarify that traffic accidents involving an officer, absent willful neglect, personal injury, driving while under the influence, or complaints submitted by members of the public, are not eligible for ACC

review under Md. Public Safety Code Ann. § 3-104.

- County to request a State legislative amendment to amend Md. Public Safety Code Ann. § 3-106(a)(h) to allow the trial board process to be established by the ACC, and to allow the trial board case to be brought on behalf of the ACC.
- CCSO to cease providing the position of the agency along with the offer of discipline to the officer required pursuant to Md. Public Safety Code Ann. §3-105, as it does not comport with the purpose of the ACC recommendation under the Act, and effectively makes an offer of discipline less than that of the ACC recommendation in some instances, which is not permitted under the Act.
- County to request a State legislative amendment to amend Md. Public Safety Code Ann. § 3-105 to include clear language that prohibits inclusion of the position of the chief of the law enforcement agency in the offer of discipline and limits the ability to communicate a recommendation of the agency until such time as the officer has declined the offer of discipline from the ACC.
- County to enhance their recruitment efforts to be more aggressive and proactive when advertising vacancies on the PAB.
- PAB to request attendance of the LPPD Chief and CCSO Sheriff, rather than representatives, at least twice annually.
- PAB to provide the Board of Commissioners quarterly updates on high level information concerning the mandate of the PAB.

cc: Ms. Deborah E. Hall, Acting County Administrator  
Mr. Wes Adams, County Attorney  
Mr. Guy Black, Chairman, Administrative Charging Committee