A STUDY OF THE

MONTOMERY COUNTY

POLICE DEPARTMENT'S

COMPLAINT HANDLING SYSTEM



Office of Legislative Oversight
Report Number 99-2
September 21, 1999

EXECUTIVE SUMMARY

A Study of the Police Department's Complaint Handling System
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Summary of Findings

An effective complaint handling system is essential for a well-functioning police department.

Complaints provide a police department with valuable information about how the community perceives a department's performance. Effective handling of complaints is one way to oversee employee conduct, as well as an opportunity to reinforce a department's commitment to its core values. In addition, research suggests that when citizens feel that their complaints have been treated fairly and with respect, they are more inclined to obey the law and cooperate with the police in the future.

To be effective, complaint handling must be accessible, fair, consistent, efficient, and accountable. An effective and trusted complaint handling system requires ongoing effort.

A department's commitment to excellence in complaint handling recognizes officers' and citizens' shared entitlement to an effective process. It is challenging to investigate complaints, especially when it can lead to discipline and even dismissal of officers. Those involved in the internal affairs function need the support of police leadership to accomplish this important task.

The chief and other leaders in a department must articulate and model the standards for officer conduct. Employees and citizens alike should clearly know what is expected of officers.

A police department promotes trust by providing clear information about how to file a complaint and making it convenient for citizens to do so. To be fair, a complaint handling system must treat all officers consistently and with respect, regardless of rank, race/ethnicity, gender, or personal connections. Investigations must be timely, professional, and thorough, and consequences must relate to the severity of the allegations.

Accountability requires a department to accurately collect, analyze, and report on complaint-related data. This process enables a department to identify trends and learn from complaints. Accountability includes tracking how the overall system operates, how the department as a whole performs, and how well an individual officer's behavior reflects departmental policy and values. Accountability also extends to making changes when analysis of the data collected indicates that change is warranted.

A police department should not rely upon complaint handling to manage officer conduct and promote accountability.

Even the best complaint handling system is limited because it focuses on allegations of misconduct after an incident. In addition, complaint investigations often fail to reach clear conclusions because of the lack of adequate evidence.

Discipline alone cannot teach the values of any organization, but it can reinforce them. A police department is responsible for educating its officers and instilling them with the department's values. The best control of officer conduct comes when an officer internalizes the principles of ethical policing, and reflects the values of the department in his/her day-to-day decision making.

MCPD deserves credit for improving the Department's complaint handling process during the past two years. However, problems continue in several key areas.

MCPD's high standards of conduct for its officers are well known by MCPD personnel. MCPD publishes its organizational values in internal directives, displays mission posters in department facilities, and articulates the Department's values in its public material about the complaint process. Initial training for police officer candidates and in-service training for sworn officers includes an increasing emphasis on ethical decision-making.

While MCPD acted recently to improve the accessibility of the complaint process, additional work is needed. The Department updated the public brochure describing the Department's complaint process; simplified the written complaint form, and provided copies in both English and Spanish to the District Stations. The Police-Community Relations Facilitator (hired by the Office of the Chief Administrative Officer in early 1999) is also working to improve community knowledge of the complaint process.

During the past two years, the Department also acted to improve the efficiency of complaint handling with greater attention to staffing and automation needs of the Office of Internal Affairs. While the Department now places more emphasis on meeting its 90-day deadline for completing investigations, the average time for investigating a complaint filed in 1997 or 1998 was six months, with some taking as long as two years.

OIA and District Station staff who conduct internal investigations strive to complete balanced and credible investigations. Nonetheless, MCPD lacks a system for assuring that it investigates all complaints and disciplines officers in a fair and consistent manner. Complaints enter the Department in many places, and the initial sorting of incoming complaints is diffuse and inconsistent. Furthermore, while OIA technically is responsible for overseeing the handling of complaints throughout MCPD, there is no mechanism for insuring that OIA receives all the information it needs to perform this function.

The Department also lacks a clear process that guarantees a consistent review of the quality or outcome of investigations. Without strong, internal oversight for quality and consistency, it is difficult for a complaint handling system to gain a reputation for fairness. The Department does not currently generate regular reports that contain complaint-related information. The fact that OIA's case tracking system is not automated makes routine reporting of complaint-related data even more difficult.

How MCPD responds to complaints about employee conduct is governed by a complex set of state and county laws, collective bargaining agreements, and department directives. The Department's unilateral authority to change most of these parameters is limited.

Governing Documents	Authority to Change
State law • Maryland Law Enforcement Officers' Bill of Rights, (LEOBR) • Maryland Public Information Act	Maryland General Assembly
The Charter of Montgomery County, Maryland • Section 215, Appointments • Article 4, Merit System and Conflicts of Interest • Section 505, Right to Information • Section 510, Collective Bargaining	Referendum of the registered voters of Montgomery County.
Montgomery County Code • Chapter 1A, Establishing the Structure of County Government • Chapter 33, Personnel and Human Resources • Chapter 35, Police	Montgomery County Council
Agreement between Montgomery County Government and Fraternal Order of Police, Montgomery County Lodge #35, Inc.	County Executive and Fraternal Order of Police, Montgomery County Lodge #35, Inc. The Council's role with respect to taking action necessary to implement the collective bargaining agreement is outlined in County Code Section 33-80.
Montgomery County Personnel Regulations	Personnel Regulations are Method 1 Executive Regulations, which means they are promulgated by the County Executive and approved by the County Council.
Police Department Field Operations Manual (includes Department Directives and Headquarters Memoranda)	Police Department, subject to provisions in Article 61 of the Collective Bargaining agreement concerning changes to directives, rules, and procedures.

The Office of Internal Affairs working alone cannot make the complaint handling process effective.

A reputable Office of Internal Affairs (OIA) is key to an effective complaint handling process in a police department. An OIA staffed with qualified investigators that produces thorough and fair investigations is essential to earning and retaining the trust of sworn officers and the public.

However, some important elements of a well functioning complaint handling system are beyond OIA's purview. For example, District Station personnel are often the first ones to interact with a citizen who wants to register a complaint. After an investigation is complete, senior management outside of OIA (i.e., Majors, Deputy Chief) review the case and decide whether to concur with OIA's findings. By State law, the final decision on whether to pursue discipline resides with the Chief. If an officer elects a hearing board, even more actors are involved, e.g., the Fraternal Order of Police, a civilian arbitrator, and MCPD's legal advisor.

Strategies used by other police departments to improve complaint handling include a discipline matrix, an early identification system, and better data collection.

A discipline matrix is a written guide for categorizing conduct violations and imposing discipline. It lists conduct violations, ranks them in order of seriousness, and assigns a range of discipline to each one. Deviation from the discipline in the matrix is possible in some jurisdictions with approval of a committee or top management. Departments adopt a discipline matrix to promote greater consistency in complaint handling and related discipline.

An early identification system is the general term used for an automated data system that keeps track of certain information by officer. It enables a department to pro-actively intervene to provide training or other support if a commander's review of the data tracked by the system reveals that an officer's behavior creates concern.

Many police departments around the country maintain a database of complaint-related information. They record information about the types of complaints, the complainant, the accused officers, and the number of years of service, assignment, and educational background of the officers. The database also contains information about outcomes, discipline, and hearing boards.

From the database, a department can produce regular reports about complaints, both for internal departmental use and for the public, to the extent permitted by law. The department can use the reports to inform the public as well as sworn officers about complaints. Publishing factual information about complaints received and their disposition helps to counteract misinformation. In addition, it can send the message both to officers and the community that the department handles complaints seriously, consistently, and fairly.

There is a wide range of opinion but little empirical evidence about the benefits of greater citizen involvement in a police department's complaint handling process.

Citizen review is a procedure for handling complaints about police officer misconduct that, at some point in the process, involves people who are not sworn officers. Different models of citizen review can be placed along a continuum according to the extent of citizen involvement. At one end of the continuum, police department personnel perform all tasks for evaluating complaints about police misconduct. At the other end, civilians outside of the department are responsible for all of the procedures.

There is little empirical evidence that citizen review improves the efficiency or effectiveness of complaint handling. One of the few outcomes documented is that internal police department systems for reviewing complaints sustain allegations of misconduct twice as often as citizen review systems. Evidence on results in the areas of policy review and police-community relations is either unavailable or conflicting.

Two provisions of the Law Enforcement Officers' Bill of Rights (LEOBR) constrain citizen involvement in Maryland. LEOBR gives the Chief of Police authority for final decisions about discipline, and assigns responsibility for internal investigations to sworn officers. Prince George's County' structure for citizen involvement reflects these limitations. The new structure for Baltimore City, approved in the 1999 Legislative Session, raises new questions about LEOBR's limits.

Summary of Recommendations

The Office of Legislative Oversight recommends a package of changes to make MCPD's complaint handling system more effective. An effective system is accessible, consistent, efficient, and accountable. An effective system is also one that sworn officers, elected officials, and the general public respects and trusts.

To improve access, consistency, and efficiency of the complaint handling process, the County should:

- Make it easier to file a complaint and expand public education of the process;
- Immediately establish a case management system in the Office of Internal Affairs (OIA);
- Adopt a discipline matrix to standardize consequences when rules are violated;
- Adopt and enforce the Commission on Accreditation of Law Enforcement Agencies' goal of 30 days for the investigation of minor complaints, and 90 days for the resolution of complaints that must be investigated according to State law (LEOBR) procedures;
- Allocate Internal Affairs investigators' time more efficiently; and
- Support the internal investigation function with sufficient legal and administrative staff.

To enhance accountability, the Department should:

- Improve communication about complaints both within and outside of the Department;
- Implement an early identification system;
- Regularly review complaint data for consistency, trends, and "lessons learned;"
- Hire an independent consultant to evaluate the quality of internal investigations; and
- Conduct regular, statistically reliable opinion surveys of officers and County citizens.

To strengthen the reputation of the Office of Internal Affairs, the Department should:

- Raise the stature of the Internal Affairs function in the Department;
- Create incentives to attract experienced investigators to work in Internal Affairs, and
- Staff Internal Affairs primarily with officers who have proven investigative expertise.

To give the new Chief a chance to improve the current system, the County should delay adding a citizen review element for at least 12-18 months. Improvements to the current system of complaint handling should bring many of the benefits ascribed to citizen review. Furthermore, there is little empirical evidence that citizen review increases the efficiency or effectiveness of a police department's complaint handling system.

To explore whether statutory changes could further improve MCPD's complaint handling system, OLO recommends the Council examine selected provisions of the Police Labor Relations Law. OLO recommends the Council first evaluate how authorizing effects bargaining and defining union membership in the law to include police officer candidates have affected MCPD's ability to effectively manage performance and conduct issues. The Council should also learn more about how the negotiation process between the County Government and the Fraternal Order of Police works in practice.

A STUDY OF THE MONTGOMERY COUNTY POLICE DEPARTMENT'S COMPLAINT HANDLING SYSTEM

Page #'s

Chapter I	Authority, Scope, Organization, and Definitions	1
Chapter II	Methodology and Acknowledgements	4
Chapter III	The Role of Complaints in a Police Department	7
Chapter IV	Effective Complaint Handling	10
Chapter V	Models Of Citizen Involvement In Complaint Handling	15
Chapter VI	The Complaint Handling System in Montgomery County	27
Chapter VII	Findings	63
Chapter VIII	Recommendations	83
Chapter IX	Executive Branch Comments on Final Draft	95

Appendices

CHAPTER I: AUTHORITY, SCOPE, ORGANIZATION, AND DEFINITIONS

A. Authority

Council Resolution No. 13-1388, FY 1999 Work Program of the Office of Legislative Oversight, adopted August 4, 1998.

B. Scope of Report

The County Council requested the Office of Legislative Oversight (OLO) to study how the Montgomery County Police Department (MCPD) handles complaints concerning the conduct of Department employees, and to contract for an opinion survey on the expectations and perceptions of citizens and police officers concerning police/citizen interactions. Specifically, the Council asked OLO to:

- Research what makes for effective complaint handling in a police department;
- Review the governance structure relevant to how the Police Department currently handles complaints, including the requirements of State and County laws and regulations, the collective bargaining agreement between Montgomery County and the Fraternal Order of Police, and internal MCPD directives;
- Evaluate the Police Department's current complaint handling process, from the time MCPD receives a complaint, through investigation, to final decision-making;
- Review the complaint-related data maintained by the Office of Internal Affairs;
- Research how other police departments approach internal investigations, and how other places compile and report complaint-related data; and
- Examine how other jurisdictions structure citizen involvement in the process of responding to complaints about officer conduct.

OLO contracted with Peter D. Hart Research Associates, Inc. (Hart Research) to conduct the survey component of this project.

C. Organization of Report

OLO's study of MCPD's complaint handling system consists of nine chapters and an extensive appendix that includes background information, sample forms, and other reference material. In addition, there are two companion documents to OLO Report 99-2: the report of Hart Research's survey results; and the report of recommendations from the Resource Committee appointed by the Council. These two companion documents are available from the Office of Legislative Oversight.

The contents of Chapters III through IX of OLO Report 99-2 are as follows:

Chapter III, The Role of Complaints, examines why effective handling of complaints is important to the well being of a police department.

Chapter IV, Effective Complaint Handling, identifies the characteristics of an "effective" complaint handling system in a police department.

Chapter V, Alternative Models of Citizen Involvement, summarizes different models, and the pros and cons of involving citizens in the review of complaints about police officer misconduct.

Chapter VI, The Complaint Handling System in Montgomery County, provides an overview of the legal and regulatory parameters within which the MCPD responds to complaints, examines MCPD's system (on paper and in practice) of handling complaints, summarizes selected complaint-related data from the Office of Internal Affairs, and discusses a number of related issues.

Chapters VII and VIII present OLO's findings and recommendations.

Chapters IX contains Executive Branch comments on a final draft of this report.

D. Abbreviations and Definitions

Unless otherwise indicated, the definitions listed below come from the Police Department's written directives. In most cases, the MCPD's definitions mirror those adopted by the Commission on Accreditation of Law Enforcement Agencies, Inc.

CALEA	Commission on Accreditation of Law Enforcement Agencies, Inc.
Facilitator	Police-Community Relations Facilitator
LEOBR	Law Enforcement Officers' Bill of Rights

MCPD Montgomery County Police Department

OIA Montgomery County Police Department's Office of Internal Affairs

Complaint: A complaint is an allegation of misconduct made against an employee(s) of the police department.

Citizen Review: A procedure for handling complaints about police officer misconduct that, at some point in the process, involves people who are not sworn officers. (*Citizen Review Resource Manual*, Police Executive Research Forum, 1995.)

Minor Complaints of Misconduct: Minor complaints are not enumerated in this directive, but include those allegations, which if sustained, would be appropriately disciplined through the imposition of summary punishment or use of the Supervisor's Remedial Action Form. (sic)

Serious Allegations of Misconduct: Serious complaint includes, among other acts, physical brutality, complaints which allege racial prejudice, misappropriation of monies, or untruthful statements.

Rank and File: Master Police Officer, Police Officer 3, Police Officer 2, Police Office 1, Police Officer Candidate

Summary Punishment (LEOBR definition): Disciplinary action implemented by the highest ranking order of a unit, or officer acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days of suspension without pay or a fine of $150.

Definitions of Findings (from MCPD Function Code 301)

Sustained The investigation disclosed sufficient evidence to prove the allegations of misconduct.

Not Sustained: The investigation failed to disclose sufficient evidence to prove or disprove the allegation.

Unfounded: The investigation of the complaint indicates that the acts complained of did not occur.

Exonerated: The incident did occur, but the actions of the accused were justified, lawful and proper.

Policy Failure
The incident did occur, but there was an omission of policy or the established policy was insufficient or ineffective. Therefore, the allegation involving the affected employee will be considered Not Sustained for purposes of this finding.

CHAPTER II: METHODOLOGY AND ACKNOWLEDGEMENTS

A. Methodology

1. General

Karen Orlansky, Director, Office of Legislative Oversight and Tedi Osias, Program Analyst, Office of Legislative Oversight conducted this project between September 1998 and July 1999. Jennifer Kimball, Legislative Analyst, Office of Legislative Oversight, assisted with data collection and analysis, including the research associated with different models of citizen involvement in complaint handling. Teri Busch, Administrative Specialist, Office of Legislative Oversight, provided administrative support throughout the project.

Consistent with the original project design, OLO contracted for conduct of public opinion research. A competitive procurement resulted in the hiring of Peter D. Hart Research Associates, Inc. (Hart Research) in February 1999. Hart Research designed and conducted three separate surveys. As indicated above, Hart Research's methodology and survey results are being published in a companion document to this OLO report.

OLO staff compiled information for this study through extensive interviews, observations, and document reviews. OLO's resources included:

- Legislative files, Police Department documents, task force reports, and staff memoranda;

- Books, journals, newspapers, and websites, (See Appendix O for a list of specific resources);

- Interviews with current and former employees of the Montgomery County Police Department. OLO consulted with more than 100 officers representing all ranks, the three bureau majors, the office of the chief, and the district stations. OLO staff also attended a number of police training sessions, rolls calls, and staff meetings and spent significant time accompanying officers on "ride-alongs" at various times of day and night in all five District Stations;

- Interviews with County Government staff from other departments, including the Office of the Chief Administrative Officer, Office of the County Attorney, Office of Human Resources, Department of Finance, Office of Management and Budget, and Office of the County Council.

- Discussions with members of the Resource Committee appointed by the County Council to provide input to OLO throughout this study;

- Telephone and in-person interviews with additional community members representing different interest groups and points of view;

- Interviews with Internal Affairs and other police department staff from other jurisdictions; and

- Consultation with related subject experts from the Mid-Atlantic Community Policing Institute, Johns Hopkins University School of Continuing Studies, University of Maryland Department of Criminology, US Department of Justice, and the Police Executive Research Forum.

2. The Role of the Resource Committee

To provide the Office of Legislative Oversight with a diverse group of individuals to consult with, the Council appointed a committee of citizen and police representatives to offer its advice to OLO during the project year. Council Resolution 13-1389 outlined the membership and responsibilities of the Resource Committee. The Council appointed the Resource Committee members on October 27, 1998. (See Appendix N for copy of Council Resolution No. 1389.)

The Resource Committee met 14 times between November 1998 and June 1999. The Resource Committee started its work by becoming familiar with the various aspects of the complaint handling process, primarily from key representatives of the Police Department. The Committee then invited citizen leaders to share their observations and recommendations about how the Police Department's complaint handling process can be improved.

At one meeting, Committee members provided OLO with suggestions about the surveys of citizens and police officers. The Committee allocated another meeting to learning about the different models of citizen involvement in complaint handling found in various jurisdictions around the country.

The Resource Committee dedicated four full meetings to reaching conclusions and debating alternative recommendations to transmit to OLO. OLO staff observed the Committee's deliberations. The Committee's initial written report of recommendations to OLO concerning the Police Department's complaint handling process is published as a companion document to this OLO report. The Council Resolution establishing the Committee invites the Resource Committee to provide additional written comments directly to the Council after the public release of OLO's final report.

B. Acknowledgements

County Government. The Office of Legislative Oversight appreciates the high level of cooperation received from County Government staff. In particular, OLO thanks Chief Charles A. Moose, Lieutenant Colonel Evans (retired as of August 1999), along with Major Barnhouse, Major Price, Major Rodbell, Captain Clarke, Captain Dooley, Captain King, Captain McManus, and Captain Fitzpatrick for sharing their time, as well as for the climate of access, candor, and cooperation in the department that the senior command staff established for both OLO and Hart Research.

OLO owes a special thanks to all staff members in the Office of Internal Affairs, and in particular to Lt. Rhodes, who served as OIA Director during most of the study period. In addition, OLO thanks Lt. O'Toole, Lt. Wilkins, Lt. Delaney, Lt. Fitzgerald, Captain Svertesky, Captain Mates, and other unit commanders for their assistance. OLO also appreciates the tremendous help provided by the Police Department's Technology Division.

OLO thanks the many other MCPD officers at all ranks who took the time to share their views. OLO is particularly grateful for the input provided by the lieutenants and sergeants at the five District Stations and to the numerous officers who willingly allowed OLO to observe them on the job. OLO also appreciates the cooperation extended by Walter Bader, the President of the Fraternal Order of Police, Lodge 35.

In addition to the Police Department, OLO thanks other County Department staff for their cooperation. OLO received important input from the Office of the Chief Administrative Officer, the Office of the County Attorney, the Office of Human Resources, and the Department of Finance. In particular, OLO thanks Assistant County Attorney Sharon Benzil; Ronald Clarkson, Police-Community Relations Facilitator; and James Torgeson and Patrick Conroy from OHR.

The Community. OLO staff thanks the Resource Committee members appointed by the County Council for the many hours that they dedicated to this project. The following individuals served on the Committee: Walt Bader, Stephen Block, Iris (Edie) Brown, Joe Camacho, Cecilia Castellanos Schagren, Shanti Gulati, Alzada Hill, Anthony Hill, Thomas John, Cornell Lewis, Bill Mooney and Lt. Bill O'Toole. The Resource Committee Chair, Michael Spak, deserves special credit for facilitating the Committee's work. OLO also appreciates OLO staff member Teri Busch and Council staff members Justina Ferber and Linda McMillan for their support of the Resource Committee.

Finally, OLO also appreciates the many other community members, who took the time to talk with OLO staff and the Resource Committee about the issues addressed in this report. The questions brought to our attention by individual citizens helped us to design our research and focus attention on key issues.

Other Acknowledgements. OLO greatly appreciates the numerous law enforcement professionals who generously shared their valuable advice with OLO throughout the course of this study. In particular, OLO thanks Dr. Sheldon Greenberg and Marc Spurrier from the Mid-Atlantic Community Policing Institute at the Johns-Hopkins University of Continuing Studies, the University of Maryland Department of Criminology, the Police Executive Research Forum, and the U.S. Department of Justice.

OLO also thanks the Police Departments from the following jurisdictions for sharing their experiences and views: Prince George's County, Anne Arundel County, Baltimore County, Baltimore City, Rockville City, San Jose, New Orleans, Portland, Seattle, Omaha, Minneapolis, Los Angeles, and Milwaukee.

CHAPTER III: THE ROLE OF COMPLAINTS IN A POLICE DEPARTMENT

The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) establishes standards to increase the effective and efficient delivery of law enforcement services. CALEA's standards articulate how the quality of a police department's internal affairs function is important to the department's public image:

> The internal affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the agency depends on the personal integrity and discipline of each employee. To a large degree, the public image of the agency is determined by the quality of the internal affairs function in responding to allegations of misconduct by the agency or its employees. (CALEA, Accreditation Manual, Section 52, revised 1993)

The literature on police department management frequently echoes this link between public confidence in an agency and how the agency responds to citizen complaints. The rest of this chapter explains the inevitability of complaints in police work, and further explores why the quality of a department's process for responding to complaints about officer conduct is so important.

Police Work Involves Discretion

The nature of law enforcement creates the inevitability of citizen complaints about officer conduct. While police officers have extensive training and written directives to govern their behavior in many situations, officers routinely work in situations which do not fit standard patterns. As a result, officers regularly are required to use discretion. As Dorothy Guyot explains in her book, *Policing as though People Matter:*

> . . . police officers work in complicated and ambiguous circumstances. Laws and departmental rules can and should define the broad outer limits of acceptable practice, but the complexity of situations renders impossible the drafting of rules to cover all contingencies. (Guyot, p. 179)

Other officers or members of the general public may well disagree with how an officer uses his/her discretion, creating the potential for a complaint. In addition, police officers' authority to use force, including lethal force, magnifies the possibility of a complaint, and imposes a unique responsibility on law enforcement agencies to review and react to its officers' conduct.

The literature on policing discusses the myriad of situations in which an officer's judgement may be challenged. It is common for officers to interact with citizens under emotional and stressful conditions, which at times also involve behavior influenced by alcohol or drugs. Other issues arise out of the realization that it is not feasible for the police to enforce all laws equally at all times; this reality also affects the public's perception of "fair" police work and can result in complaints.

Department Values

A police department's values provide a framework within which officers exercise their discretion. How a law enforcement agency handles complaints is an opportunity for the agency's leaders to reinforce the department's core values. Police departments that base their operations on an explicit set of values can demonstrate and reinforce the value system through the complaint handling process. (A list of MCPD's organizational values is included in Appendix H.)

Complaint handling is an important element of a law enforcement agency's discipline system. While discipline alone will not teach the values of an organization, it is one mechanism that a police department has for indicating what its values are, and for reinforcing behavior that supports the department's values. When complaint handling and its consequent discipline system are perceived as functioning well, a department clarifies and reinforces its values both for its officers and the public.

Community Feedback

Any organization committed to continuous improvement attempts to learn as much as it can about its performance. For a police department, citizen complaints are a valuable source of information about officer conduct and the agency's response to community needs.

Citizen complaints about employee conduct are a window into a community's perceptions about the police department. Complaints can inform a police department, for example, if the community lacks trust in the department, or misunderstands standard officer behavior. The lessons from complaints can lead to improved officer training in particular areas, or to better community outreach and communication.

Complaint handling creates an opportunity for a police department to interact with community members on matters of importance both to the department and the complainant. A well-functioning system for responding to citizen complaints expresses a police department's respect for its community, and demonstrates the department's commitment to maintaining open communication with members of the community.

Citizen Perceptions Affect Future Behavior

Research by Tom Tyler, presented in his book, *Why People Obey the Law*, indicates that a person's opinion of how fairly he/she is treated by the police influences that person's attitude about obeying the law in the future. Tyler's research focuses on how citizens with higher levels of support (defined primarily as trust) for the authorities are less likely to engage in illegal behavior. In his conclusion, Tyler states:

> The key implication is that normative issues matter. People obey the law because they believe that it is proper to do so, they react to their experiences by evaluating their justice or injustice, and in evaluating the justice of their experiences they consider factors unrelated to outcome, such as whether they have had a chance to state their case and been treated with dignity and respect. . . . Police officers and judges who recognize and respond to people's normative concerns can exercise their authority more effectively; their rules and decisions will be accepted and obeyed voluntarily. (Tyler, p. 178)

Tyler's research underscores the importance of a police department's openness to community complaints and handling of complaints such that citizens know that "they have had a chance to state their case." Tyler's conclusion suggests that the process of dealing with complaints is as important as the final outcome, in terms of affecting a citizen's general attitude toward obeying the law in the future. Effective complaint handling gives a police department the opportunity to know about officer behavior and to respond when citizens perceive that they have been denied an opportunity to "state their case" or to be "treated with dignity and respect."

The great majority of citizen complaints received by police departments deal with misconduct that is not criminal and is fairly minor. Tyler proposes that even how a department deals with relatively minor complaints, such as a complaint about the courtesy of an officer, can significantly impact the complainant's behavior in the future. Tyler's conclusion suggests that it is critical for a department to react effectively to all conduct complaints, regardless of how minor they appear to be.

CHAPTER IV: EFFECTIVE COMPLAINT HANDLING

The characteristics of "effective" complaint handling in a law enforcement agency are essentially the same as they are for any other public or private sector organization. This chapter addresses what it means for a police department to operate an "effective" complaint handling system.[1]

To be effective, a complaint-handling system must promote trust. Trust is essential from complaint intake through complaint resolution. Sworn officers and members of the public need to be able to trust that police management will enforce high standards of conduct among all of its employees. It is in the best interest of officers and citizens alike to have a police department that is trusted to recruit for, train for, expect, and enforce high standards of conduct.

Most officers, like other people, are willing to accept some type of fair discipline when they make a mistake, to learn from their mistake and move on. In turn, they want to trust that other officers are disciplined similarly when they make mistakes, both for the sake of fairness and for their own safety.

Likewise, the public needs to be able to trust that officers, who are authorized to exercise substantial power and authority, are well trained and well disciplined. This trust is especially important to citizens because police officers are authorized to carry and use lethal force, and because officers must daily exercise discretion and good judgment.

The rest of this chapter reviews characteristics that are essential to promoting overall trust in a police department's complaint handling system. These traits are all interrelated or prerequisites for others:

- Accountability
- Leadership
- Clear ethical standards
- Accessibility
- Fair and consistent treatment
- Efficiency
- Open communication

[1] CALEA establishes criteria for accreditation that address internal affairs and discipline. Other law enforcement organizations such as the Police Executive Research Forum, also offer standards for police operations. The American Productivity and Quality Center and the National Performance Review both provide benchmarking studies of private and government best practices in the field of handling and resolving customer complaints.

Accountability

A department earns and achieves both internal and external trust by maintaining a complaint handling system that is open and accountable. Accountability contributes to trust in complaint handling and discipline because it provides information that permits officers and the public to understand what the department is doing to police itself.

Accountability takes many forms. Accountability requires the department to express a clear set of values. It means that all employees are held accountable for their own actions, and that all employees, regardless of rank, pay consequences when their behavior violates the standards of the department.

Leadership

Strong leadership is a prerequisite to an effective complaint handling and discipline system. Strong leadership means that command staff and supervisors articulate and model good character, high standards of ethics and integrity, and high standards of conduct. A department's leadership must support its officers, as well as acknowledge when change is needed.

Especially because policing is such a complex endeavor, strong leadership requires a command staff who is able to articulate the department's goals. A department's leader must clarify what conduct is desirable and what conduct will not be tolerated. Only strong leadership within the department will have the credibility to explain difficult circumstances to both the public and its officers.

Clear Ethical Standards

The literature on effective police management relates strong leadership to an explicit value system to govern employee conduct. A police department's value system must clearly establish expectations of ethical behavior. Members of the public and officers benefit from an approach to policing that recognizes that the nature of police work requires officers to frequently exercise discretion and judgement.

Officers benefit from knowing what is expected of them. In addition to an explicit value system and high ethical standards, officers must be guided by department directives that are clearly written and up to date. Officers must also be exposed to the rules. For example, officers need to understand the department's current standards for everything from making traffic stops and conducting consent searches to the use of deadly force.

Accessibility

Being accountable includes being open to information about how you are performing. An accessible complaint handling system is one that citizens know exists, and that can be easily found and used by someone who wants to register a complaint.

One of CALEA's standards for internal affairs is that the police department provides information to the public on procedures for registering complaints. CALEA's standards specify that the same information should also be disseminated to all police department employees.

Fair and Consistent Treatment

An effective complaint handling and discipline system must treat all officers fairly and consistently. This means that officers receive similar treatment for similar offenses regardless of rank, gender, race, ethnicity, seniority, or personal connections.

Fairness requires that a department conduct balanced and thorough investigations. The department's reputation must be that it conducts internal investigations with an open mind, neither disregarding nor accepting the validity of an allegation without sufficient evidence.

Fairness also requires a department to recognize and sort serious vs. minor allegations of misconduct. The level of investigation should be proportional to the allegation at hand. For example, a department should consistently approach a serious allegation with more formal methods, allocate sufficient resources to do a thorough and complete investigation, and impose severe penalties if the allegations are sustained. Similarly, a department can often approach a minor allegation in a less formal way, and likewise scale any penalties to the seriousness of a sustained charge.

Efficiency

An internal affairs function must be able to complete fair investigations in a timely manner for the purpose of clearing an innocent officer expeditiously or quickly bringing charges against a guilty one. An investigation that takes too long has consequences. A long time lapse between an incident and its resolution can minimize or even eliminate the effectiveness of discipline. In the interim, a lengthy investigation creates a stressful situation for both the officer involved and the complainant.

CALEA's general standard for an internal affairs investigation is 30 days, with status reports due every seven days. As stated in CALEA's comments on this standard:

> The impact of an internal affairs case on the integrity of the agency and on employee morale necessitates a speedy resolution to such issues. There may be exceptions to the 30-day limit, but exceptions should be granted only in those cases in which extenuating circumstances exist. (CALEA, 1993, Section 32.3.6)

Open Communication

In order to achieve trust, a complaint handling system must be as open as possible, while protecting the legal privacy rights of those involved. Sharing information while safeguarding individuals' rights to confidentiality creates trust which, in the long run, bolsters the system and makes it more effective.

In both the private and public sectors, keeping complainants informed is often cited as the single most critical component for building trust in a complaint handling system. Effective communication with the public requires prompt acknowledgment that a complaint is received, and a process for keeping complainants informed about the status of any investigation.

Accurate internal communication is equally essential. Police departments are known for their efficient "grapevines," and information about complaint investigations informally spreads quickly through a department. A by-product of the informal network is often wide dissemination of incorrect information. When a department provides official, accurate information about complaint investigations, it counteracts the informal network and promotes trust on the part of officers.

Accused officers and their supervisors also deserve to be fairly informed about pending investigations. Officers can experience significant stress when they are under investigation, whether they have been formally notified or not. Commanders need to understand the situation facing officers under their command, in case the officer's performance reflects the stress. Furthermore, if a serious allegation is pending and a commander does not know, the commander misses an opportunity to alter an officer's assignment if appropriate.

Finally, issuing periodic reports on the internal affairs function demonstrates accountability. Reports can, for example, include data on how many complaints come into the department, the nature of the complaints, and their outcome. CALEA's standard is to require the agency to publish annual statistical summaries, based on the records of internal affairs investigations, for dissemination to the public and to agency employees. As noted in CALEA's commentary on this standard:

> The National Advisory Commission on Criminal Justice Standards and Goals publication, Report on Police (1983, p. 479) states that, 'The disclosure of internal discipline statistics does not violate the confidential nature of the process; such disclosure is often valuable because it tends to dispel allegations of disciplinary secrecy voiced by some community elements.' (CALEA, 1993, Section 52.2.8)

A department needs accurate internal tracking and reporting of complaints in order to learn from them. Good internal communications can also build trust by informing officers of the outcome of investigations. Even when names are withheld, circulating descriptions of complaints, outcomes and penalties can increase officers' faith that a fair system is at work.

Table 1 summarizes some key indicators for each the characteristics of effective complaint handling.

Table 1: Indicators of Effective Complaint Handling

CHARACTERISTIC	INDICATORS
Accountability	• The department holds officers responsible for their behavior. • The department demonstrates that it listens to and learns from feedback about officer conduct. • The department demonstrates that it is continuously working to improve its performance.
Leadership	• The command staff in the department articulate the department's values and model the standards for desirable officer conduct. • The command staff support officers, while acknowledging when change is needed.
Clear Ethical Standards	• The department has an explicit value system that is clear to employees and to the public. • The complaint handling system itself reflects the department's value system and standards.
Accessibility	• The department establishes many points of entry to the complaint handling process. • The public perceives the department as open to feedback. • The department disseminates information about the complaint handling process to the public and within the department.
Fair and Consistent Treatment	• The department provides fair and consistent treatment to all officers regardless of rank, race/ethnicity, gender, or personal connections. • The department treats all complaints, complainants, and officers with respect. • The department adheres consistently to rules governing due process and confidentiality. • The seriousness of the complaint dictates the level of investigation and the severity of the consequence.
Efficiency	• With few exceptions, the department completes complaint investigations within a relatively short, fixed time period , e.g., 30-90 days. • The department allocates appropriate resources to enable the complaint handling system to function smoothly.
Open Communication	• The public and employees receive clear information about the complaint process. • The department articulates its expectations of officers and the consequences of behaviors. • The department keeps complainants, officers, and officers' commanders informed about the receipt, status and outcome of complaints. • The department reports to the community and employees on the number, type, and outcomes of complaints and on changes made in response to lessons learned from complaints.

CHAPTER V: MODELS OF CITIZEN INVOLVEMENT IN COMPLAINT HANDLING

Researchers, citizens, and public safety personnel use many terms to refer to the involvement of non-sworn individuals in the review of citizen complaints about police misconduct. Common terms include citizen review, external review, civilian review, and civilian oversight. For purposes of this report, OLO uses the term "citizen review" and defines it to mean:

> A procedure for handling complaints about police officer misconduct that, at some point in the process, involves people who are not sworn officers. (*Citizen Review Resource Manual*, Police Executive Research Forum, 1995)

A 1995 survey conducted for the Police Executive Research Forum (PERF) reported that the number of police complaint review procedures in the United States that involve citizens increased from 13 in 1980 to 65 in 1994. Citizen review is found in every region of the country, primarily in municipal police departments. In recent years, a number of County police departments implemented some form of citizen review.

There are multiple types of internal review and citizen review. In an article about the varieties of citizen review published in the *American Journal of Police*, Samuel Walker and Betsy Kreisel, write:

> With respect to public policy, the choice is not a simple either/or question of whether or not to adopt citizen review. Rather, it is a question of which form of citizen review, if any, to adopt...on the other side of the equation, the public policy choice involves one form of internal review versus another. (Walker and Kreisel, *American Journal of Police*, 1996)

The remainder of this chapter on citizen review models consists of three parts:

Part A, General Arguments, summarizes the arguments cited for and against citizen review;

Part B, Different Models, describes the different models of citizen review; and

Part C, Results, reviews the empirical evidence on the results of citizen review.

Appendix M contains information on the following models of citizen review:

- San Jose, California's Independent Police Auditor;
- Seattle, Washington's Internal Investigations Auditor;
- Omaha, Nebraska's Complaint Review Board;
- Portland, Oregon's Police Internal Investigations Auditing Committee;
- Prince George's County, Maryland's Citizen Complaint Oversight Panel;
- Baltimore, Maryland's Complaint Evaluation Board;
- Minneapolis, Minnesota's Civilian Police Review Authority; and
- New Orleans, Louisiana's Office of Municipal Investigations.

A. General Arguments For and Against Citizen Review

The topic of citizen review generates emotional arguments from opponents and proponents. The constituencies for and against citizen review vary, depending on the model being discussed and the jurisdiction. However, it is common to find police officers reacting negatively to the concept, while some community members propose citizen review as a solution to multiple problems they believe exist with the status quo.

Both sides present valid and reasonable arguments. In some cases the arguments are similar. For example, proponents argue that citizen review is more objective, fair, and valid. At the same time, individuals who argue against citizen involvement in complaint review maintain that a police department's handling of complaints is a more legitimate, valid, and informed process.

Advocates of greater citizen involvement in the review of police misconduct often argue that it:

- Ensures greater accountability of the police;
- Provides more objectivity in the review of police misconduct;
- Clarifies public expectations of police behavior;
- Gives the public a window into the complaint review process, which promotes greater community comfort with the process; and
- Encourages the participation of different racial, ethnic, and gender groups.

Many proponents of citizen review maintain that police officers cannot (under any circumstances) objectively review misconduct of fellow officers, and that internal police department review systems can never be sufficiently accessible to complainants. Proponents of citizen review argue that these factors create distrust in the community that can only be addressed by establishing a multi-member citizen review panel.

Opponents of citizen involvement in the review of police misconduct maintain there are inherent advantages to holding police departments responsible for policing themselves. Common arguments for a review system that consists of trained police officers include:

- Trained police officers can reach informed findings because they are most familiar with police procedures and legal limitations;
- It avoids an adversarial relationship between officers and citizens involved in the review of complaints; and
- It is less expensive and time consuming.

Opponents of citizen review maintain that police officers can objectively investigate allegations of misconduct. Opponents also argue that officers have the most appropriate knowledge and experience to develop valid conclusions about complaints. Proponents for internal review systems also maintain they are more efficient than citizen review systems both in terms of processing time and operating costs.

B. Different Models of Complaint Review

Table 2 lists the five models of review of police misconduct that OLO identified from research on this topic. The table depicts the models from left to right, in order of increasing citizen involvement. In practice, a jurisdiction will often take pieces of the different models to develop its own unique system.

The far-left column in the table shows the typical steps in complaint review. Each box in the table indicates who is responsible for the steps in each model. Boxes that indicate 'police' refer to a sworn officer within a police department. Boxes that indicate 'citizen(s)' refer to a single non-sworn individual or group of non-sworn individuals.

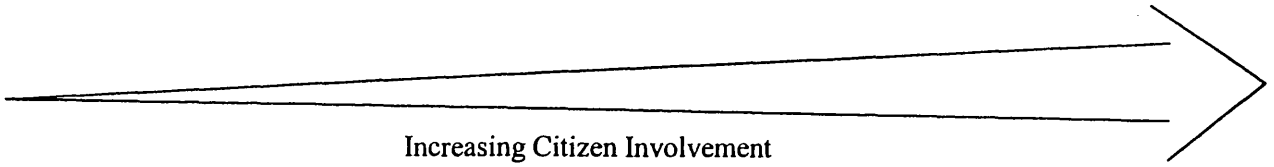
Table 3 lists the jurisdictions implementing each model of citizen review as of January 1995. At that time, approximately half of the jurisdictions that involved citizens in complaint review had implemented the citizen monitor model. Another third of the jurisdictions employed the citizen review model. As of 1995, a smaller number of jurisdictions had implemented the auditor and appeal review models.[1]

Some jurisdictions appoint a police commission to oversee the police department in general, including the complaint review process. This approach is described separately on page 24, and Appendix M contains a number of specific examples.

[1] OLO recognizes that due to the ever-changing nature of this subject area, the characteristics of some jurisdictions cited may have changed since the research was conducted.

Table 2: Models of Complaint Review

	Traditional Investigation Model	Auditor Model	Appeal Review Model	Citizen Monitor Model	Citizen Review Model
Intake	Police	Police	Police	Police and/or Citizens	Citizens
Investigation	Police	Police	Police	Police conduct investigations, with citizen review or oversight of the investigation	Citizens
Review	N/A	Independent auditor reviews individual complaints, policies and procedures	N/A	Citizens review the police investigation and recommend a finding to the police	N/A
Determination Of Findings	Police	Police	Police	Police	Citizens recommend a finding to the police
Review	N/A	N/A	Complainants may request citizen review of the police investigation.	N/A	N/A
Discipline	Police	Police	Police	Police	Police



Increasing Citizen Involvement

Table 3: Jurisdictions with Citizen Involvement in the Review of Complaints of Police Misconduct

Auditor Model	Appeal Review Model	Citizen Monitor Model		Citizen Review Model
San Jose, CA	Dayton, OH	Albuquerque, NM	Orange County, FL	Berkeley, CA
Seattle, WA	Evanston, IL	Atlanta, GA	Orlando FL	Chicago, IL
	Los Angeles County, CA	Baltimore, MD	P.G. County, MD	Cincinnati, OH
	Omaha, NE	Cambridge, MA	Portland, OR	Cleveland, OH
	Phoenix, AZ	Dade County, FL	Raleigh, NC	Detroit, MI
	Richmond, VA	Dallas, TX	Rochester, NY	Flint, MI
	Santa Cruz, CA	Denver, CO	San Diego, CA	Fresno, CA
	St. Louis, MO	Dubuque, IA	Seminole County, FL	Hawaii County, HI
	Tucson, AZ	Hartford, CT	Spokane, WA	Honolulu, HA
	Wichita, KA	Houston, TX	St. Paul, MN	Long Beach, CA
	Winston-Salem, NC	Indianapolis, IN	St. Petersburg, FL	Milwaukee, WI
		Kansas City, MO	Syracuse, NY	Minneapolis, MN
		Las Vegas, NV	Toledo, OH	Nashville,TN
		Lincoln, NE	Virginia Beach, VA	New Orleans, LA
		Miami, FL	Yonkers, NY	New York, NY
				Oakland, CA
				Philadelphia, PA
				Pittsburgh, PA
				Richmond, CA
				San Diego County, CA
				San Francisco, CA
				Washington, D.C.
Total Percent	**Total Percent**	**Total Percent**		**Total Percent**
2 3%	**11 17%**	**30 46%**		**22 34%**

Source: Walker, Samuel and Betsy Wright, "Citizen Review of the Police, 1994 A National Survey", Police Executive Research Forum, January 1995.

Complaint review procedures vary in terms of legal authority, organizational structure, role, staffing and operating procedures.

Legal Authority. Jurisdictions most commonly establish citizen review through legislative action. In some places, an executive order, a police chief administrative order, or a memorandum of understanding implements citizen review.

Organization. Citizen review involves a single executive director or a multi-member board. The auditor model uses a single executive director who reviews police policies and individual complaints. The appeal review, citizen monitor and citizen review models usually involve a multi-member board. The boards vary in size from three to 24 members with an average of 10 members. A 1995 survey showed that approximately one-fourth of multi-member boards include police officers as members. In some jurisdictions, standing committees hear complaints about the police. For example, in Nashville, Tennessee, the city's Human Relations Commission reviews complaints of police misconduct.

Complaint Jurisdiction. Most citizen review models can only become involved with citizen complaints about police officer misconduct. Other jurisdictions develop citizen review for complaints against any public safety employee or any government employee. For example, San Diego's Citizen Review Board handles complaints against police, sheriff, and probation department employees. The citizen review bodies in New Orleans, Flint, and Cincinnati review complaints against any municipal employee. The Iowa Citizens' Aide/Ombudsman handles complaints against any government agency in Iowa, including city and county law enforcement agencies.

Policy Review. Many jurisdictions ask citizens who review individual complaints to also review police department polices and procedures and recommend changes. According to Walker's 1995 survey, 62% of the complaint review procedures that involve citizens included review of police department policies and procedures. Citizens review and recommend a variety of policies. For example:

- The San Francisco Office of Citizen Complaints recommended the police department develop written polices regarding the arrest of disabled people; and
- The Denver Public Safety Review Commission recommended changes in how the police department compiles its gang list.

Other Activities. Most citizen review bodies and some police departments publish some form of public report. The size and scope of these reports varies. The reports typically provide information about the type and disposition of complaints, geographic area of complaints, and race, ethnicity and gender of complainants. The procedures of complaint review bodies often include guidelines regarding confidentiality of information reported.

Some oversight agencies or citizen boards also conduct community outreach activities, particularly in minority communities. This outreach provides an opportunity to explain the complaint review process and hear citizens' concerns.

1. Traditional Internal Investigation Model

Intake	Investigation	Determination of Findings	Review	Discipline	Review
Police	Police	Police	Not Applicable	Police	Not Applicable

The majority of police departments still use traditional internal police department procedures for reviewing complaints. In a traditional investigation model, sworn officers employed by the police department handle each step in the complaint review process. The traditional model does not involve citizens in the review of specific complaints, and generally provides no opportunity for anyone outside the police department to review the police department's internal investigation.

Variations exist among police departments in specific aspects of the traditional internal investigation model. In Montgomery County, the County's negotiated agreement with the Fraternal Order of Police (FOP) provides that when an officer (who is a member of the bargaining unit) rejects the Chief's finding and decision on discipline, the officer may elect an "alternate" hearing board. The alternate board consists of two sworn officers and a non-sworn arbitrator. (Chapter VI contains a full description of the County's complaint handling process.)

2. Auditor Model

Intake	Investigation	Review	Determination of Findings	Discipline	Review
Police	Police	Auditor	Police	Police	Not Applicable

In the auditor model, the intake, investigation, determination of findings, and discipline steps take place within the police department. After the police department investigation is completed, an auditor reviews citizen complaints and the police department's investigation and finding. The auditor is independent of the police department and reports directly to the jurisdiction's chief executive officer (elected or appointed), or to the jurisdiction's elected board or council.

The auditor reviews a random sample of complaints or all of the complaints investigated by the police department. The auditor also has access to the police department's investigative process, including information about the status of investigations. Some jurisdictions allow the auditor to sit in on interviews of complainants, officers, or witnesses.

In addition, an auditor typically reviews the police department's policies and procedures for handling complaints of misconduct and other policies, such as use of force policies. The auditor often makes recommendations to improve the department's procedures and policies.

This model provides a system for external monitoring of a police department's complaint review function. It allows someone independent of the police department to review police investigations, and to identify potential problems in terms of policies, procedures, or individual officer behavior. At the same time it leaves the police department's internal review system intact.

Appendix M includes descriptions of the auditor model implemented in San Jose, California and Seattle, Washington. The procedures in these two cities differ slightly from the model described here and from each other.

3. Appeal Review Model

Intake	Investigation	Review	Determination of Findings	Review	Discipline
Police	Police	Not Applicable	Police	Citizens	Police

In the appeal review model, non-sworn individuals review complaints and appeals. After the police department investigates a complaint and makes a determination of findings, a complainant can appeal the finding to a group of non-sworn individuals. The citizens review the complaint, the police department investigation, and the findings. The citizens can recommend a different finding to the police chief. In some jurisdictions the citizens can also request that the police investigate the case further. The chief makes the final decision regarding discipline.

The appeal review model provides some external oversight of the police department's process by giving the complainant someplace to go if he or she is unsatisfied with the outcome of the complaint. It provides less citizen involvement than some other models because citizens become involved only after the complaint has been through the internal department complaint process.

Appendix M contains descriptions of the appeal review model implemented in Omaha, Nebraska and Portland, Oregon.

4. Citizen Monitor Model

Intake	Investigation	Review	Determination of Findings	Review	Discipline
Police and/or Citizens	Police	Citizens review investigation and recommend finding	Police	Not Applicable	Police

This model uses citizens in a somewhat different role than either the auditor or appeal review models. Under the citizen monitor model, non-sworn individuals are often authorized to take complaints from citizens. Similar to the previous two models, the police department investigates the complaints. The citizens may, however, exercise some oversight of the investigation. For example, citizens may attend interviews conducted by the police or access information about the status of investigations.

Under the citizen monitor model, the police department provides certain categories of completed investigation reports to a citizen board. The citizens review the investigation report and recommend a finding to the police chief. The police chief makes a final determination of findings and identifies discipline based on the investigation and the citizens' recommendation.

The two citizen review models implemented in Maryland are both considered variations of the citizen monitor model. Appendix M describes the Citizen Complaint Oversight Panel in Prince George's County, and the recently modified Complaint Evaluation Board in the City of Baltimore.

5. Citizen Review Model

Intake	Investigation	Review	Determination of Findings	Review	Discipline
Citizens	Citizens	Not Applicable	Citizen recommendation and police determination	Not Applicable	Police

The citizen review model involves citizens more than the previous models. The review of complaints takes place primarily outside the police department. Citizens receive complaints, conduct investigations, and determine findings for recommendation to the police chief. Like the other models, however, the police chief makes the final decision about the outcome of the complaint and decides discipline.

Under this model, community members lodge complaints at a facility staffed by non-sworn personnel. Professional investigators, outside the police department, investigate the complaints. In some cases the citizen review board has the authority to subpoena documents, witnesses, and officers. Citizen review boards may also be authorized to discuss complaints at open hearings, with legal representation for the parties involved.

Appendix M contains descriptions of the citizen review models implemented in Minneapolis, Minnesota and New Orleans, Louisiana.

Police Commissions

Some jurisdictions establish civilian bodies, known as police commissions, to oversee the local police department. Police commissions are often compared to a corporate board of directors that sets policies and oversees operations, with the police chief serving as the department's chief executive officer who manages daily operations.

The mayor or other executive typically appoints members to a police commission. These commissions fulfill a broad oversight function. For example, a police commission will:

- Appoint (or at least recommend candidates for) the police chief;
- Set overall policy and review rules and regulations;
- Review the police department's annual budget and make recommendations; and
- Handle citizen complaints about police misconduct.

How a commission handles complaints of police misconduct varies. In most cases, the commission staff includes individuals who review and investigate complaints, with the commission members authorized to determine findings and discipline.

Some jurisdictions that have a police commission include the cities of Honolulu, Hawaii; Los Angeles, California; Milwaukee, Wisconsin; Detroit, Michigan; and San Francisco, California. Appendix M includes more information about the Los Angeles Board of Police Commissioners and the Milwaukee Fire and Police Commission.

C. Results of Citizen Involvement in Complaint Handling

Few studies evaluate or quantify the results of complaint review procedures that involve citizens versus procedures conducted entirely within police departments. This section summarizes the limited information that is available about the results of citizen review.

1. Policy Review

Policy review is characterized as a preventive measure. It identifies and attempts to change policies and procedures that may contribute to officer misconduct, an ineffective complaint process, or other problems. Auditors and citizen boards play an advisory role only, because their authority does not generally extend to actually implementing the changes.

Research about citizen review stresses the importance of the policy review function, but notes that no one has studied how often police departments implement the policy recommendations of auditors or citizen boards. In addition, there is no research evaluating the results or impact of policy changes recommended by auditors or citizen boards.

2. Sustain Rates

Community members often believe that complaint review procedures that involve citizens will lead to a higher sustain rate on complaints, and produce more serious discipline for officers. Data indicate that this is not necessarily the case. When comparing systems for reviewing complaints, Douglas Perez found that internal police department systems for reviewing complaints sustain allegations twice as often as citizen review systems.[2] According to Perez:

> It is not likely that instituting citizen review will significantly change the pattern of dispositions of complaint investigations, most will remain unsubstantiated simply due to the nature of complaints and difficulty of finding proof of wrongdoing. (Perez, Douglas. *Police Review Systems*, International City Management Association, August 1992)

In addition, the limited data available support the view that the police culture does allow officers to sustain complaints against fellow officers. In fact, advocates of maintaining police control of conduct issues argue that officers are more stringent than citizens when it comes to identifying and disciplining problem officers. This is based on officers' self-interest in getting rid of "rotten apples" that harm the department's reputation.

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[2] Perez acknowledges that comparing complaint statistics is complicated and only limited comparisons are useful.

3. Officer Performance

One goal of complaint review procedures is to influence officer performance and behavior. Articles on police management suggest that internal police department review of complaints is more likely to influence police officers' attitudes, behavior and performance than citizen review procedures. The logic of this view is that since internal review systems tend to find officers guilty more often, they have more opportunity to change behavior. Also, officers generally respect and take more seriously reviews of their conduct by other officers, further encouraging changes in performance and behavior.

4. Police-Community Relations

Jurisdictions usually introduce citizen review in response to negative police-community relations or a significant incident between the police and a citizen. OLO was not able to find any credible research that evaluates or measures the effect of citizen review procedures on police-community relations.

Citizens tend to have very high, sometimes unrealistic, expectations of the citizen review procedure's ability to improve relations with the police. According to Skolnick and Fyfe, "Many of those who argue for the establishment of civilian complaint review boards have extremely unrealistic expectations of what they can accomplish. Only rarely will such boards settle whatever police-community problems may exist."

Samuel Walker reports that "opposition to citizen involvement in complaint review from police chiefs has declined significantly, as they (chiefs) increasingly recognize the importance of responding effectively to citizen complaints." Even so, OLO's research identified some jurisdictions that report significant conflict and lack of cooperation between police departments and auditors or citizen boards. Other jurisdictions report that lack of support from elected officials and police unions hinder the effectiveness of the citizen review procedures.

CHAPTER VI: THE COMPLAINT HANDLING SYSTEM IN MONTGOMERY COUNTY

This chapter examines the details of the complaint handling system in the Montgomery County Police Department. It begins with the legal and regulatory framework, and then moves into the process and a review of data from the Office of Internal Affairs. A discussion of additional issues that affect how the system operates follows. The chapter concludes with a comparative perspective on how selected other police departments in Maryland approach internal affairs. The chapter has five parts.

Part A, The Governance Structure, provides an overview of the legal structure within which the MCPD handles complaints about employee conduct.

Part B, The Process, reviews the steps (on paper and in practice) of MCPD's complaint handling system.

Part C, The Data, presents selected data from the Office of Internal Affairs for 1997 and 1998 including the number of documented complaints, the length of internal investigations, and case outcomes.

Part D, Additional Issues, discusses the role of the Offices of the County Attorney and State's Attorney, as well as the relationship between the Office of Internal Affairs and Office of the Chief.

Part E, Comparative Perspective, describes some approaches and complaint handling mechanisms used by other police departments in Maryland.

A. The Governance Structure

The Montgomery County Police Department (MCPD) handles complaints about employee conduct within a complex governance structure that includes State and County laws and regulations, the County Charter, collective bargaining agreements, and Police Department directives. OLO presents the governance structure in detail so that the reader understands the intricacy of the legal framework and what is required to change it.

This chapter reviews the legal structure that directly affects the operation and management of the Police Department. It focuses on how MCPD handles complaints against sworn police officers.[1] In sum, the relevant governing documents are:

- The Maryland Law Enforcement Officers' Bill of Rights (LEOBR), which establishes the procedures for handling disciplinary actions involving police officers in Maryland.

[1] See page 28 for an explanation of how the governance structure differs for non-sworn employees of the MCPD.

- The Maryland Public Information Act, which controls public access to government information, including access to police personnel records.

- The County Charter, which sets forth the structure of government and decision-making in Montgomery County. This includes the process for developing and approving budgets, appointing officials, and hiring employees. It also establishes parameters for employee conduct, collective bargaining, and public access to information.

- The Montgomery County Code, which includes numerous laws that affect the operations and management of the Police Department. County law outlines the powers and duties of the Police Department and the Chief of Police. The County Code also establishes the County's personnel laws, which include the structure and process for collective bargaining between the County Government and MCPD employees.

- The County's Personnel Regulations, which address numerous topics related to employee conduct, including prohibited activities, disciplinary actions, grievances, and the disclosure of illegal or improper actions.

- The collective bargaining agreement between the Fraternal Order of Police, Montgomery County Lodge #35 Inc., and Montgomery County Government, which outlines the rights of members of the bargaining unit and the responsibilities of County Government.

- The Montgomery County Police Department's Field Operations Manual, which contains all active Department Directives and Headquarters Memoranda. These documents address many facets of Police Department operations, including unit responsibilities, personnel administration policies, and procedures for most department activities.

Table 4 lists the major governing documents and the entity authorized to make changes to each one. Each governing document is described in more detail beginning at page 30.

How the Governance Structure Differs for Non-Sworn Police Department Employees

The major differences in the governance structure for handling complaints and imposing discipline for non-sworn officers are that:

- LEOBR does not apply to non-sworn Police Department employees; and

- The applicable collective bargaining agreement is the agreement between the County Government and the Montgomery County Government Employees Organization (UFCW Local 1994).

Table 4: Governing Documents Related to Complaint Handling for Sworn MCPD Officers

Document	Authority to Change
State law • Maryland Law Enforcement Officers' Bill of Rights (LEOBR) • Maryland Public Information Act	Maryland General Assembly
The Charter of Montgomery County, Maryland • Section 215, Appointments • Article 4, Merit System and Conflicts of Interest • Section 505, Right to Information • Section 510, Collective Bargaining	Referendum of the registered voters of Montgomery County
Montgomery County Code • Chapter 1A, Establishing the Structure of County Government • Chapter 33, Personnel and Human Resources • Chapter 35, Police	Montgomery County Council
Collective Bargaining Agreement between Montgomery County Government and Fraternal Order of Police, Montgomery County Lodge #35, Inc.	County Executive and Fraternal Order of Police, Montgomery County Lodge #35, Inc. The Council's role with respect to taking action necessary to implement the collective bargaining agreement is outlined in County Code Section 33-80.
Montgomery County Personnel Regulations	Personnel Regulations are Method 1 Executive Regulations, which means they are promulgated by the County Executive and approved by the County Council.
Police Department Field Operations Manual (includes Department Directives and Headquarters Memoranda)	Police Department, subject to provisions in Article 61 of the Collective Bargaining Agreement concerning changes to directives, rules, and procedures.

Before this year, the process for receiving, sorting and investigating allegations of misconduct concerning civilian employees were the same as those for sworn officers. Either District Station or OIA personnel investigated the charges, depending on the seriousness of the allegations.

Earlier this year, MCPD modified the process for responding to complaints about its civilian employees. The Department's current practice is to refer complaints about civilian personnel to the employee's unit commander for investigation and possible discipline. OIA staff no longer conduct investigations of alleged misconduct of civilian employees. This process change is not yet reflected in revisions to the Department's directive that describes the discipline process for civilians (Function Code 301.F).

Maryland Law Enforcement Officers Bill of Rights (LEOBR)

In 1974, the Maryland General Assembly enacted the Law Enforcement Officers' Bill of Rights (LEOBR). As of this year, 26 states have legislated some form of LEOBR. In many other jurisdictions, non-legislative formats such as collective bargaining agreements or personnel regulations implement similar provisions.

The Maryland LEOBR, codified as Article 27, Sections 727–734D, establishes the framework for handling disciplinary actions involving "law enforcement officers" in Maryland. LEOBR defines "law enforcement officer" as any person who, in his/her official capacity, is authorized by law to make arrests and who is a member of certain law enforcement agencies. LEOBR explicitly states that it preempts any conflicting law or regulation enacted at the state, county, or municipal level.[2]

The list of law enforcement agencies enumerated in LEOBR includes any county police department. LEOBR does not apply to the police chief or entry level probationary officers, except that the law applies to probationary officers subject to any investigation involving brutality.[3]

State law requires that the procedures and protections outlined in LEOBR must be followed whenever:

> . . a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for any reason which could lead to disciplinary action, demotion, or dismissal. (LEOBR, Section 728(b)).

[2] LEOBR, Section 734B, Conflicting law, ordinance or regulation; preemption of local legislation.
[3] The County's agreement with the FOP, Montgomery County Lodge #35 outlines discipline procedures for officers not covered by LEOBR but included in the bargaining unit.

LEOBR governs requirements for lodging a complaint and sets the statute of limitations for filing charges. LEOBR affords law enforcement officers certain rights during the investigation and hearing stages of the disciplinary process. These include the rights to written notice of charges and time of hearing; representation; and interrogation at reasonable times and places.

According to LEOBR, an officer also has the right to appeal a police chief's decision to impose discipline to a "traditional" administrative appeal hearing board. The traditional appeals board consists of three members appointed by the chief. In a traditional board, all three board members are officers, and one must be of the same rank as the accused officer. An officer has the right to be provided with the complete investigatory file, including any evidence that would tend to clear the officer of guilt, at least 10 days before the hearing.

LEOBR also provides that jurisdictions with a recognized exclusive collective bargaining agent can agree with the bargaining agent to structure an "alternate hearing board" as an option for unit members. The current agreement between the County and the Fraternal Order of Police (FOP) Lodge #35 provides for an alternate hearing board. The alternate board in Montgomery County consists of one member appointed by the FOP, one member appointed by the chief, and one arbitrator selected from a list agreed to by both the union and police management. The County and the FOP share the cost of the arbitrator's fee.

LEOBR authorizes the hearing board (traditional or alternate) to make findings involving the guilt of the accused officer. If the hearing board decides that the accused officer is not guilty, then the case is concluded. If the hearing board decides that the accused officer is guilty, then the hearing board reconvenes to hear evidence concerning recommendations of discipline. While the hearing board makes a recommendation on discipline, LEOBR authorizes the chief of police to make the final decision regarding discipline. LEOBR authorizes the accused officer to appeal the chief's decision to the Circuit Court.

LEOBR also specifies that the law is not intended to prohibit police management from imposing "summary punishment" for minor violations of departmental rules and regulations when: the facts are not in dispute; the officer waives the hearing provided by LEOBR; and the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached. In these cases, the "summary punishment" may not exceed three days suspension without pay or a fine of $150.

Maryland Public Information Act

The Maryland Public Information Act (MPIA) sets forth the process for members of the public to obtain information from public agencies about the affairs of government and the official acts of public officials and employees. It lists the types of information that are exempt from general availability, as well as exceptions to the exemptions. The MPIA also provides for appeals to court to challenge denials of access by public agencies.

Police disciplinary investigations and proceedings under LEOBR are considered part of a police officer's personnel record, and the MPIA identifies personnel records as confidential. A December 1998 memorandum from the County Attorney of Montgomery County affirms that the MPIA prevents citizens, including complainants, from having access to the specific content and disciplinary outcome, if any, of individual complaint investigations.

Charter of Montgomery County Maryland

The Charter of Montgomery County sets forth the overall structure of government and decision-making for the County Government. Initially adopted in 1968, the voters of Montgomery County most recently amended the Charter in November 1998. The Charter provisions that most directly affect the operations of the Montgomery County Department of Police are:

- Section 215, Appointments, outlines how non-merit department directors (including the Chief of Police) are appointed. The County Executive appoints the Chief of Police, subject to confirmation by the County Council.

- Section 505, Right to Information, expressly protects confidential police records and personnel records from public inspection.

- Section 510, Collective Bargaining, states that the County Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County police officers.

- Article 4, Merit System and Conflicts of Interest, sets forth the parameters of the merit system for County Government employees. It includes the process for adopting personnel regulations, and the role and responsibilities of the Merit System Protection Board. This article also enumerates a code of ethics applicable to all public employees and lists certain prohibited activities and corrupt practices.

Montgomery County Code

The County Code sections that most directly affect the operations and management of the Police Department are Chapters 1A, 33 and 35.

Chapter 1A, Establishing the Structure of County Government: This chapter establishes the Police Department as a principal department in the Executive Branch of County Government, and provides for the appointment of the Chief of Police as a non-merit position in the Executive Branch. The County Executive appoints the Chief of Police, subject to County Council confirmation. Chapter 1A also places a six-month time limit on the term of an acting Police Chief. The Council can extend the six-month limit by majority vote.

Chapter 35, Police: Chapter 35 outlines the powers and duties of the Chief of Police and enumerates specific Police Department responsibilities. The Chief is subject to orders, rules, and regulations issued by the County Executive. The Chief is responsible to the County Executive for the "proper and efficient conduct, control, and discipline of the department of police." Additional powers and duties of the Chief listed in Chapter 35 include the:

- Prompt and vigorous enforcement of all criminal statutes, laws, and ordinances;
- Authority to adopt regulations and additional instructions which pertain to the work of the Police Department;
- Authority to order and direct instruction and training for members of the police department; and
- Requirement to take prompt action in prosecuting any member of the police guilty of "interfering with, or in any manner impeding, the orderly and efficient operations and conduct of the department of police."

Code Section 35-3(g) explicitly requires the Chief to "refer all charges properly filed with the director of the department against any member of the police to the office of internal affairs."

Chapter 33, Personnel and Human Resources: Chapter 33 is the law governing the County Government's personnel practices. It establishes the parameters of the County's merit system, employees' retirement and disability benefits, and employer-employee relations.

Chapter 33, Article V, Police Labor Relations: sets forth the County's structure and process for collective bargaining between the County Government and certain police employees. The Police Labor Relations law:

- Outlines employee rights and the process for selection, certification and decertification of an employee representative for collective bargaining;
- Identifies which police employees are eligible to belong to such an employee organization;[4]
- Lists the employer's duties toward the certified representative; and
- Creates the position of the Permanent Umpire and describes the scope of the Permanent Umpire's authority, which includes the authority to determine what issues can be resolved in the bargaining process.

[4] County Code Section 33-76 defines union eligibility to include any police officer in the classification of master police officer I, master police officer II, police officer I, police officer II, police officer III, and police officer candidate, or equivalent nonsupervisory classifications, but not those in the classification of police sergeant or any equivalent or higher classification.

Section 33-80, Collective bargaining, lists the matters which the County Government (the employer) and the certified employee representative must bargain collectively. For example, salary and wages, hours and working conditions, and employee benefits are subject to collective bargaining.

The law also lists matters that the law designates as employer rights that are not subject to collective bargaining. Examples of these include determining the overall budget and mission of the employer, maintaining and improving the efficiency and effectiveness of operations, and supervising employees.

The final item included on the list of matters subject to collective bargaining is "the effect on employees of the employer's exercise of rights." This phrase legislates what is referred to as "effects bargaining," because it means that while the areas identified as management rights are not subject to collective bargaining, the effects of management's exercise of those rights are subject to collective bargaining.[5]

Chapter 33 also outlines the County Council's role with respect to an agreement ratified by the employer and certified representative. It also sets forth the specific procedures for collective bargaining, including the process of selecting an impasse neutral and the rules of binding arbitration. Finally, the chapter lists prohibited practices, and explicitly outlaws strikes and lockouts.

Collective Bargaining Agreement

The current agreement between Montgomery County, Maryland and the Fraternal Order of Police (FOP) Lodge 35, Inc., is effective from July 1, 1998 through June 30, 2001. The table of contents of the agreement lists 61 articles that address a wide range of issues related to pay, benefits, and other matters in which the FOP has a role, such as discipline, department directives, and administrative procedures. The articles with particular relevance to the complaint handling process are summarized below and attached in Appendix G.

Article 43, Discipline, addresses the discipline process for unit members who meet LEOBR's definition of "law enforcement officer," and the process for officers not covered by LEOBR. For most FOP members, who are covered by LEOBR, the discipline section is limited to the alternate hearing board process. For the relatively small number of unit members not covered by LEOBR, i.e., all Police Officer candidates, and all probationary employees except when allegations of brutality are involved, the agreement establishes the process for the investigation and disposition of complaints.

[5] The County's laws governing collective bargaining with other employee organizations, i.e., MCGEO, IFFP, do not include effects bargaining.

Article 51, Personnel Files, defines "personnel record" as any personnel, medical, or departmental operating file. Article 51 sets forth the terms governing custody, contents, review, and confidentiality of different types of personnel records.

Article 61, Directives and Administrative Procedures, outlines the agreed-upon procedures related to the process of making changes to directives, rules, and procedures that are referenced in the agreement and to items not enumerated in the agreement. Section C outlines procedures for the FOP's review of all proposed changes to directives, rules or procedures. Section C requires the Department to forward copies of all changes to the union. It requires the union to notify the Department of any comments it has within 14 days. This section provides that the union's failure to respond shall be deemed a negative reply.

Personnel Regulations (Method 1 Executive Regulations)

The County Code (Chapter 33) authorizes the County Executive to promulgate regulations to implement the County Government's personnel system. The Code classifies Personnel Regulations as Method (1) Executive Regulations. Method (1) Executive Regulations require Council approval.

The Personnel Regulations address a broad spectrum of issues related to the hiring, classification, evaluation, compensation, benefits, and discipline of County Government employees. Unless explicitly exempted, all Police Department employees (sworn and civilian) are subject to the County Government's Personnel Regulations, except where the subject matter is addressed by a collective bargaining agreement. Certain elements of the sworn officers' benefits package and discipline systems, for example, are addressed outside the Personnel Regulations.

Sections 28-31 of the Personnel Regulations articulate the County Government's policies regarding discipline for County employees. It includes a list of causes for disciplinary actions, types of disciplinary actions, the process for taking disciplinary action, the process for grieving a disciplinary action, and the process for an employee to file a complaint if he/she believes a retaliatory action or coercion has taken place.

The collective bargaining agreement between the County and the FOP requires that Section 27-3 of the 1986 version of the Personnel Regulations applies to FOP members.

Police Department Directives

The Montgomery County Police Department's Field Operations Manual contains all active Department directives and headquarters memoranda. These documents address many facets of Police Department operations, including unit responsibilities, personnel administration policies, and procedures for most department activities.

MCPD's directive on the disciplinary process, most recently updated in 1994, describes the Department's overall policy towards discipline as follows:

> A relationship of trust and confidence between the department and the community is essential to effective law enforcement. Officers must be free to exercise their own judgement and take enforcement action in a reasonable, lawful, and impartial manner without fear of reprisal. It is therefore important to establish a disciplinary process that enables the department to initiate positive, corrective action for improper conduct while at the same time protecting officers from unwarranted criticism for properly discharging their duties. (Function Code 301)

With respect to handling complaints, Function Code 301 states:

> It is the policy of this department to provide a thorough, fair, and expeditious disposition of complaints regarding the conduct of department employees. Further it is the policy to invite individuals to bring to the attention of the department complaints about the conduct of its employees whenever that person believes the employee acted improperly.

Function Code 301 defines a "complaint" and further defines the distinction between a "Serious Allegation of Misconduct" and "Minor Complaints of Misconduct." Function Code 301 outlines the Department's procedures for various aspects of complaint handling, including how a complaint is filed and how a complaint is investigated. Much of the language in these directives comes directly from LEOBR.

The directives establish the duties and responsibilities of the Office of Internal Affairs, and set forth specific guidelines for how OIA will conduct its business. These directives include guidelines for determining whether an investigation will be conducted by OIA or by the individual's commanding officers, as well as time frames for completing all internal investigations. (The details of this process are the subject of Part B of this Chapter.)

Other directives in the 301 function code series (301.B, C, D, and F) establish procedures for notifying officers that are the subject of an internal investigation, and for forming and conducting hearings under traditional administrative hearing boards, alternate administrative hearing boards, and emergency suspension hearing boards. The directives also detail the standards and procedures for expunging records, and establish the process for civilian discipline, unless modified by a collective bargaining agreement.

B. The Process

MCPD's process for handling complaints about the conduct of sworn officers is complex. The Police Department's written directive that governs how the department handles complaints (Function Code 301) includes process requirements from the State of Maryland's Law Enforcement Officers' Bill of Rights (LEOBR). In addition, Function Code 301 reflects provisions from the Maryland Public Information Act and the County Government's collective bargaining agreement with the Fraternal Order of Police, Lodge 35.

The table below summarizes the major steps in MCPD's complaint handling process from the time a complaint enters the system (intake), through the Chief's decision whether to issue charges and impose discipline, to an officer's decision whether to elect a hearing board.

Table 5: The Major Steps in MCPD's Complaint Handling Process

The Steps	What occurs during this step?
Intake	MCPD staff at various locations (e.g., headquarters, Internal Affairs, District Station) receive a complaint about the conduct of a Montgomery County police officer. The complaint can come from a citizen or from another Police Department employee. The complaint can be in the form of a letter, a telephone call, a fax, or face-to-face conversation.
Sorting and Assignment	OIA or District Station sergeants or lieutenants evaluate the seriousness and complexity of the complaint. They make an initial determination about whether the complaint warrants documentation on an OIA Intake Form and/or needs an official OIA case number. This decision relates to who is assigned to conduct the investigation of the alleged misconduct.
Investigation	OIA or District Station sergeants or lieutenants conduct an investigation of the alleged misconduct. The investigation is supposed to include interviewing the complainant, witnesses, the accused officer, and any other involved persons. The investigation results in a formal written report of findings.
Findings	An investigation results in finding(s) that one or more of the allegations are sustained, not sustained, or unfounded. It can also conclude that the officer should be exonerated, or that the conduct was the result of a policy failure.
Decision to Bring Charges/Impose Discipline	The MCPD chain of command reviews the investigation and finding(s) and recommends whether to concur or disagree with its findings. The Chief of Police makes the final decision on the finding(s), decides whether to issue charges against an officer, and decides discipline.
Hearing Board	State law provides that an officer has the option to elect a hearing board in the event of sustained charges.

In practice, the steps in the process for handling complaints about officer conduct vary somewhat according to several factors, including:

- Where and how a complaint is filed;
- Whether a complaint is classified as serious or minor;
- Whether OIA or a District Station staff investigates the complaint; and
- Whether an officer exercises his/her right to elect a hearing board if an allegation is sustained.

The following pages further examine each of these steps. The chart at page 38a and 38b depicts the sequence of MCPD's current complaint handling process.

Intake

A person can file a complaint about the conduct of a sworn officer or other Police Department employee in different ways. The Department's directive on the disciplinary process encourages individuals to use the Department's Complaint Form. The Department will also accept a complaint in another written form, in person, or by telephone call. The only exception to this is for complaints alleging brutality, for which State law requires a sworn, written statement.[6]

Citizens can file complaint at different locations, including:

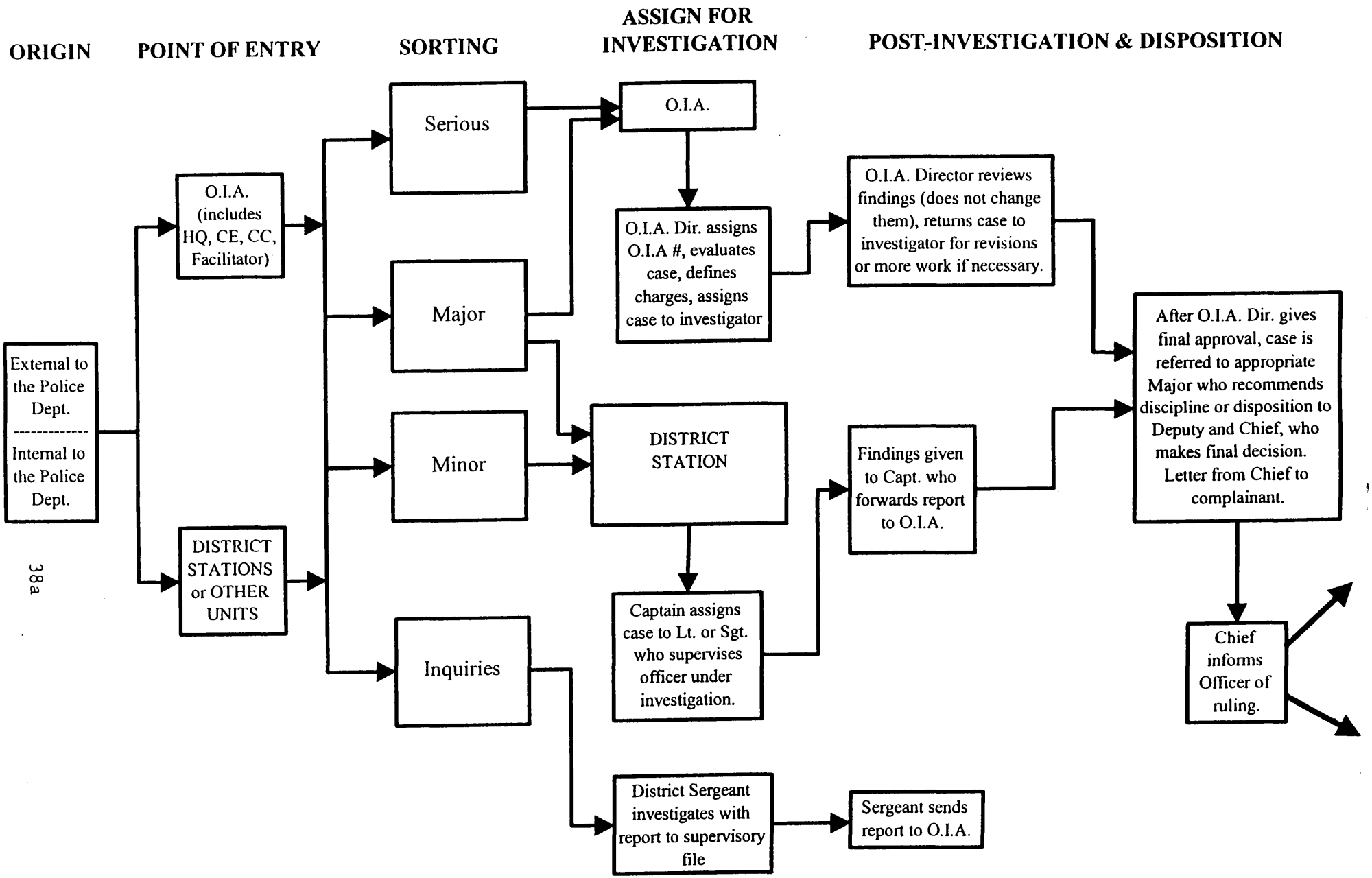
- The Office of Internal Affairs;
- One of the five District Police Stations (Bethesda, Germantown, Silver Spring, Wheaton-Glenmont, Rockville)
- Police Headquarters; or
- The offices of the County Council, County Executive, or Police Community Relations Facilitator at any of the County's regional service centers.

The Department terms a complaint generated by a citizen who is not an employee of the Police Department an "external" complaint. The Department terms a complaint generated by an employee of the Department an "internal" complaint. Both internal and external complaints raise concerns about officer conduct. In practice, an internal complaint may address a persistent performance issue, such as being late for work repeatedly, or any conduct matter which an external complaint could address.

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[6] Appendix K (©116) contains a copy of MCPD's current complaint form. The form is now also printed in Spanish. If OIA receives a complaint alleging brutality that does not satisfy the LEOBR standard for a sworn, written statement, OIA's practice is to send a letter informing the complainant that a sworn, written statement is necessary to effectuate their complaint.

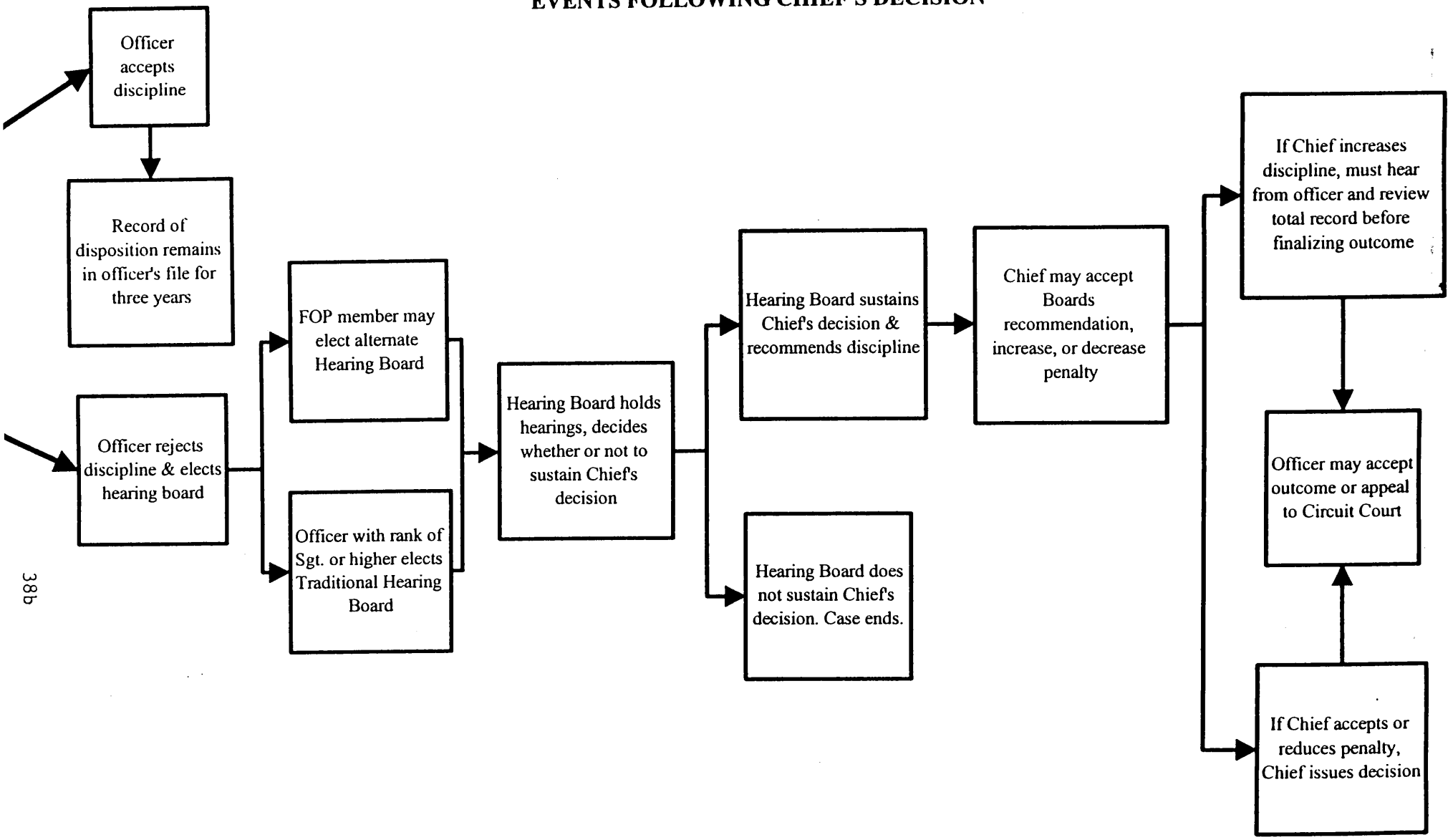
MCPD'S COMPLAINT HANDLING PROCESS IN PRACTICE



Source: OLO

Chart continues on next page

EVENTS FOLLOWING CHIEF'S DECISION



Source: OLO

Function Code 301 requires that a complainant at a District Station speak directly with the on-duty executive officer or highest-ranking police supervisor (most often a sergeant or lieutenant). In response to learning that some citizens perceive this requirement as an obstacle, some District Stations now permit a citizen to leave a written complaint at the front desk. An executive officer or supervisor then follows up with a telephone call to the complainant to get additional information.

By letter, the Office of Internal Affairs acknowledges receipt of a complaint to the complainant. During 1998, OIA improved its communications with complainants in several ways. Under current practice, OIA investigators inform complainants monthly about the status of their complaint. The contact may be in writing or by telephone, and each investigator must document the contact in the investigation file.

A number of additional developments during 1998 and 1999 modified MCPD's intake process in practice. Two key changes, the introduction of the OIA Intake Form and the creation of the Police Facilitator position, are described below. Function Code 301 does not yet reflect these changes.

Introduction of the OIA Intake Form in January 1998. In January 1998, the Office of Internal Affairs (OIA) introduced a new form called an "OIA Intake Form." Appendix L contains a copy of the OIA Intake Form.

The Intake Form provides space to record basic information from a complainant, such as the complainant's name and address, the identification of the involved officer, and the date, location, and description of the incident. The Intake Form also provides space to document the contacts between the officer who is performing the intake function and the complainant.

According to OIA's written instructions, the OIA Intake Form is for minor types of violations. The instructions for using the Intake Form state that OIA's intent was to:

- More accurately track all complaints and potential complaints received by the Department;
- Treat all MCPD complaints in a more consistent manner regardless of where they originate or are sent for investigation; and
- Resolve minor misconduct issues at the lowest level possible and in the least formal manner.

The use of the Intake Form in practice is discussed more fully in the section on sorting and assignment.

The Police-Community Relations Facilitator. To improve the public's access to MCPD's complaint process, the County Council included partial-year funding for a Police-Community Relations Facilitator (the Facilitator) position in the County Government's FY 99 budget. The Council approved full-year funding ($60,000) for the Police Facilitator in FY 2000. The Council funded the Police Facilitator in the County's Office of the Chief Administrative Officer.

According to the job announcement issued in the fall of 1998, the Facilitator is responsible for "coordinating a system that provides accessible alternative sites to citizens who want to file complaints against the Police Department regarding improper police conduct." The Facilitator is responsible for establishing a program to help citizens follow up on complaints after they have filed them, to inform the community about the complaint process, and to handle calls to the County Council and County Executive from citizens who want to file a complaint related to police conduct.

The CAO filled the position of Police-Community Relations Facilitator in February 1999. To date, the Facilitator's activities include:

- Becoming familiar with the complaint process and getting to know individual members of the Police Department. The Facilitator's upcoming plans include attending roll calls at the District Stations and participating in ride-alongs with officers.

- Increasing the visibility of the Facilitator's role by attending community meetings and participating in both print and electronic media interviews. The Facilitator routinely visits the Regional Service Centers as part of his outreach efforts.

- Responding to citizen contacts. Citizens have contacted the Facilitator by telephone, by mail, and in person at Regional Service Centers or other County locations. The Facilitator has received complaints, requests for updates on ongoing investigations, and other feedback from citizens about the Police Department.

If a citizen contacts the Facilitator before formally filing a complaint, the Facilitator may act as a liaison and try to resolve the issue to the citizen's satisfaction without proceeding to a formal complaint filing. Alternatively, the Facilitator helps a complainant fill out a complaint form. The Facilitator then forwards the written complaint to OIA, with a copy to the Chief of Police. In practice, the Department accepts complaints through the Facilitator, even though they do not enter the department in the manner prescribed by Function Code 301.

If a citizen wants information about the status of a complaint, the Facilitator will contact the Office of Internal Affairs. In some cases, the Facilitator is able to provide the information directly to the citizen. In other cases, the Facilitator arranges for Department personnel to contact the citizen directly to provide information.

Sorting and Assignment

Sorting and assignment refer to the process by which the Department assesses the seriousness of a complaint and decides what level of follow up is appropriate. An allegation that could result in discipline (as defined by State law) must be treated differently than one that could not.

Function Code 301 assigns OIA the primary responsibility for categorizing complaints and assigning them for investigation, either to OIA, a District Station, or other MCPD unit. Because the majority of citizen complaints reach MCPD through the District Stations, in practice, many sergeants and lieutenants in the field also sort and assign citizen complaints on a regular basis.

Who sorts complaints and what criteria they use are reviewed below. A discussion of how the process operates in practice follows a description of written departmental policy.

Sorting and Assignment According to Function Code 301

The Department directive on the disciplinary process (Function Code 301) describes the process for sorting and assigning complaints. If the complaint is lodged at OIA, then the OIA director does the initial screening of minor versus serious.

If the complaint is lodged at a District Station, then the supervisor who speaks to the complainant does the initial screening. Function Code 301 requires the supervisor who receives an incoming complaint to document it. If the complaint alleges a serious case of misconduct, then the supervisor is supposed to forward the documented complaint to OIA. OIA then assigns the complaint a formal OIA control number, and determines whether OIA or one of the individual's supervisory officers will conduct the investigation.

According to Function Code 301, if the supervisor receiving the complaint determines that it alleges a minor case of misconduct, then the supervisor of the accused officer can handle the complaint. The accused officer's supervisor is required to investigate the incident and document the results of his/her investigation. Function Code 301 requires the supervisor to obtain a control number from OIA and to provide a copy of the investigative report to OIA. The maximum discipline associated with a minor complaint is known as "summary punishment," defined as three days suspension without pay or a fine of $150.

Written Assignment Guidelines. Function Code 301 provides written guidelines for deciding whether OIA or another unit should conduct the investigation. The directive sets forth the following two principles as guidelines for the Director of OIA when determining investigative responsibility:

- Discipline is a command responsibility; and
- Complaints should be investigated at the lowest possible level.

Function Code 301 assigns the Office of Internal Affairs (OIA) the primary responsibility for conducting administrative investigations in the following instances:

1. All use of force complaints.
2. All firearm discharges except for range practice or the destruction of animals.
3. All racial, ethnic, and sexual harassment/discrimination complaints.
4. All administrative investigations required whenever an employee is charged with a criminal offense, or while operating a motor vehicle while under the influence of alcohol or drugs, or when the employee is the operator of a vehicle involved in a fatal accident.
5. Any complaint designated by the Chief of Police.

For all other types of complaints, Function Code 301 lists the following general guidelines for "the OIA Director to use" to determine whether OIA or the individual's commanding officer should conduct the investigation:

1. Type of complaint.
2. Source of complaint.
3. Number of individuals involved.
4. Whether the accused officers are assigned to the same unit.
5. Jurisdictional limitations.
6. Underlying indications of graft, corruption, or other serious misconduct.
7. Any other related matter that would dictate assignment.

Allegations of Criminal Acts.. Function Code 301 requires that OIA be notified if an officer is arrested or accused of a criminal or potentially criminal act. Function Code 301 assigns the investigation of criminal allegations to "the appropriate unit." In practice, criminal investigations are most often assigned to the Investigative Services Bureau (ISB).

In all cases of alleged criminal conduct, OIA is responsible for conducting an administrative investigation. MCPD's policy calls for OIA to begin its investigation after the criminal matter is resolved.

One reason for the separation of administrative and criminal investigations is that statements compelled from accused officers in the course of an administrative investigation are not admissible in a criminal proceeding. Separation improves the likelihood that a case involving criminal allegations against an officer is not compromised by an administrative investigation.

Sorting and Assignment in Practice

In practice, the sorting of complaints and potential complaints is not a simple process. It involves many individuals and a wide range of allegations. While Function Code 301 assigns OIA the responsibility for coordinating the complaint sorting process, in practice, a great deal of complaint handling occurs without any involvement of OIA staff. At present, there is no central point in MCPD through which all complaints alleging officer misconduct consistently pass, either before, during, or at the conclusion of a complaint investigation.

When a citizen files a complaint at a District Station, a District Station sergeant or lieutenant typically does the initial sorting. According to OLO's interviews, MCPD personnel at all ranks are confident that complaints about serious misconduct are consistently documented and forwarded to OIA. However, the record keeping and sorting of all other types of complaints (and potential complaints) is more variable.

With numerous sergeants at each District Station receiving incoming complaints, it is possible for a similar allegation (especially a minor one) to be classified differently from one District to another, and perhaps even from one shift to another within a single District Station. The introduction of the OIA Intake Form in January 1998 represented part of OIA's effort to bring greater consistency and centralization to the sorting and assignment of all complaints.

Another common observation shared by most staff interviewed is that while the assignment guidelines in Function Code 301 are generally followed, other factors affect where a complaint is investigated. These additional factors include the relative workload at OIA and at the District Stations, and the "political" sensitivity of a complaint.

Supervisory personnel can elect a formal investigation even for a minor allegation. For example, a formal investigation provides an opportunity for a more thorough investigation and a more definitive conclusion. Also, a supervisor may want a more formal approach if an officer has a history of complaints. As a result, formal investigations are sometimes used in cases of minor allegations, both at OIA and the District Stations. Furthermore, OIA can investigate minor complaints, and District Station personnel at times investigate serious complaints that Function Code 301 assigns to OIA.

Two Additional Categories of Complaints. Interviews with OIA and District Station staff suggest that, in practice, there are two additional categories of complaints not explicitly defined in Function Code 301. As described below, for purposes of discussion, OLO terms these two additional categories "inquiries" and "major complaints." Function Code 301 addresses minor complaints, but in practice, the minor complaint category appears to be broader than the directive describes.

In practice, MCPD personnel most often define "minor" to mean that an OIA formal case number is not needed because remedial counseling would be the most serious likely outcome. When District Station staff determine that the allegation, if sustained, could result in discipline, then they initiate a formal internal investigation by requesting an OIA case number.

OLO observed that, in practice, OIA and District Station personnel appear to use the following four categories for sorting complaints.

- Inquiries: Not defined in Function Code 301, these are complaints that are judged to be very minor, and that the sergeant or lieutenant can "resolve" easily by discussing the incident with the complainant and the officer. (The term "inquiry" is adopted by OLO in order to differentiate this category of minor complaint.)

- Minor Complaints: While included in Function Code 301, the treatment of "minor" complaints deviates from the directive. These complaints, if sustained, would result at most in remedial counseling, and many of them do not receive OIA case numbers. However, they require more investigation than inquiries.

- Major Complaints: Not defined in Function Code 301, these are complaints that require LEOBR procedures because if sustained, they would result in formal discipline. They receive formal OIA case numbers, and can be investigated either at the District Station or OIA. Allegations typically are less serious than those defined in Function Code 301 as "serious" complaints. (The term "major complaint" is adopted by OLO in order to differentiate this category of complaint.)

- Serious Complaints: Included in Function Code 301, these are complaints that receive OIA numbers and contain allegations specified in Function Code 301. While Function Code 301 assigns them to OIA, in practice they are sometimes investigated at District Stations.

Inquiry: As indicated above, an "inquiry" is the term OLO adopts to describe "complaints" from citizens that the Department deems resolved after an officer's supervisor talks to the complainant.

An example of an "inquiry" is a citizen who calls an officer's District Station to complain about receiving a speeding ticket. The officer's supervisor (typically a sergeant) listens to the complainant and talks the situation over with the officer involved. If the supervisor determines the officer did nothing to violate Department procedures, then the supervisor will often talk again with the complainant. If the citizen is "satisfied," and does not wish to pursue filing a written complaint, then in most cases, the Department considers the matter resolved.

Until recently, these types of "complaints," or "inquiries" did not appear in police records at all. When OIA introduced the OIA Intake Form in January 1998, OIA asked District Station personnel to document each and every complaint, including such inquiries, on the Intake Form no matter how minor it was or how easily it was resolved. Based on interviews throughout the Department, it appears that as of the spring of 1999, there continued to be inconsistent use of the OIA Intake Form. However, OLO cannot state with any degree of certainty how many contacts fall into this category or what percentage of cases are not documented on Intake Forms.

Minor complaints in practice. Function Code 301 defines a "minor" complaint by its possible consequences. If the allegation of misconduct is sustained and the officer would receive summary punishment or remedial counseling, then according to Function Code 301, the complaint is "minor." If more severe discipline could result, then the complaint does not qualify as "minor." Function Code 301 does not define minor complaints any further.

In practice, the category of minor complaints includes a wide range of allegations, from those that are more serious than inquiries and warrant more investigation, to those that are major but still are not in the "serious allegation" category. The category of minor complaints in practice includes some that can result in discipline and therefore require LEOBR procedures, and some that do not.

When a complaint could result in discipline, it is supposed to receive a formal OIA case number. Once a complaint receives an OIA number, it is treated the same as any serious allegation of misconduct.

In practice, this means that most complaints that meet Function Code 301's definition of minor are not tracked by formal OIA case numbers, even though this is technically required. District stations are resolving them without requesting OIA numbers unless formal discipline could result. The increased number of complaints documented on Intake Forms within the past 18 months suggests that at least some of these situations are now being recorded on OIA Intake Forms and tracked at OIA with intake numbers.

Personnel at District Stations interviewed by OLO explained the practice of minimizing OIA's part in handling these complaints as an attempt to keep discipline at the lowest supervisory level, and to avoid unnecessarily formalizing the supervisory function. Accordingly, District Station supervisory personnel retain responsibility for a wide range of allegations, determining that they can be addressed without formal discipline. The result of having formal investigations with OIA case numbers only in cases that can result in formal discipline is that OIA's oversight of cases of minor complaints is limited.

To the extent that District Stations comply with OIA's request to fill out Intake Forms for every complaint, OIA does have some oversight. Intakes are forwarded to OIA, and the OIA Director reviews them for appropriateness and thoroughness of approach. OIA's review includes confirming that District Station personnel have "completed the loop" by contacting the complainant with the final outcome.

Investigation

By law, the structure of the complaint investigation depends upon the possible outcome if an allegation is sustained. This applies whether OIA or District Station personnel conduct an investigation. As explained earlier in this chapter:

- If the outcome of the investigation could lead to disciplinary action, demotion or dismissal, then LEOBR governs the process. LEOBR does not prohibit law enforcement agencies from imposing "summary punishment," defined as up to three days suspension without pay or a fine of $150.

- If the outcome of the investigation could lead to non-disciplinary action, such as counseling or non-punitive reassignment, then LEOBR requirements do not apply, and the investigation can proceed on a more informal level.

The provisions of LEOBR apply to all MCPD law enforcement officers. LEOBR does not apply to police officer candidates or officers in a probationary status, unless they are under investigation for alleged brutality in a work situation.

As reviewed earlier, LEOBR requirements formalize the investigation process. The Department, for example, must inform the officer in writing about the nature of the investigation, and schedule the interrogation so that the officer has at least 10 days to obtain representation. LEOBR also includes requirements about where, when and by whom the officer can be interrogated, and other provisions intended to insure that the interrogation process is fair to the officer. Under LEOBR, all interviews and interrogations must be recorded, either written or taped.

Under LEOBR, the Department may require an accused officer to undergo tests for controlled substances and alcohol. The information produced by these tests, if it is obtained as the result of a direct order, can be used in the administrative investigation but is not admissible or discoverable in a criminal proceeding. The officer can also be required to submit to a polygraph examination. Agreement between the officer and the Department is required before the results of the polygraph can be used in the administrative investigation, if the officer was ordered to undergo the polygraph examination.

Although not required by LEOBR, MCPD conducts internal investigations using a criminal investigative approach. Using criminal investigation techniques, the investigator interviews the complainant and the witnesses to an incident before informing or interrogating the accused officer. To insure that the accused officer does not know that he/she is under investigation, until this year OIA had also delayed notifying the officer's commanding officer until OIA had decided to serve a Form 242 on the officer. (The use of Form 242 is described below.) Department personnel cited thoroughness and efficiency as reasons for using this approach. During the past year, OIA began to routinely notify the commanders that an officer in their command is under internal investigation.

If the complaint investigation is assigned to a District Station, then the District Commander (or designee) decides who will conduct it. In many cases, the Commander assigns the investigation to the direct supervisor of the accused officer, frequently his/her sergeant. This practice relates back to the Department's policy that discipline is a command function, and belongs at the lowest applicable level of authority. As an alternative, commanders can elect to assign an internal investigation to another supervisor, a sergeant or lieutenant at the District Station.

In any complaint investigation, if the complainant is uncooperative, OIA can terminate the investigation. The Department also retains authority to conduct its own investigation into alleged officer misconduct, with or without a pending complaint.

The investigation process is essentially identical for internal and external complaints. Like an external complaint, an internal complaint can involve minor or serious misconduct. In practice, the category of internal complaints also includes persistent or serious performance issues. Some of OIA's cases involve a supervisor filing a complaint against an employee that he/she supervises. These performance-related complaints can allege violations such as tardiness or failure to write reports on time. In such cases, nothing in Function Code 301 prohibits the supervisor who filed the complaint from being assigned as the investigator.

Notification of the Accused Officer and Officer's Commander

The Office of Internal Affairs officially notifies the accused officer that he/she is under investigation by serving the officer with a Form 242. In fact, the Department uses the number of the form as a verb, i.e., "The officer was 242'd." Appendix I contains a copy of MCPD Form 242.

As explained above, in most cases, by the time an officer is officially notified by OIA that he/she is the subject of an internal investigation, the investigation itself has been in progress for some time. OLO understands that officers normally receive early notification of a complaint when District Station personnel conduct the investigation.

As noted above, OIA only recently began to routinely notify the commanders that an officer in their command is under internal investigation. A number of commanders told OLO that good supervision mandates knowing if an officer under their command is the subject of an internal investigation. Investigations place officers under considerable stress, and their performance can be adversely affected. For example, even before an officer has been officially notified by OIA, it is common for the "grapevine" to know that an officer is under investigation, and the officer frequently hears the rumor of the investigation.

Active investigations can also interfere with promotion and voluntary reassignment opportunities. Decision-makers routinely consider OIA records in decisions about promotions, although not for transfers. Sustained violations sometimes limit promotions. For competitive transfers, decision-makers review personnel files, which would not contain information about ongoing investigations. For non-competitive transfers, management may use information about pending internal investigations.

Findings

At the conclusion of the investigation, the investigating officer recommends a finding for each allegation, but does not make a discipline recommendation. Function Code 301 states that the administrative/civil standard of "preponderance of evidence" should govern the outcome. This standard requires that the evidence point to a greater likelihood that the event did occur than that it did not occur. "Preponderance of evidence" is a less stringent standard than "beyond a reasonable doubt," which is used in criminal cases.

Table 6 lists the definitions of the various findings, as contained in Function Code 301.

Table 6: Definitions of Findings from Function Code 301

Finding	Definition
Sustained	The investigation disclosed sufficient evidence to prove the allegation of misconduct.
Not sustained	The investigation failed to disclose sufficient evidence to prove or disprove the allegation.
Exonerated	The incident did occur, but the actions of the accused were justified, lawful and proper.
Unfounded	The investigation of the complaint indicates that the acts complained of did not occur.
Policy Failure	The incident did occur, but there was an omission of policy or the established policy was insufficient or ineffective. Therefore, the allegations(s) involving the affected employee will be considered "Not Sustained" for purposes of this finding.

As a point of clarification, a finding of "not sustained" means that a lack of evidence prevents the investigator from reaching a conclusion about the incident. Many incidents have no witnesses other than the participants. If only the officer and the complainant are involved, then there may be two very different descriptions of an incident. This situation is typically referenced as a "he said, she said" situation. Without witnesses or physical evidence, an investigator has no basis on which to determine what actually occurred.

In practice, OIA sometimes also uses a finding of "closed administratively" to complete action on a case. Some reasons for closing a case administratively are an uncooperative complainant or exceeding the one-year time limit on bringing charges against an officer. The option of closing a case administratively is not defined in Function Code 301 and there are no clear standards for using this option. Furthermore, the outcome for the officer is unclear. When a case is "closed administratively," the department does not have guidelines for expunging the record or determining how the finding will appear in the officer's discipline history.

Review of Investigation. The investigator concludes the investigation with a written report that is submitted to the investigator's supervising officer. At OIA, the supervising officer is the OIA Director. At the District Stations, the supervising officer is generally a lieutenant and then the District Commander. While Function Code 301 requires the OIA Director to review all investigations, in practice the OIA Director only consistently has access to internal investigations with formal OIA case numbers for review.

Under a process revised during 1998, the OIA Director now transmits each completed investigation with OIA's recommended findings to the Major who has responsibility for the officer(s) named in the complaint. (A Major directs each of the three bureaus: Field Services, Investigative Services, and Management Services.) The Major may confer with the officer's unit commander before deciding what discipline to recommend. The Major forwards both OIA's and his recommended findings, as well as his discipline recommendation, to the Deputy Chief for review. The Deputy Chief then reviews the file, and forwards his recommended findings and discipline to the Chief.

The Chief makes the final decision about the Department's findings, decides whether to bring charges, and decides the discipline. According to LEOBR, the Department has one year after the incident comes to its attention to bring charges against an officer.

Decision to Bring Charges/Impose Discipline

If the Chief agrees with a finding to sustain one or more allegations, then the Chief sends a memorandum to the involved officer. The Chief's memorandum details the sustained charge(s) and discipline. If the officer accepts the Chief's decision, then the discipline is imposed and the case is considered resolved.

According to the Collective Bargaining Agreement, the memorandum of charges also informs the officer that he/she has the option of exercising his/her right to elect a hearing board. Function Code 301 gives the officer seven days to inform the department that he/she is electing a hearing board.

After the Chief makes a decision about whether to charge the officer with a violation and what discipline to impose, the Department informs the complainant in writing about the outcome, unless the officer elects a hearing board (see below). The department informs the complainant whether the allegation is sustained or not, but Personnel Regulations and the Maryland Public Information Act (MPIA) prevent the department from revealing the details of the discipline. During 1999, the Department's final letters to complainants were less generic than in previous years.

Hearing Boards

Traditional and Alternate Hearing Boards. LEOBR requires the Department to provide a "traditional" hearing board. LEOBR also permits a jurisdiction to establish an "alternate" hearing board under certain circumstances. At present, Montgomery County has a traditional hearing board, and an alternate hearing board that is an option available to officers represented by the Fraternal Order of Police.

The "traditional" board consists of three members appointed by the Chief of Police. One of the three members must hold the same rank as the accused officer. MCPD officers who are not represented by the FOP (officers ranked sergeant and above) must elect a traditional hearing board if they do not accept the Chief's finding and discipline decision.

LEOBR provides that if a jurisdiction permits an exclusive bargaining agent for the Police Department, then the jurisdiction can establish an alternate board pursuant to a collective bargaining agreement. LEOBR explicitly states that the provision to provide the option of an alternate board is not subject to binding arbitration.

The Fraternal Order of Police (FOP) Lodge 35 is the exclusive bargaining agent for the Montgomery County Police Department. The County Government agreed to include an alternate board in the collective bargaining agreement that became effective on August 30, 1990. The agreement was contained in a Memorandum of Agreement, executed mid-term in the contract period from July 1, 1988 to June, 30, 1991. The County and the FOP renewed the provision in the contract that became effective on July 1, 1991.

The contract that was effective from July 1, 1992 to June 30, 1994 excluded the provision that permitted the alternate hearing board. The option was, however, reinstated for the contract term beginning July 1, 1996, and remains in the current contract, which is in effect until June 30, 2001. Police Department and Office of Human Resources (OHR) staff confirmed that LEOBR empowers the County unilaterally to remove the option of an alternate hearing board because the provision is not subject to arbitration. However, the parties must wait until negotiations for the next contract to address the subject.

As incorporated into the County's current agreement with the FOP, the alternate board consists of one member appointed by the chief, one member appointed by the FOP, and a neutral party acceptable to both the Police Department and the union. The Department and the union have agreed to a list of four arbitrators who serve as the neutral party on a rotating basis. The arbitrator chairs each alternate hearing board. The Department and the FOP share the cost of the arbitrator.

Hearing Board Procedures. By LEOBR requirement, the Department must give the investigatory file to the accused officer at least 10 days before the hearing. The file must include all exculpatory information and the identity of witnesses. The file can be purged of the identity of confidential sources, non-exculpatory information, and recommendations about charges, disposition or punishment. The officer must sign a confidentiality agreement and pay the cost of copying.

For either type of hearing board, Function Code 301 directs the hearing board to base its findings on the preponderance of evidence standard. Interviews with Department personnel indicated that, in practice, hearing board members use the more stringent criminal standard of "beyond a reasonable doubt." Hearing boards are considered a personnel matter and are not open to the public.

LEOBR outlines administrative procedures that govern the conduct of the hearing. For example, parties have the right to cross-examine witnesses and present rebuttal testimony. The hearing board is authorized to accept evidence with probative value that a reasonable and prudent person would accept, administer oaths, and issue summonses and compel attendance.

If the hearing board does not sustain the finding, the case is over and the charges are dismissed. In the case of a sustained finding, the hearing board reconvenes to hear testimony about discipline and then decides what discipline to recommend to the Chief.

The Chief can accept the hearing board's discipline recommendation, increase it, or reduce it. If, however, the Chief wishes to impose a harsher punishment than that recommended by the hearing board, the Chief must review the entire record of the investigation and hearing, afford the officer an opportunity to be heard, and explain fully the decision to increase the discipline.

C. Office of Internal Affairs Data

1. Method of Review/General Observations

OLO reviewed a sample of 1997 and 1998 records at the Office of Internal Affairs (OIA). OLO's purpose was primarily to learn about the type of information tracked by the Office of Internal Affairs about complaints and complaint processing. OLO did not assess the quality of the investigations or analyze the pattern of complaints.

OIA collects information in case logs and case files. The case logs contain a summary of basic data about each complaint. This includes the date the Department received the complaint, the name of the complainant and accused officer(s), the allegations of misconduct, and the disposition and date of final action by the Chief. OIA's case files contain more detailed information about each case, such as a description of the incident and transcripts of interviews with witnesses and the accused officer(s).

Compared to 1997 case files, OIA's case files for 1998 show improvement in organization and uniformity. For example, OIA introduced a sign-off sheet to record the date and initials of each reviewer in the chain of command. OIA also began to number sections of documents in the file and include an easily located list of the sections in the file.

At the same time, some of the process information OLO expected to see in all OIA's files was not consistently there or easy to find. For example, the files do not regularly contain transmittal memos that would enable tracking who in the department sent a complaint to whom for investigation or review. Again, 1998 case files showed improvement.

Also, OIA's method for numbering 1997 cases differentiated between internal and external complaints. The 1997 case numbers included an "I" for internal and an "E" for external complainant. The cases were numbered concurrently, however, so that there ended up being two series of 1997 cases numbered 97-1 through 97-37. One series is exclusively external cases, but the other one is not exclusively internal cases. To avoid confusion, OIA stopped including "I" or "E" on case numbers in 1998. This addressed the dual numbering problem, but made it more difficult to track the origin of 1998 complaints.

In an additional complication, single case files can cover a complaint about more than one officer, with possibly several allegations against each officer. In tracking the number of allegations that the department sustained compared to other findings, OLO had to devise a method to account for numerous allegations, officers and findings in a single case. For immediate purposes of data collection, OLO chose to count a case as "sustained" if one or more allegations against a single officer were sustained.

OIA was completing work on 1997 and 1998 cases while OLO was studying the process. The status and outcomes for some of the cases have no doubt changed since OLO completed its data collection, especially for cases where officers elected a hearing board. Furthermore, OLO was unable to independently verify some of the data.

Finally, an assessment of the quality of investigations and detailed workload analysis at OIA and the District Stations was beyond the scope of OLO's project. A definitive study of how closely the Department follows its directives in assigning cases for investigation likewise requires more detailed and substantive case examination.

For all these reasons, OLO cautions the reader that the data OLO collected and presents in the following section has meaning, but that meaning is limited. With these caveats, the data do provide a general picture of complaint handling in the Department, especially with respect to the volume of complaints, the length of investigations, and where complaints are investigated.

Counting the Number of Documented Complaints. In 1997, the MCPD assigned OIA case numbers to 191 complaints. During 1998, the MCPD assigned OIA numbers to 90 complaints, and documented 317 complaints on OIA Intake Forms.

The introduction of the OIA Intake Form in January 1998 makes it difficult to compare the number of documented complaints over time. The Intake Form provided a means for recording inquiries and other very minor complaints that the Department had not historically documented on a regular basis. Similarly, some types of complaints that received an OIA number in 1997 were treated as an Intake Form complaint in 1998.

Interpreting "raw" complaint data, such as the total number or the increase or decrease in the number of documented complaints, also poses problems. For example, a decreasing or relatively "small" number of documented conduct complaints can mean that a community is generally satisfied with the conduct of its police officers. Alternatively, it can mean that citizens find it difficult to file complaints or that a department is not doing a good job of documenting the complaints that are submitted. It can also mean that some citizens are dissatisfied with officer conduct but do not have the confidence that filing a complaint will make a difference.

Similarly, a relatively "large" or increasing number of documented complaints can indicate a growing dissatisfaction in the community with officer conduct. Alternatively, it can mean that a department publicized its complaint process and made it more accessible in an attempt to capture feedback about its officers' job performance. An increasing number of documented complaints can also reflect a citizenry's growing confidence that a police department wants to know how its employees do their jobs and that the department will address complaints seriously and efficiently.

While recognizing that it may not be an "apples to apples" comparison among jurisdictions, a recent survey conducted by the University of Maryland's Institute for Governmental Service (IGS) included the number of documented complaints reported by law enforcement agencies throughout Maryland. Table 7 summarizes the number of "complaints" reported by MCPD and four other County police departments in Maryland for 1996 and 1997. (Appendix P contains the Executive Summary of the IGS report.)

Police departments around the country take different approaches to defining, categorizing, and tracking complaints. As a result, OLO was not able to identify a meaningful or useable benchmark for a "typical" number of complaints per officer.

Table 7: Number of Complaints Reported by Police Department in Selected Maryland Counties

Police Department	Number of Complaints in 1996	Number of Complaints in 1997
Anne Arundel County	174	161
Baltimore County	193	157
Howard County	192	178
Montgomery County	146	191
Prince George's County	340	324

Source: Montgomery County Police Department, Office of Internal Affairs, and *Review of Police Disciplinary Procedures in Maryland and Other States*, IGS, June 1999.

2. Data Related to Complaint-Processing

In addition to the total numbers of complaints, OLO collected data for 1997 and 1998 on the length of investigations, assignment of cases for investigation, and case findings. Selected data about complaint handling in the MCPD follow, with the above caveats about OLO's data collection and complaint data in general. All of the following data relate only to cases assigned formal Office of Internal Affairs case numbers.

Number of completed investigations. OIA assigned case numbers to 191 complaints in 1997 and 90 complaints in 1998. Table 8 indicates that investigations were completed for 92% of the complaints received in 1997 (as of the end of 1998), and for 89% of the complaints received in 1998 (as of July 1999).

Investigations conducted by OIA vs. District Stations. During 1997, OIA conducted approximately 44% of the internal investigations. In 1998, the percent conducted by OIA increased to 60% of internal investigations. Specifically, OIA had responsibility for 84 of the 191 investigations for 1997 complaints, and 54 of the 90 investigations for 1998 complaints.

Table 8: Number of Investigations Completed

	Complaints Assigned OIA Numbers	Number of Completed Investigations (as of 7/99)	Percent of Cases with Completed Investigations
1997	191	176	92%
1998	90	80	89%

Length of Investigations. On average, OIA took somewhat longer to complete investigations for complaints filed in 1998 compared to complaints filed in 1997. For 1997 complaints, OIA's investigations averaged 195 days (29 weeks); the median length was 164 days (23 weeks). For 1998 complaints, the length of OIA's investigations, on average, increased to 225 days (32 weeks); the median increased to 236 days (34 weeks).

In general, OIA investigates the more serious or complex complaints. As expected, the data show that it took longer, on average, for OIA to complete investigations than for District Station personnel to complete the internal investigations assigned to them.

On average, District Station personnel took less time to complete investigations for complaints filed in 1998 compared to complaints filed in 1997. For 1997 complaints, District Station investigations averaged 143 days (20 weeks); the median length was only 82 days (12 weeks). For 1998 complaints, District Station investigations, on average, decreased slightly to 130 days (19 weeks); the median decreased marginally to 78 days (11 weeks).

Table 9: Length of Internal Investigations (Days)

	All Investigations		OIA Investigations		Dist. Stat. Investigations	
	Average	Median	Average	Median	Average	Median
1997	164	111	195	164	143	82
1998	188	187	225	236	130	78

Sustain Rate. The Department sustained at least one allegation in 53 (30%) of the 176 investigations completed for 1997 cases with OIA numbers. The Department sustained at least one allegation in 34 (43%) of the 80 investigations completed for 1998 cases.

A comparison of 1997 and 1998 cases investigated by OIA versus the District Stations shows that the sustain rate in cases investigated by OIA decreased slightly from 32% to 28%. During this time, the sustain rates in formal cases assigned to District Stations increased significantly from 29% to 73%.

MCPD's sustain rate appears to be in line or higher than the average sustain rate reported by a survey of police departments in Maryland conducted by the University of Maryland's Institute for Governmental Service (IGS). According to the IGS survey (published in 1999), police departments in Maryland sustain charges in approximately one-third of all formal complaint investigations.

Table 10: MCPD Sustain Rates

	All Internal Investigations	Investigations Conducted by OIA	Investigations Conducted by District Stations
1997	30%	32%	29%
1998	43%	28%	73%

Officers Electing Hearing Boards. The IGS survey reports that, on average, 80% of officers statewide accept the discipline decided by their chief, without electing a hearing board. The remaining 20% of officers chose to take the case to a hearing board. The IGS survey reports that statewide, hearing boards reach a decision of guilty in 75% of the cases heard.

MCPD officers elected a hearing board in 28 (32%) of the 87 cases completed for 1997 and 1998 complaints in which the Department sustained at least one allegation. Expressed another way, in approximately two-thirds of the cases in which the Department sustained at least one allegation, officers did not elect a hearing board. This suggests that the percentage of officers requesting a hearing board is somewhat higher in MCPD compared to other police departments in Maryland, as reported by the IGS survey.

For cases filed in 1997, MCPD officers elected hearing boards in 18 (34%) of the 53 cases completed with at least one sustained charge. All 18 of these hearing board cases related to 1997 investigations are resolved. In 13 of the 18 cases, the department and the officer reached an agreement before the case went before a hearing board. Hearing boards held hearings and reached conclusions in five. Of these, the hearing board sustained the charge(s) in two cases, did not sustain the charge(s) in two cases, and dismissed one case for technical reasons. (See Table 11)

For cases filed in 1998, officers elected hearing boards in 10 (29%) of the 34 cases completed in 1998 with at least one sustained charge. As of July 23, 1999, none of these cases has gone to hearing yet. Three of the 10 have been settled without a hearing and seven are pending.

Table 11: Hearing Board Data

	Cases for which Officer Elected a Hearing Board		Status and Outcome of Hearing Board Cases		
	Number	Percent[7]	Cases Settled Before Hearing Board Held	Cases Awaiting Hearing	Hearing Board Action
1997	18	34%	13	0	The Board heard 5 cases. Of these, the Board sustained findings in 2 cases; did not sustain findings in 2 cases; and dismissed one case for technical reasons.
1998	10	29%	3	7	No action to date

D. Additional Issues

This section discusses a number of additional issues that affect MCPD's complaint handling process:

- The relationship between the Office of Internal Affairs and senior management;
- The role of the Office of the County Attorney in complaint handling; and
- The role of the Office of the State's Attorney in complaint handling.

[7] This is the percent of cases with at least one sustained charge.

1. Relationship Between OIA and the Senior Management

The Office of Internal Affairs Director reports directly to the Deputy Chief of Police in the Office of the Chief. Before mid-1997, OIA had reported to the Office of the Chief through the Office of Professional Compliance. A MCPD directive (Function Code 220, dated March 27, 1998) formalized the organizational relocation of OIA.

During the past 18 months, the Deputy Chief and OIA Director met more regularly to discuss specific complaints as well as management issues such as OIA staffing, technological support, and process improvements. The three bureau Majors and/or the Deputy Chief discuss specific cases with OIA both during investigations and after they are completed.

Communication between OIA and senior management takes several forms. Sometimes OIA provides information because the Office of the Chief requests it, or because a case has become controversial. Some complaints come directly into the Office of the Chief, and from there are referred to OIA.

OLO understands that the Department is working to establish a more routine approach to analyzing trends and learning lessons from complaints. To date, the approach has been an informal one that relies on the OIA Director to bring specific issues to the attention of the Office of the Chief. However, there is no institutionalized process for OIA and senior management to collectively review complaint-related data on a regular basis.

2. Office of the County Attorney

The Police Department's legal advisor is an Assistant County Attorney assigned to the Police Department. One of the legal advisor's responsibilities is to represent the Department in hearing board cases. The attorney works with OIA investigators to prepare the case, and actually presents the case to the hearing board. The attorney also represents the department in settlement discussions.

A hearing board for a single case frequently lasts for several days and requires extensive preparation. One of the reasons for the delay in scheduling hearing boards is the availability of the legal advisor's time to prepare for a case and the availability of the FOP attorney. Scheduling delays also result from difficulty in confirming an arbitrator's availability.

Under current practice, competing time demands limit opportunities for the OIA Director and the legal advisor to discuss cases when the Department first receives them. Interviews indicated that both OIA and the legal advisor, as well as others in MCPD's leadership believe that earlier and more frequent contact between OIA and the legal advisor would benefit the Department and the complaint handling process in general.

In the FY 2000 budget, the County Executive requested and the Council approved funding for a part-time attorney (on contract) to assist the Department's legal advisor to work through the backlog of hearing board cases. As of June 1999, all hearing board cases from 1997 complaints have either been heard or settled; seven of the ten hearing board cases from 1998 complaints are still waiting for hearing boards.

3. Office of the State's Attorney

The Office of State's Attorney has a role in responding to complaints when allegations are made that a police officer has committed a crime. In cases of criminal allegations against an officer, Function Code 301 directs OIA and the unit conducting the criminal investigation to proceed concurrently. In practice, OIA suspends its investigation until the criminal investigation and any subsequent action is completed.

If the Department's criminal investigation sustains the allegation, the State's Attorney conducts an investigation to determine whether to issue an indictment against the officer. If the determination is difficult, the State's Attorney will take the case to the grand jury. In the case of an officer discharging a weapon in the line of duty, the State's Attorney investigates the case and decides whether to present it to a grand jury. Fatalities are always presented to the grand jury. Procedures between the Police Department and the State's Attorney's Office are not formalized.

Another connection is that the District Court cannot issue a statement of criminal charges stemming from a citizen complaint against a police officer, without a recommendation to do so by the State's Attorney. State law (Judicial Proceedings Article, Section 2-608), controls the process for civilians to bring charges against police officers. It requires the District Court to forward an application for a statement of charges against a police officer to the State's Attorney. The requirement applies to allegations against the officer for actions in the course of doing his job.

The State's Attorney is required to investigate the circumstances and make a recommendation to the District Court Commissioner whether a statement of charges should be filed against the officer, and whether the Commissioner should issue a summons or warrant.

E. Other Complaint Handling Systems In Maryland

For a comparative perspective, OLO researched how selected other police departments in Maryland structure their intake, investigation, and tracking of complaints about officer conduct. This section summarizes what OLO learned about the processes in Anne Arundel County, Baltimore County, and Prince George's County. OLO also obtained information from the Maryland State Police. All of these departments, like Montgomery County, must operate within the parameters set by state law, including the Law Enforcement Officers' Bill of Rights.

1. Themes

Increased Centralization of Complaint Handling. The other police departments reviewed have all moved toward greater centralization of tracking complaints and complaint handling. The most common reason cited for greater centralization is to further the goal of increasing accountability throughout the department. The representatives from other police departments that OLO interviewed all discussed their respective department's dedication to insuring that officers are accountable for their actions, and how their department as a whole must proactively demonstrate its ability to police officer conduct.

In the other police departments researched, the Internal Affairs (IA) office is assigned the lead role in complaint handling. Internal Affairs is responsible for reviewing all incoming complaints and assigning complaints for investigation. Similar to Montgomery County, both Internal Affairs and District Station staff actually conduct internal investigations. Upon completion of an investigation, all reports are sent to Internal Affairs for review and determination of recommended discipline.

Discipline Matrix. Most of the police departments researched have adopted a discipline matrix as one element of centralizing the complaint handling process. A discipline matrix is a written guide for categorizing conduct violations and imposing discipline. The matrix lists conduct violations, ranks them in order of seriousness, and assigns a range of discipline to each one. Recommendations for discipline that deviate from the matrix are subject to review. Departments have devised different mechanisms to review discipline recommendations. However, they all share a common theme of trying to insure consistency in how they impose discipline.

Data Collection/Review. Data collection is also becoming more centralized. Some departments have extensive databases, while others are less sophisticated.

Staff from the police departments reviewed articulate a shared priority on using complaint-related information to learn both about the performance of individual officers as well as the overall performance of the department. There are different degrees of centralized procedures in place for review of complaint data to determine what changes may be required, either in departmental training, directives or policy.

All of the departments examined have implemented an early identification system. The early identification system allows commanders to review data on officer conduct periodically to identify potential problem behavior. Each jurisdiction uses a somewhat different data set and a different threshold, but in all jurisdictions, commanders look for officers with a certain number of incidents within a specified period of time (e.g., every six months). Incidents tracked by the system typically include data (tracked by officer) of complaints received, the outcome of investigated complaints, use of force reports, and vehicle accidents.

The departments share a philosophy that their early identification systems are in place for non-punitive purposes. These other police departments view their systems as an opportunity for supervisors to take a closer look at a particular officer's situation, and for management to maintain better oversight of what is going on department-wide. Early identification enables supervisors to look into whether an officer under his/her command is under unusual stresses, at home or on the job, or if there are other causes for a pattern of behavior. It presents the department with an opportunity to offer an officer counseling, training, or other support, and perhaps intervene successfully to prevent misconduct at a later time.

Relationship with the Chief of Police. In the police departments examined, the Internal Affairs (IA) director is assigned the primary responsibility for extracting "lessons" for the department from complaint-related data. The director of the IA office is generally part of the Chief's most senior management team and "inner circle." The exception is Prince George's County. There, the IA office reports to the Commander, Inspectional Services (IS), who in turn reports directly to the chief.

Regardless of specific organizational structure, in all of the departments examined, the IA director has ready access to the Chief and other senior management. Much of the effectiveness of the learning process appears to derive from a strong collaborative working relationship. Some departments hold regular meetings to review complaint data, to identify trends, and to make decisions whether changes are in order.

Communication. The other police departments reviewed all place priority on prompt communication with the complainant and with the accused officer. In one department, a directive requires notification of the officer within 24 hours from the time that a complaint is filed against him/her. The directive also requires the department to notify the complainant that the department has received the complaint, and to provide periodic updates about the status of the complaint throughout the process, including its final resolution.

2. Unique Elements in the Complaint Handling Processes

In this section, OLO notes some mechanisms instituted by Baltimore County and Prince George's County related to complaint handling and discipline.

Alternative Discipline Process (ADP). Baltimore County has implemented an alternative disciplinary process. In a particular case, if the supervisor of the officer involved and the central IA office agree that the alleged misconduct is relatively minor, and the involved officer agrees to accept the discipline offered by the department, the case is resolved and discipline imposed quickly and without an extensive investigation.

Without the accused officer's agreement, the LEOBR process would apply before the department could impose discipline. The ADP recognizes that in some instances, an officer recognizes that he/she made a mistake and accepts the consequences. The department reports that the ADP results in a simpler and more streamlined process for handling selected incidents.

Delegation of Discipline. In Prince George's County, the Chief of Police delegates his discipline-related decision-making authority to "supervisors" in certain circumstances. The purpose of the delegation is to make the imposition of discipline more efficient. According to chief of the Internal Affairs office, the department insures consistency through the use of a disciplinary matrix and the supervision and review by Inspectional Services, within which the Internal Affairs office is located.

Disciplinary Review Committee (DRC). Prince George's County also uses a Disciplinary Review Committee (DRC) to insure consistency in the imposition of discipline. If a supervisor wants to deviate from the discipline matrix, by imposing either more or less severe discipline than called for by the matrix, the supervisor must present the rationale to the DRC and receive its approval. OLO understands that, to date, the Department has not needed to use the DRC review process.

Citizen Involvement. Prince George's County's complaint handling systems includes citizen review of specific complaint cases. Appendix M contains a description of the Prince George's County Citizen Complaint Oversight Panel.

CHAPTER VII: FINDINGS

The Office of Legislative Oversight's findings answer the following eight questions.[1]

- Why is complaint handling in a police department important?
- What makes for effective complaint handling in a police department?
- Does the Montgomery County Police Department currently have an effective system for handling complaints about employee conduct?
- What do complaint-related numbers mean and what MCPD data are readily available?
- What is the current legal and regulatory structure that governs MCPD's complaint handling?
- What are other police departments doing to improve the effectiveness of their complaint handling and related discipline systems?
- What are the different models of citizen involvement in complaint handling and what are the arguments for and against increased citizen review?

WHY IS COMPLAINT HANDLING IN A POLICE DEPARTMENT IMPORTANT?

Finding #1: An effective complaint handling system is essential for a well-functioning police department.

Successful police department operations include good community relations and require an effective complaint handling system. A well-functioning system that receives, investigates, and resolves complaints about officer conduct offers the police department:

- Valuable information about how the community perceives the department's performance;
- One way to oversee employee conduct; and
- A necessary process for reinforcing a police department's commitment to its core values.

When a police department places priority on effective complaint handling, it sends several messages. An accessible complaint handling system indicates that a department wants open lines of communication with its community. It provides the community with an opportunity to give the department feedback about its performance, and provides a department with an opportunity to learn from its community about how to improve.

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[1] This chapter assigns numbers to the findings for reference purposes. The sequence of findings does not signify their relative importance.

In addition, research conducted by Tom Tyler on "why people obey the law" demonstrates that citizens' perception of their interaction with police officers has an effect on their future law-abiding behavior. The research suggests that when citizens feel that their complaints have been treated fairly and with respect (regardless of eventual outcome), then they will be more inclined to obey the law and cooperate with the police in the future.

WHAT MAKES FOR EFFECTIVE COMPLAINT HANDLING?

Finding #2: To be effective, complaint handling must be accessible, fair, consistent, efficient, and accountable.

To be effective, a complaint handling process must promote trust. In order to be trusted by officers and members of the public, a complaint handling system must be accessible, fair and consistent, efficient, and accountable.

An effective complaint intake system is accessible to members of the public who want to communicate their dissatisfaction about an interaction with a police department employee. A department promotes accessibility by providing clear information about the process and how to use it, and by providing different ways (and locations) for submitting complaints.

Strong leadership, which includes articulating the department's core values, is critical to an effective complaint handling system. The chief and other leaders in a department must explicitly state and model the standards for officer conduct. Employees and citizens alike should clearly know what is expected of officers.

An effective complaint handling system is fair and consistent. A fair and consistent system promotes trust among officers and the public by handling similar cases in similar ways. To be fair, a department must:

- Treat all officers consistently and with respect, regardless of rank, race/ethnicity, gender, or personal connections;
- Conduct professional and thorough investigations;
- Scale its investigative efforts and related consequences to the severity of the allegations; and
- Adhere to its own rules governing due process and confidentiality.

Effective complaint handling is also efficient. Investigations promptly lead to findings and (when appropriate) result in discipline. For discipline to improve performance, it should occur as soon as possible after an incident. A department develops trust by keeping an accused officer, his supervisors, and the complainant informed about receipt of the complaint and its status until the case is resolved.

Finally, accountability is an essential characteristic of an effective process. Accountability requires a department to have mechanisms for collecting and analyzing complaint-related data accurately. This enables a department to insure consistency in how cases are handled, as well as to identify trends and learn from complaints. Accountability includes tracking how the overall system operates, how the department as a whole performs, and how well an individual officer's behavior reflects departmental policy and values. Accountability also extends to making changes when analysis of the data collected indicates that change is required.

Finding #3: A police department should not rely upon complaint handling and discipline to manage officer conduct and promote accountability.

An accountability system that depends on investigations of complaints is insufficient. There are inherent limits to what even the best complaint handling process can accomplish because:

- By definition, a complaint handling process focuses on allegations of misconduct after the fact;
- Many people who feel they have had unsatisfactory encounters with police personnel will never complain (some of the reasons for not communicating a complaint are outside the control of the police department); and
- Due to a lack of adequate evidence, many complaint investigation cases fail to reach clear conclusions.

In her book, *Policing as Though People Matter*, Dorothy Guyot discusses the fact that policing requires officers to exercise discretion on a routine basis. She observes that a departmental review of the use and abuse of police discretion is "an exercise in Monday morning quarter-backing by people who did not watch the game." As a result, Guyot concludes that, " . . . the most effective control on police authority will be the self-control of the officers at the very moment they are executing their authority."

Discipline alone cannot teach the values of any organization, but it can reinforce them. A police department is responsible for educating its officers and instilling them with the department's values. The best control of officer conduct comes when an officer internalizes the principle of ethical policing, and reflects the values of the department in his/her day-to-day decision making.

Finding #4: Maintaining an effective complaint handling and discipline system requires an ongoing commitment.

Maintaining an effective complaint handling process requires an ongoing effort and commitment by a department's leadership. Especially in a large department, the dual functions of complaint handling and discipline involve a large number of people, who must share a commitment to a well-functioning process.

It is a difficult assignment to investigate complaints, especially when they can lead to discipline and even dismissal of colleagues. Those involved in the internal affairs function need the support of police leadership to accomplish this important task.

Department-wide commitment to excellence in complaint handling means continuing to place a high priority on the function and continuing to assess the adequacy of resources allocated to complaint handling and discipline. An ongoing commitment to excellence in complaint handling and discipline recognizes the importance of the function and the community's interest in and entitlement to an effective process.

IS MCPD'S CURRENT SYSTEM FOR HANDLING COMPLAINTS EFFECTIVE?

Finding #5: MCPD, and the Office of Internal Affairs in particular, deserves credit for implementing improvements to the complaint handling process during the past two years. However, problems continue in several key areas.

This finding explains what aspects of MCPD's complaint handling system work well and what aspects need improvement. The following pages present the relevant Hart Research results along with OLO's specific observations on MCPD's complaint handling with respect to the traits essential for effective complaint handling: clarity of ethical standards, accessibility, efficiency, fairness and consistency, communication, and accountability.

Hart Research Survey Results

General Public Survey. Hart Research reports that 58% of County residents know that MCPD has a process for citizens to file complaints. More than one third are not sure that a process exists and the remaining 8% believe the MCPD does not have a process. The knowledge of the process as well as confidence in MCPD to properly investigate citizen complaints varies by race/ethnicity.

Out of the relatively small percent of citizens who responded they have ever felt treated unfairly by a Montgomery County police officer (13%), a large majority (87%) did not file a complaint. The most frequently cited reasons for not filing a complaint were:

- I didn't think the police would investigate my complaint or take it seriously.(36%)
- The unfair treatment wasn't that serious. (21%)
- I didn't know how to file a complaint. (6%)
- I was afraid to file a complaint. (4%)

Survey of MCPD Officers. Hart Research's survey of sworn MCPD officers reports that slightly more than half (52%) rate MCPD's system for investigating citizens' complaints excellent or pretty good. However, 45% of officers rate the MCPD's system for investigating citizens' complaints just fair or poor. When asked why they felt the system was just fair or poor, officers volunteered the following reasons:

- Investigations are unfair or biased. (51%)
- It takes too long to complete investigations. (30%)
- The procedures for investigating complaints are poor. (15%)

OLO Findings on Complaint Handling Effectiveness

5a. Clarity of Ethical Standards

The MCPD has high standards of conduct for its officers. In 1992, the Department rewrote its mission statement and organizational values to reflect the Department's transition to a community policing philosophy. The Department's organizational values together spell PRIDE:

Partnership:	We are committed to working in partnership with the community and each other to identify and resolve issues which impact public safety.
Respect:	We are committed to respecting individual rights, human dignity and the value of all members of the community and the department.
Integrity:	We are committed to nurturing the public trust by holding ourselves accountable to the highest standards of professionalism and ethics.
Dedication:	We are committed to providing the highest quality of professional law enforcement service to the community and the goal of enhancing the quality of life within Montgomery County.
Empowerment:	We are committed to empowering our members and the community to resolve problems by creating an environment that encourages solutions that address the needs of the community.

MCPD publishes its organizational values in internal documents, displays mission and values posters in department facilities, and articulates the Department's values in its public material about the complaint process. Initial training for police officer candidates and in-service training for sworn officers includes an increasing emphasis on ethics and values. During the past several years, the Department expanded its entry level and in-service training on ethics.

A new Police Chief has recently been appointed, and now assumes a lead responsibility for articulating the Department's expectations and values. Leadership throughout the Department shares the job of conveying and implementing the Department's commitment to ethical policing.

5b. Accessibility

While the Department has made a number of changes in the past two years to improve the accessibility of the complaint process, Hart Research's survey results suggest it still needs work. In terms of specific changes aimed at improving accessibility, the Department:

- Moved the Office of Internal Affairs staff offices to a location outside of headquarters;
- Updated the public brochure that describes the Department's complaint process; and
- Simplified the Department's written complaint form and provided copies of the form in both English and Spanish to the District Stations.

The Police-Community Relations Facilitator (hired by the Office of the Chief Administrative Office in early 1999) is also working to improve accessibility of the complaint process. The Facilitator's outreach activities include: informing community groups about how to file a complaint with the Police Department; making complaint forms available and meeting with citizens at the Regional Service Centers; helping individual citizens to submit complaints; and helping citizens obtain information about the status of internal investigations.

Actions taken by District Station commanders to improve accessibility include adjusting implementation of the Department's formal requirements for accepting complaints. For example, instead of requiring complainants to speak to supervisory personnel before submitting a complaint, front desk personnel at some stations are now authorized to accept complaints. Supervisory personnel from the District Station then follow up with a telephone call to the complainant.

The Department's directives do not yet reflect the additional outreach or the more open process for accepting complaints currently available in some District Stations. The Department's web site does not yet contain information about the complaint process, or provide an electronic way for citizens to submit complaints.

5c: Efficiency

The length of time that an internal investigation takes is an important factor in terms of the Police Department's management of an effective complaint handling and related discipline system. It is widely recognized that in order to improve performance, discipline must occur close to the time when an incident occurs.

There are other consequences of delayed outcomes. For example, it is stressful on anyone to be "under investigation," and particularly stressful for officers when their career is essentially placed on hold while an investigation is pending. A lengthy investigation can similarly pose difficulties for a complainant, who is anxious to have a complaint resolved one way or another.

During the past two years, the Department took a number of actions aimed at improving the efficiency of complaint processing time. Specific changes included: increasing the number of sergeants assigned to OIA as investigators, improving access to automation throughout the Department (including in OIA), and paying additional attention to case management within OIA.

The Department's formal directive on the disciplinary process requires that "all internal investigations be completed within a 90 day period unless an extension is authorized by the Director, OIA or his designee." The Department has placed increasing emphasis on this requirement.

Data on complaints filed in 1997 and 1998 provide evidence, however, that the average time for investigating a complaint exceeded the Department's standards. During the time period reviewed, complaint investigations from receipt in the department to OIA's transmittal of a completed investigation and the Chief's signature took, on average, six months. A subset of cases continued for long periods of time after the investigation was completed. In recent years, some cases have taken two years or more when officers have elected hearing boards.

A number of factors no doubt affected the efficiency of internal investigations during the past two years. OIA offices were relocated and new staff assigned to OIA needed to be trained. At the same time, a series of external studies (e.g., The Police-Community Relations Task Force, Department of Justice, OLO) required support from OIA personnel, which took many hours away from internal investigations. A review of investigation times during 1999 could be a more accurate indicator of the effectiveness of recent improvements.

5d. Fairness and Consistency

OIA and District Station staff who conduct internal investigations strive to complete balanced and credible investigations. Those involved in the conduct and/or review of internal investigations approach their assignments with a high degree of professionalism. Investigations are taken seriously, and attention and effort is given to conducting "fair" investigations.

Nonetheless, the Department lacks an effective system for assuring that it investigates all complaints and disciplines officers in a fair and consistent manner. The initial sorting of incoming complaints is diffuse and inconsistent throughout the Department. The problem of consistent sorting is complicated because of the many places a complaint can arrive at the Department, e.g., OIA offices, headquarters, one of five District Stations.

While OIA technically is responsible for overseeing the handling of complaints throughout the Department, there is no mechanism for insuring that OIA receives all the information it needs to perform this function. There is also no apparent process for assuring that OIA executes this responsibility according to the guidelines contained in Department directives.

The Intake Form was a step in the direction of centralizing the recording and reviewing of all complaints. However, compliance with OIA's instructions for use of the Intake Form continues to be uneven, which means that OIA still lacks the opportunity to review how all incoming complaints are classified. The Department has not yet incorporated the use of the Intake Form into its official directives.

The Department also lacks a clear process that guarantees a consistent review of the quality or outcome of investigations. Without strong, internal oversight for quality and consistency, it is difficult for a complaint handling system to gain a reputation for fairness.

5e. Quality of Internal and External Communication.

Communication with Complainants. During the past 12 months, OIA improved its routine procedures for communicating with complainants. OIA staff now issue an immediate letter informing complainants that OIA received their complaint. In addition, OIA staff contact complainants at least once a month to provide information on the status of their complaint. The contact may be by letter or telephone. OIA investigators record each contact in the file, and one investigator reviews case files regularly to insure that the contact occurred. (OIA does not oversee communication between complainants and investigators at the District Station.)

During the past year, the Department worked to improve the letters sent from the Police Chief to the complainant at the conclusion of the case. The Department's intent is to provide more specific information so that complainants gain a greater understanding of the Department's final decision. The County's Personnel Regulations and the Maryland Public Information Act, however, restrict the amount of information that the Department can provide to complainants about discipline.

It is too soon to measure how the activities of the Police-Community Relations Facilitator have improved communication between the Police Department and members of the community.

Communication with Officers and their Commanders. Adhering to criminal investigation procedures, OIA's general practice is not to inform accused officers about pending internal investigations until OIA completes interviews with all other parties and has collected whatever evidence is available. This year, OIA started to notify unit commanders more routinely about officers in their command who are under internal investigation. The Department's directive on the disciplinary process only explicitly addresses notification of an officer prior to his/her interrogation. It does not address the process for informing an officer's commander.

In some police departments, officers and their unit commanders are notified within 24 hours after the department has received a complaint about that officer's conduct. The literature on police organizational culture observes that open communication among officers and their commanders enhances understanding of the internal investigation process and promotes trust within the organization.

5f: Accountability

The Department does not currently generate regular reports that contain complaint-related information. OIA is in the process of developing standard monthly reports to the Chief. However, the available data are limited in part because of technical problems with maintaining and compiling complaint-related information. The fact that OIA's case tracking system is not automated makes routine reporting of complaint-related data even more difficult.

There are multiple consequences of not compiling, analyzing, and reporting complaint-related data on a regular basis. Without current information about the number and content of complaints, how complaints are processed, and how complaints are resolved, the Department misses the opportunity to bring consistency to complaint handling and discipline. The lack of good data also hampers opportunities for improving the Department's complaint handling system.

Perhaps most importantly, the Department also misses an opportunity to improve the conduct of its officers, both individually and collectively. As discussed earlier, complaints represent feedback about police conduct, and this feedback provides one important way to identify where the Department may need to evaluate its written policies, training, and other practices.

At this time, the Department's process for learning from its complaints (whether sustained or not) is informal. The Department lacks both a data collection system and the institutionalized process that would enable senior management to review complaint-related data on a regular basis, to draw lessons, and to make and publicize changes to reflect what the Department learns.

WHAT DO COMPLAINT-RELATED NUMBERS MEAN?

Finding #6: Meaningful interpretation of raw complaint-related data is difficult. Without careful analysis, complaint-related data can lead to misleading conclusions.

For any department, establishing a consistent and reliable process for tracking and reporting complaint-related data is difficult. Even when data are accurately tracked, the interpretation of complaint-related data presents additional challenges.

For example, an increase in the number of external complaints received by a police department can mean different things. It can mean that an increasing number of citizens are dissatisfied with officer conduct. It can, however, also signify that a department improved the accessibility of its complaint process.

Other examples of complaint-related data that require careful interpretation are the:

- Sustain rate – defined as the number (or percent) of investigations that sustain allegations about officer conduct; and
- Hearing board rate – defined as the number (or percent) of sustained findings for which officers elect a hearing board.

Absolute numbers or trends in these data, by themselves, do not imply that a police department has an effective or ineffective complaint handling system. In addition, meaningful interpretation requires a breakdown of these data into categories such as type of complaint (e.g., minor or serious) and source of complaint (e.g., internal or external).

The law enforcement community has not established an "industry-standard" way of tracking and reporting complaints and/or the handling of complaints. Because of the multiple decisions that each police department makes about collecting complaint-related data, until the law enforcement community establishes more standard data collection, a comparison of complaint data among police departments has limited value.

The Number of Documented Complaints in Montgomery County. In 1997, the MCPD assigned OIA case numbers to 191 complaints. During 1998, the MCPD assigned OIA numbers to 90 complaints, and documented 317 complaints on OIA Intake Forms.

The introduction of the OIA Intake Form in January 1998 makes it difficult to meaningfully compare the number of documented complaints over time. The Intake Form provided a means for recording inquiries and other very minor complaints that the Department had not historically documented on a regular basis. Similarly, some types of complaints that received an OIA number in 1997 might have been treated as an Intake Form complaint in 1998.

Finding #7: At present, only limited complaint-related data are readily available from MCPD.

OLO reviewed a sample of 1997 and 1998 records at the Office of Internal Affairs primarily to determine the type of information tracked by the Department about complaints and complaint processing. For reasons more fully explained in Chapter VI, OLO cautions that the meaning of these data is limited. The data provides a general picture of complaint handling in the Department, especially with respect to the length of investigations, where complaints are investigated, and the outcome of complaint investigations. OLO was unable to independently verify some of the data. For many reasons, OLO's data collection cannot be used to assess the quality of the investigations or draw conclusions about the patterns or trends of complaints.

Summary of Data Related to Complaint Processing

All of the following data relate only to cases assigned formal OIA case numbers.

- During 1997, OIA conducted approximately 44% of all formal complaint investigations. In 1998, the percent conducted by OIA increased to 60%. District Station and other unit personnel conducted the balance.

- OIA generally investigates the more serious or complex complaints. For 1997 complaints, OIA's investigations averaged 29 weeks; for 1998 complaints, the average length increased to 32 weeks.

- For 1997 complaints, District Station investigations averaged 20 weeks; for 1998 complaints, the average length decreased slightly to 19 weeks.

- The Department sustained at least one allegation in 30% of the 176 investigations completed for 1997 cases with OIA numbers. The Department sustained at least one allegation in 43% of the 80 investigations completed for 1998 cases.[2]

- A comparison of 1997 and 1998 cases investigated by OIA and District Station personnel shows that the sustain rate in cases investigated by OIA decreased slightly from 32% to 28%. During this time, the sustain rates in formal cases assigned to District Stations for investigations increased from 29% to 73%.

- As of June 1999, officers had elected hearing boards in 29% of the 34 cases completed in 1998 with at least one sustained charge. As of July 23, 1999, three of the 10 cases were settled without a hearing, and seven await hearing.

- For cases filed in 1997, officers elected hearing boards in 18 (34%) of the 53 cases completed with at least one sustained charge. All of the 18 hearing board cases related to 1997 investigations are completed. In 13 of the 18 cases, the department and the officer reached an agreement before the case went before a hearing board. Five cases went to hearing boards. Of these, the hearing board sustained the finding in two cases, did not sustain the finding in two cases, and dismissed one case for technical reasons.

WHAT IS THE LEGAL STRUCTURE THAT GOVERNS MCPD'S COMPLAINT HANDLING?

Finding #8: How MCPD responds to complaints about employee conduct is governed by a complex set of state and county laws, collective bargaining agreements, and department directives. The Department's unilateral authority to change most of these parameters is limited.

- The Maryland Law Enforcement Officers' Bill of Rights (LEOBR) establishes the framework and procedures for handling internal investigations and disciplinary actions involving police officers in Maryland.

- The Maryland Public Information Act controls public access to government information, including access to police personnel records.

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[2] According to a University of Maryland survey, police departments in Maryland, on average, sustain charges in approximately one-third of all formal complaint investigations. The survey also reports that, on average, 80% of officers statewide accept their discipline, without appealing to a hearing board; and that statewide, hearing boards in Maryland reach a decision of guilty in 75% of cases.

- The County Charter sets forth the structure for governance and decision-making in Montgomery County; including the process for appointing officials, hiring employees. collective bargaining, and public access to information.

- The Montgomery County Code outlines the powers and duties of the Police Department and the Chief of Police. The County Code also establishes the County's personnel laws, which include the structure and process for collective bargaining between the County Government and police employees.

- The County's Personnel Regulations address numerous topics related to employee conduct, including prohibited activities, disciplinary actions, and grievances.

- The collective bargaining agreement between the County Government and Fraternal Order of Police Montgomery County Lodge #35 outlines the rights of members of the bargaining unit and responsibilities of County Government toward them.

- MCPD's Field Operations Manual contains all active Department Directives and Headquarters Memoranda which address many facets of Police Department operations, including unit responsibilities, personnel administration policies, and procedures for most department activities.

Governing Documents	**Authority to Change**
State law • Maryland Law Enforcement Officers' Bill of Rights, (LEOBR) • Maryland Public Information Act	Maryland General Assembly
The Charter of Montgomery County, Maryland • Section 215, Appointments • Article 4, Merit System and Conflicts of Interest • Section 505, Right to Information • Section 510, Collective Bargaining	Referendum of the registered voters of Montgomery County.
Montgomery County Code • Chapter 1A, Establishing the Structure of County Government • Chapter 33, Personnel and Human Resources • Chapter 35, Police	Montgomery County Council
Agreement between Montgomery County Government and Fraternal Order of Police, Montgomery County Lodge #35, Inc.	County Executive and Fraternal Order of Police, Montgomery County Lodge #35, Inc. The Council's role with respect to the collective bargaining agreement is outlined in Code Section 33-80.
Montgomery County Personnel Regulations	Personnel Regulations are Method 1 Executive Regulations, which are promulgated by the County Executive and approved by the County Council.
Police Department Field Operations Manual (includes Department Directives and Headquarters Memoranda)	Police Department, subject to provisions in Article 61 of the Collective Bargaining agreement concerning changes to directives, rules, and procedures.

Finding #9: The Office of Internal Affairs working alone cannot make the complaint handling process effective.

A reputable Office of Internal Affairs (OIA) is key to an effective complaint handling process in a police department. In many departments, internal affairs serves as the clearinghouse for sorting, assigning and reviewing complaints, as well as for insuring the quality of investigations and the consistency of discipline. An internal affairs office staffed with qualified investigators that produces thorough and fair investigations is essential to earning and retaining the trust of sworn officers and the public.

However, some important elements of a well functioning complaint handling system are beyond OIA's purview. For example, District Station personnel are often the first ones to interact with a citizen who wants to register a complaint about officer conduct. After an investigation is complete, senior management outside of OIA (i.e., Majors, Deputy Chief) review the case and decide whether to concur with OIA's findings. By law, the decision on whether to pursue discipline resides with the Chief.

If an officer elects a hearing board to appeal the decision of the Chief about discipline, then additional actors get involved. The Fraternal Order of Police typically represents the officer during the proceedings. If the officer elects an alternate hearing board, a civilian arbitrator (selected jointly by the County and the FOP) chairs the board. The availability of the arbitrator, the union attorney, and the department's legal advisor complicate the scheduling of the hearing board.

The availability of legal support to advise the department also impacts the complaint handling and discipline process. At the present time, only one Assistant County Attorney is assigned as the Police Department's legal advisor. This limits the amount of legal advice to the Department as well as the scheduling of hearing boards.

Allegations of possibly criminal conduct involve investigations by other elements of the department, primarily the Investigative Services Bureau (ISB), as well as the Office of the State's Attorney. Good coordination with OIA is essential if the overall system is to achieve efficiency, consistency and fairness.

WHAT STRATEGIES ARE OTHER POLICE DEPARTMENTS USING TO IMPROVE THE EFFECTIVENESS OF COMPLAINT HANDLING?

Finding #10: A discipline matrix promotes greater consistency in complaint handling and discipline for similar situations.

One strategy other police departments employ to bring greater consistency to the complaint handling and discipline process is a discipline matrix. In addition to helping to standardize discipline, a matrix is a tool for bringing greater uniformity to the sorting of complaints and assigning them for investigation.

A discipline matrix is a written guide for categorizing conduct violations and imposing discipline. The matrix lists conduct violations, ranks them in order of seriousness, and assigns a range of discipline to each one. Deviation from the discipline in the matrix is possible in some jurisdictions with approval of a committee or top management. An excerpt from a sample discipline matrix is attached. (See pages 82a to 82h.)

It is inevitable that complaints will enter the department in a diffuse way, if the department provides wide accessibility to the complaint process. The matrix is one tool to help personnel who receive incoming complaints to place alleged conduct violations in the correct category so that incidents are investigated at the proper level with the appropriate level of formality.

A number of law enforcement agencies in Maryland use a discipline matrix and report success in its operation. Among them are the Prince George's County Police Department, the Baltimore County Police Department, and the Maryland State Police. During the course of research for this project, OLO learned that MCPD has been developing a discipline matrix for some time, but that it has not yet been implemented.

Finding #11: Police departments use early identification systems to improve a department's capacity for early intervention on potential conduct issues.

While some departments label it an "early warning system," many police departments prefer to call it an "early identification system." This is the general term used for an automated data system that keeps track of certain information by officer. A well-designed and intelligently-used early identification system enables a department to track officer conduct and intervene proactively in a non-punitive way to provide counseling, training, or other support if the system reveals a pattern of officer behavior that concerns a commander.

The purpose of early identification systems is to improve police management's ability to "do their job" by increasing a supervisor's knowledge of officer conduct. Each department can design an early identification system to serve its own purposes. It is common for an early identification system to track, by individual officer, data such as:

- Complaints received about officer conduct;
- Resolution of any complaints investigated;
- Automobile accidents (regardless of fault); and
- "Use of force" reports filed by the officer. (Mandatory reports by officers following use of weapons, pepper spray, etc.)

After a specified period of time, such as six months, the system identifies officers who have a predetermined number of entries. The officer's unit commander receives this information as a notice to look more closely into the officer's performance. The intervention gives the officer's supervisor an opportunity to examine the pattern of incidents (if any) and to provide counseling, support or training for the officer, as needed. **The number of incidents by itself does not warrant intervention. It is entirely appropriate for a commanding officer to conclude from his/her closer look that there is nothing going on to indicate that an officer needs additional training or counseling.**

Police departments throughout the country use early identification systems, including the Prince George's County and Baltimore County police departments. The efficacy of the system depends on reliable reporting and tracking of information in a database; it also requires intelligent and fair use of the information by supervisory personnel. Departments must be committed to ongoing monitoring and verifying of information, because the quality of the information is the basis for the system to be credible and useful both to the department and the officer.

The MCPD does not have an early identification system. MCPD does track all use of force incidents, but the applicable directive states explicitly that use of force reports are not to be used in relation to individual officers. The directive on the use of force reports (Function Code 131) states: "This form will be used administratively to evaluate use of force department-wide and will not be used by the Office of Internal Affairs in any subsequent investigation." As a result of collective bargaining, the "Supplementary Narrative" section of the form contains the following statement: "Completion of this portion of the form is being done under duress."

In MCPD, after an officer completes the use of force form, it goes first to the Chief and then to the Office of Policy Compliance, which retains the reports and issues a quarterly report. Function Code 131 requires the Use of Force and Weapons Review Committee to review and analyze the quarterly report, and to provide its recommendations to the Chief regarding departmental policies and procedures.

Finding #12: Departments use better tracking and reporting of complaint-related data to improve communication.

As indicated above, many police departments around the country, including a number in Maryland, have database systems for tracking complaint information. They record information about the types of complaints, the complainant, the accused officers, and the number of years of service, assignment, and educational background of the officers. The database also contains information about outcomes, discipline, and hearing boards.

From the database, departments produce regular reports about complaints, both for internal departmental use and for the public, to the extent permitted by law. A department can use the reports to inform the public, police management, and the rank and file about complaints. Publishing factual information about complaints received and their disposition helps to counteract rumors and other misinformation. In addition, it sends the message both to officers and the community that the department handles complaints seriously, consistently, and fairly.

WHAT ARE THE DIFFERENT MODELS FOR CITIZEN INVOLVEMENT IN COMPLAINT HANDLING AND WHAT ARE THE ARGUMENTS FOR AND AGAINST CITIZEN REVIEW?

Finding #13: There is a wide range of opinion but only limited empirical evidence about the benefits of greater citizen involvement in a police department's complaint handling process.

Citizen review is a procedure for handling complaints about police officer misconduct that, at some point in the process, involves people who are not sworn officers. (*Citizen Review Resource Manual*, Police Executive Research Forum, 1995.) The nature of citizen involvement in the review of complaints varies considerably across the country.

Different models of citizen review can be placed along a continuum according to the extent of citizen involvement.

The chart at page 80 summarizes the major models of citizen review implemented in the United States. Some jurisdictions create hybrids to meet specific local needs.

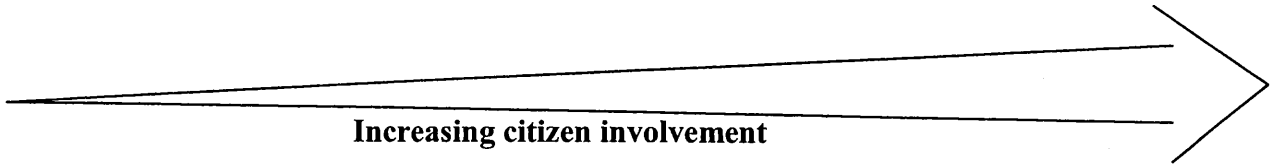
At one end of the continuum, police department personnel perform all tasks for evaluating complaints about police misconduct. At the other end, civilians outside of the department are responsible for almost the entire complaint review process. Between the two ends, the models represent a mixture of civilian and police responsibilities. An auditor conducts a review of police complaint handling, or a civilian board hears appeals of departmental decisions, or a civilian board monitors a department's handling of complaints.

Arguments for and against greater citizen involvement relate to objectivity, public confidence, and efficiency.

Proponents assert that citizen involvement in complaint investigation is more objective and likely to promote greater accountability from the police department. They also argue that it increases public trust because it provides a window into a police department's process for policing itself, and involves participation from a variety of ethnic, racial and gender groups.

Models of Complaint Review

	Traditional Investigation Model	Auditor Model	Appeal Review Model	Citizen Monitor Model	Citizen Review Model
Intake	Police	Police	Police	Police and/or Citizens	Citizens
Investigation	Police	Police	Police	Police conduct investigations, with Citizen review or oversight of the investigation	Citizens
Review	N/A	Independent auditor reviews individual complaints, policies and procedures	N/A	Citizens review the police investigation and recommend a finding to the Police	N/A
Determination Of Findings	Police	Police	Police	Police	Citizens recommend a finding to the Police
Review	N/A	N/A	Complainants may request Citizen review of the police investigation.	N/A	N/A
Discipline	Police	Police	Police	Police	Police



Opponents of citizen review argue that police officers' familiarity with police procedures enables them to reach informed decisions about officer responsibility, and that police officers are less likely to perceive internal investigations as entirely adversarial if they are conducted by other officers. Opponents also assert that police departments handle complaints more efficiently and less expensively than citizen involvement models.

Empirical results are limited.

OLO found little data about the actual results of any form of citizen review. One of the few outcomes that the research has documented is that internal police department systems for reviewing complaints sustain allegations of misconduct twice as often as citizen review systems. Another less quantifiable outcome is that officers appear more likely to alter their conduct as a result of an internal investigation by police officers than by citizens. Evidence on results in the arenas of policy review and police-community relations is either unavailable or conflicting.

State law affects what type of citizen review can be implemented in Maryland.

In 1997, the Council requested the County Attorney to provide a legal opinion on a proposal from the Montgomery County Chapter of the NAACP to establish citizen review. The NAACP's proposal called for a Community Police Review Commission that would review all complaint investigations concerning members of the MCPD. The NAACP proposed that the Commission be authorized to conduct further investigations, to hire private investigators, and to issue subpoenas to compel witnesses to appear before it. Under the proposal, if the Commission and Chief of Police disagreed about the outcome of an investigation, the disagreement would be referred to the US Department of Justice for final decision.

In December 1998, the County Attorney responded to the Council's request. The County Attorney's opinion explained that two provisions of LEOBR constrain citizen involvement in complaint review in Maryland. LEOBR gives the Chief of Police authority for final decisions about discipline, and assigns responsibility for internal investigations to sworn officers.

The County Attorney's opinion concludes that, "The NAACP proposal for the creation of a Community Police Review Commission conflicts with local laws regarding the confidentiality of internal affairs investigatory files. Additionally, the proposal for the Commission directly conflicts with the Maryland LEOBR by failing to provide for the procedural protection for officers under investigation and by establishing the United States Department of Justice as the "new" final decision maker in matters involving recommended disciplinary charges and punishment against a law enforcement officer."

The County Attorney's opinion discusses Prince George's County and Baltimore City as the two jurisdictions in Maryland that have established models of Citizen Review Boards. In the 1999 session, the General Assembly adopted a new form of citizen involvement for Baltimore City. The new system creates a board composed of nine citizens who are voting members, and three non-voting members, including a representative of the union, the Police Commissioner, and the Vanguard Justice Society. The new law empowers the citizen board in Baltimore City to conduct investigations of police officers. The legality of citizen involvement in complaint investigation and review will need to be revisited in light of the recent changes to State law.

Lessons for successful complaints review systems.

The literature on citizen review suggests several characteristics for successful systems of any model for reviewing complaints about police conduct. They include legitimacy, resources, support, customization, and planning.

Legitimacy refers to the perception by the department and the public that the complaint process is fair and has integrity. Any system for investigating complaints requires adequate resources. Support refers to the critical requirement that the Chief of Police must set the tone for the process and provide leadership for it. The community's political leadership and police officers must also support the system for reviewing complaints if it is to have legitimacy.

Each jurisdiction has unique characteristics, and its system for handling complaints has to be customized to reflect its needs. Finally, careful planning, either for a citizen review model or an internal police process, maximizes the possibility that a system will work well.

TERRENCE B. SHERIDAN
Chief of Police

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Integrity . . . Fairness . . . Service

May 1, 1998

SPECIAL ORDER #1-98

TO: All Sworn Department Personnel. To Be Announced At Roll Call And Posted On The Bulletin Board for 30 days.

RE: Departmental Disciplinary Matrix

EFFECTIVE: Immediately

BACKGROUND: In response to concerns expressed by Department members, a committee was established to review the Department's disciplinary process, application, and procedures.

PURPOSE: To establish a disciplinary matrix, applicable to sworn members, for addressing violations of the rules and regulations of this Department, in a fair and consistent manner. Additionally, a board will be established, to review the recommended disciplinary action of a commander, when the discipline range is mitigated or aggravated.

POLICY: It is the policy of this Department to be fundamentally fair and consistent in the application of discipline. The goal of the disciplinary matrix is to encourage appropriate behavior. **The matrix serves as a guide for the initial offer of discipline by a commander. Trial Board recommendations are not bound by the discipline matrix.**

RELATIONSHIP TO DEPARTMENTAL VALUES: By adopting a prompt, consistent, and fundamentally fair disciplinary process, the Department maintains **FAIRNESS** for all members of the Department.

ABBREVIATIONS:

1. **I.A.S.** - Internal Affairs Section.
2. **D.R.B.** - Disciplinary Review Board.
3. **A.D.P.** - Alternative-Disciplinary Process.
4. **L.E.O.B. R.** - Law Enforcement Officers' Bill of Rights.

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DEFINITIONS:

1. **Matrix** - A chart or table of categorized infractions, with corrective actions and penalties.
2. **Category** - The level in which infractions are classified.
3. **Mitigating/Aggravating** - A circumstance which supports the raising or lowering of the category level of an infraction.
4. **Disciplinary Review Board** - A review board consisting of representatives of the Services Bureau, Internal Affairs Section and the Legal Section.

GENERAL:

Misconduct is classified into broad categories of infractions based on progressive degrees of severity. The disciplinary matrix is therefore divided into categories of infractions of the rules and regulations. Category "A" articulates the lowest level of infraction and will first be addressed as non-disciplinary, performance issues. All actions must be documented, but that does not necessarily require formal correspondence. Repeated infractions of any category may move an infraction to the next level. Infractions of Category "B" or higher will be disciplinary matters subject to formal disciplinary penalties as outlined below and in accordance with L.E.O.B.R.

COMMANDERS:

1. Will promptly review all complaints sent to them and initiate the appropriate action.
2. Will document any complaint resolved at the command level without the initiation of formal discipline.
3. Recommend discipline for sustained allegations.
4. May consider mitigating/aggravating circumstances in assessing a penalty range. All considerations to move the recommended discipline above or below the prescribed penalty range must be factually identifiable, in a written format and sent to the D.R.B.
5. Will be notified of the D.R.B. recommendation, but have the final authority as to recommending discipline.

I.A.S.COMMANDER:

1. Will assign an investigator to a complaint or refer the matter to a member's commander for review and the appropriate action. Matters referred to the commander may be handled outside the application of L.E.O.B.R.
2. Confers with commanders regarding the appropriate violation category.

DISCIPLINARY REVIEW BOARD:

- Will review, as soon as possible, all recommended discipline of a commander who chooses to mitigate or aggravate the prescribed discipline stated in the matrix.
- Will report its findings to the initiating commander through the appropriate bureau/division commander.

MINOR INFRACTIONS:

- Are normally not disciplinary matters.
- Are enumerated in Category "A".
- Must be documented and discussed with the employee, who may comment thereon.
- Which are repeated will be handled as disciplinary matters, subject to Category "B" penalties.

CATEGORY "A" VIOLATIONS

APPLICATION:

- First occurrence of a Category "A" violation.
- Second and/or subsequent violations, within a 12 consecutive month period, will be handled as Category "B" violations.
- First and second departmental accidents (at fault), within 24 consecutive months. (Except personal injury and fatal departmentals.)

CORRECTIVE ACTIONS:

- Training and/or education
- Written counseling
- Mediation
- Restitution
- Other non-disciplinary actions
- Psychological Services

CATEGORY "B" VIOLATIONS:

APPLICATION:

- First occurrence of a Category "B" violation.
- Second/subsequent violations of Category "A", will be addressed herein.
- Subsequent violations of Category "B" within 36 consecutive months will move a third such violation to Category "C".

DISCIPLINE RANGE:

- Written reprimand or loss of leave/suspension for one day.

CATEGORY "C" VIOLATIONS:

APPLICATION:

- First occurrence of a Category "C" violation.
- Subsequent violations from Category "B" will be handled herein.
- Subsequent violations of Category "C", within 60 consecutive months will move a third such violation to Category "D".

DISCIPLINE RANGE:

- Two to three days loss of leave or suspension.

CATEGORY "D" VIOLATIONS:

APPLICATION:

- First occurrence of a Category "D" violation.
- Subsequent violations of Category "C" will be applied to this Category.
- Subsequent violations of Category "D" will be moved to Category "E".

DISCIPLINE RANGE:

- 4 to 15 days loss of leave/suspension, transfer.

CATEGORY "E" VIOLATIONS:

APPLICATION:

- First occurrence of a Category "E" violation.
- Subsequent violations of Category "D" will be applied to this Category.
- Subsequent violations of Category "E" will be cause for dismissal.

DISCIPLINE RANGE:

- More than 15 days loss of leave/suspension and/or demotion or dismissal.

IMPLEMENTATION: This order and its attachment will be distributed to all sworn members of the Department and all non-sworn directors.

By Order Of,

Terrence B. Sheridan
Chief of Police

DISCIPLINE MATRIX

BEHAVIOR	CATEGORY				
	A	B	C	D	E
INAPPROPRIATE COMMENTS/GESTURES/DISCOURTESIES	X				
RUDE OR DISCOURTEOUS ACTIONS	X				
USE OF PROFANE/OBSCENE LANGUAGE/OR GESTURES	X				
ALL OTHER HARASSMENT OF NON-MEMBERS		X			
MISREPRESENTING FACTS					
ALL INTENTIONAL MISREPRESENTATION OR LYING ALLEGATIONS					X
OFF DUTY VIOLATIONS					
FAILURE TO TAKE REQUIRED ACTION OFF DUTY		X			
ASSOCIATING WITH PERSONS OF QUESTIONABLE CHARACTER/GOING TO PLACES SUSPECTED OF VIOLATING THE LAW		X			
INVOLVEMENTS WITH FRIENDS, ASSOCIATES, OR RELATIVES WHEN PROHIBITED		X			
INAPPROPRIATE COMMENTS, LANGUAGE, PROFANITY, ETC. OFF DUTY	X				
SECONDARY EMPLOYMENT VIOLATIONS					
NO PERMIT ON FILE (INCLUDING EXPIRED PERMIT)		X			
RESTRICTION VIOLATIONS		X			
WORKING WHILE ON ILD/SICK LEAVE WITHOUT PERMISSION			X		
USING DEPARTMENTAL EQUIPMENT WHILE WORKING SECONDARY EMPLOYMENT		X			
PRISONER RELATED VIOLATIONS					
VIOLATIONS DURING ARREST		X			
IMPROPER SEARCHES		X			
TRANSPORTATION OF PRISONER	X				
PRISONER PROPERTY		X			
RESTRAINT VIOLATIONS	X				
GUARDING VIOLATIONS		X			
FAILURE TO MAINTAIN PRISONER CHECK LOG	X				
MEDICAL/MENTAL HEALTH VIOLATIONS		X			

EVIDENCE & FOUND PROPERTY VIOLATIONS	CATEGORY A	B	C	D	E
INITIAL RECOVERY OF EVIDENCE AT A SCENE		X			
RELATED TO THE RECEIPT OF EVIDENCE		X			
PROCESSING/TESTING OF EVIDENCE		X			
STORAGE AND/OR THE RELEASE OF EVIDENCE		X			
INITIAL RECOVERY OF FOUND PROPERTY	X				
RECEIPT OF FOUND PROPERTY	X				
STORAGE/RELEASE OF FOUND PROPERTY	X				
HARASSMENT & DISCRIMINATION					
SEXUAL HARASSMENT/DISCRIMINATION					X
RACIAL HARASSMENT/DISCRIMINATION					X
RELIGIOUS/ETHNIC HARASSMENT/DISCRIMINATION					X
SEXUAL ORIENTATION HARASSMENT/DISCRIMINATION					X
ALL OTHER HARASSMENT/DISCRIMINATION					X
FIREARMS VIOLATIONS					
WEAPON DISCHARGE VIOLATION - ON/OFF DUTY					X
CARRYING UNAUTHORIZED WEAPON - ON/OFF DUTY		X			
CARRYING UNAUTHORIZED AMMUNITION - ON/ OFF DUTY		X			
FAILURE TO SECURE WEAPON - ON/ OFF DUTY			X		
FAILURE TO PROPERLY MAINTAIN WEAPON	X				
FAILURE TO REPORT WEAPON DISCHARGE					X
NEGLIGENT HANDLING OF FIREARM RESULTING IN DISCHARGE		X			
DEPARTMENTAL ACCIDENTS (AT FAULT)					
DAMAGE ONLY TO POLICE VEHICLE	X				
DAMAGE ONLY TO POLICE AND OTHER VEHICLE/PROPERTY	X				
INJURY TO POLICE PERSONNEL OR CIVILIAN			X		
FATAL INJURY TO POLICE PERSONNEL OR CIVILIAN				X	
FAILURE TO REPORT ACCIDENT					X

EXCESSIVE FORCE & BRUTALITY	CATEGORY A	B	C	D	E
UNNECESSARY FORCE - FORCE THAT IS USED WHEN NOT REQUIRED IN LIGHT OF THE CIRCUMSTANCES BUT IS NOT BRUTAL OR EXCESSIVE		X			
UNREASONABLE - FORCE USED THAT IS OUTSIDE WHAT AN ORDINARY OR PRUDENT LAW ENFORCEMENT OFFICER WOULD USE			X		
EXCESSIVE FORCE - FORCE THAT IS EXCESSIVE IN SCOPE, DURATION, OR SEVERITY IN LIGHT OF THE CIRCUMSTANCES				X	
BRUTAL FORCE - FORCE THAT IS WITHOUT JUSTIFICATION OR MITIGATION IN THE LIGHT OF THE CIRCUMSTANCES AND IS SEVERE OR CRUEL IN SCOPE OR DURATION					X
NEGLECT					
FAILURE TO TAKE NECESSARY POLICE ACTION		X			
SUPERVISOR FAILURE TO TAKE ACTION		X			
VIOLATIONS RELATING TO INVESTIGATIONS					
VIOLATIONS OF PROCEDURES FOR PRELIMINARY AND FOLLOW-UP INVESTIGATIONS		X			
FAILURE TO FILE REQUIRED REPORTS		X			
ACCURACY OF REPORTS		X			
ARRESTS (LACK OF PC, FAILURE TO MAKE REQUIRED ARREST, FAILURE TO ISSUE CITATION)			X		
ACCURACY OF CHARGING DOCUMENT, WARRANT APPLICATION OR TESTIMONY (NOT INCLUDING PERJURY)			X		
IMPROPER INTERVIEW OR INTERROGATION			X		
IMPROPER SEARCHES, SEIZURES OR ENTRIES			X		
MISCELLANEOUS VIOLATIONS					
CRIMINAL HISTORY DISSEMINATION			X		
MVA HISTORY DISSEMINATION		X			
IMPROPER DISSEMINATION OF INVESTIGATION INFORMATION			X		
BEING OFF POST OR LEAVING ASSIGNMENT W/O PERMISSION	X				
CHEATING ON TESTS, HOMEWORK OR OTHER ASSIGNMENTS					X
DEMERIT VIOLATIONS	X				

MISCELLANEOUS VIOLATIONS CONTINUED	CATEGORY A	B	C	D	E
FAILURE TO ASSIST/BACK-UP OTHER OFFICER			X		
FAILURE TO OBEY AN ORDER (PERFORMANCE)	X				
INSUBORDINATION			X		
OBSTRUCTING OR HINDERING A CRIMINAL INVESTIGATION (INCLUDING O/J)					X
OBSTRUCTING OR HINDERING AN IAS OR ADMINISTRATIVE INVESTIGATION (INCLUDING O/J)					X
A.W.O.L. VIOLATIONS		X			
LATENESS TO ASSIGNMENT OR COURT	X				
RELATING TO FAILURE TO REPORT TO COURT		X			
OUT OF UNIFORM/IMPROPER DRESS	X				
UNAUTHORIZED RIDE-A-LONG	X				
SLEEPING ON DUTY		X			
FAIL TO FOLLOW CHAIN OF COMMAND/OBTAIN SUPERVISOR'S APPROVAL	X				
INTOXICATED /CONSUMPTION OF ALCOHOL ON-DUTY					X
FAILURE TO ADVISE OF ADDRESS/TELEPHONE CHANGE	X				
FAILURE TO ANSWER RADIO	X				
ALL OTHER MISCELLANEOUS ALLEGATIONS	X				
CARE OF AGENCY EQUIPMENT					
LOSING AGENCY EQUIPMENT		X			
DAMAGING DEPARTMENT EQUIPMENT		X			
ALLOWING UNAUTHORIZED PERSONS TO USE DEPARTMENT EQUIPMENT		X			
IMPROPER USE OF EQUIPMENT OR DEPARTMENTAL INFORMATION	X				
CRIMINAL VIOLATIONS					
ALL CRIMINAL VIOLATIONS AND ATTEMPTS; INCLUDING SERIOUS TRAFFIC (SUBJECT TO PROSECUTION BY THE STATE'S ATTORNEY)					X
ALL OTHER MINOR TRAFFIC VIOLATIONS NOT COVERED	X				

CHAPTER VIII: RECOMMENDATIONS

The Office of Legislative Oversight offers a package of recommendations to improve how the Montgomery County Police Department (MCPD) handles complaints. As the Council explicitly requested, OLO includes a recommendation concerning the future of citizen involvement in the Police Department's complaint handling process. OLO also recommends several issues for further Council review.

While some of OLO's recommendations introduce new ideas, most build upon suggestions generated by the many individuals OLO interacted with during the course of research for this project. Other recommendations reinforce changes already underway. OLO recommends the Council give priority consideration to requests for additional resources targeted to improve the effectiveness of MCPD's complaint handling system.

In sum, OLO recommends changes that should go a long way toward making MCPD's complaint handling system "effective." An effective complaint handling system is accessible, fair and consistent, efficient, and accountable. An effective complaint handling system is also one that deserves and maintains the support, respect, and trust of the general public and elected officials, as well as members of the Police Department.

How MCPD responds to complaints about officer conduct is a multi-faceted system governed by a complex set of state and county laws, collective bargaining agreement provisions, and Department directives. It is a system that involves numerous people from different units within and outside of MCPD.

In order to be as effective as possible, all components of the system must function well and in coordination with one another. Recognizing the systemic nature of the complaint handling process, successful implementation of OLO's recommendations will require a collaborative effort among many actors, including the County Executive, the Police Department, the Fraternal Order of Police Lodge 35, the Office of the County Attorney, the Office of Human Resources, and the County Council. Success will also depend upon participation of the media and members of the public.

OLO's recommendations address the following topics:

- Process improvements to make MCPD's complaint handling system more accessible, consistent, and efficient;
- Strategies to improve communication and enhance MCPD's internal and external accountability on conduct-related issues;
- Ways to strengthen the reputation of the Office of Internal Affairs;
- Citizen involvement in MCPD's complaint handling process; and
- Aspects of County law and practice that the Council should examine for their impact on the Department's ability to effectively respond to complaints and manage conduct issues.

Recommendation #1

Build upon changes already underway to make the MCPD's complaint handling system more accessible, consistent, and efficient.

OLO recommends the County implement a series of process changes to improve the accessibility, consistency, and efficiency of MCPD's system for handling complaints about employee conduct. Many of OLO's specific recommendations build upon changes that MCPD has already started to make. Successful implementation will involve people and practices both within and outside of the Office of Internal Affairs.

Improve Accessibility

OLO recommends that the County Government build upon improvements made during the past 18 months to improve the accessibility of the complaint process. The Police Department should continue its own efforts, and support the efforts of the Police-Community Relations Facilitator, to more widely disseminate information about how to file a complaint with the Police Department. In addition, the Police Department should:

- Formalize the process (already in place in some District Stations) that empowers a wider range of Police Department staff to receive complaints about employee conduct. To implement this, the Department will need to train additional personnel about how to recognize and initially process complaints.

- Complete revisions to MCPD's brochure about how to file a complaint so that it is easier to read and understand. The brochure should clearly articulate the Department's commitment to fair, prompt and respectful handling of complaints.

- Translate the complaint forms and related information about filing a complaint into additional languages. (The form is already available in English and Spanish.) OLO recommends that the District Station Commanders identify the specific translations needed in their respective districts.

- Provide information on the Department's web site about how to file a complaint, and provide an electronic means for citizens to do so.

The Police-Community Relations Facilitator should continue his efforts to inform the community about MCPD's complaint handling process. To date, the relationship between the Police Department and Facilitator appears to be cooperative, and it is important for this relationship to remain constructive. OLO recommends that the Department's directives recognize the Facilitator as a legitimate avenue for filing a complaint and for seeking information about the status of a pending complaint.

Improve consistency

Consistent treatment of complainants, complaints, and Department employees is essential to earning and maintaining trust within the Department and with the public. To improve consistency, OLO recommends a number of specific process improvements.

Discipline Matrix. The Police Department should finalize and implement the discipline matrix that it has been developing for some time. A discipline matrix standardizes consequences associated with specific conduct violations. A discipline matrix also promotes the consistent sorting of complaints by establishing categories of violations along a continuum of seriousness. (For reference, see the sample discipline matrix at the end of the Findings chapter.)

Sorting and Assignment. To promote fair and consistent treatment, the Department's goal should be to handle comparable complaints according to a similar process, regardless of who made the complaint, what employee(s) is involved, or where the incident occurred.

The potential for consistent sorting of complaints increases with a small number of well-defined categories. OLO recommends the MCPD consider the straightforward approach used by the Baltimore County Police Department.

To improve the consistency of assigning complaints for investigation, OLO recommends the Department revisit the existing directive that outlines which alleged violations OIA should investigate and which ones the District Stations should investigate. (Function Code 301) After either affirming or revising the existing criteria, the Department must make every effort to follow its own rules.

Standard Language. The Department can also improve consistency by standardizing the language used in dealing with complaints. Department personnel should convert allegations contained in citizen complaints to specific rules violations. Allegations in internal investigations should be expressed in standard categories both for consistent treatment and for uniformity in record keeping.

For consistency in outcomes, the Department should only make findings that reflect the options contained in the Department's directives. For example, in practice, "closed administratively" has become a basis for closing a case. OLO understands that this has been used as a finding when a complainant is uncooperative or when other options for closing a case are unavailable. If the Department intends to continue to use this finding, then the Department should incorporate it into the directives and establish standards for when it is used.

Legal Support. To help the Police Department bring overall greater consistency to the complaint handling system, the Office of the County Attorney should allocate additional resources to providing legal support to the Police Department. At present, the single legal advisor assigned to the Department has only limited time to attend to complaint-related matters.

This year, as a temporary solution to the backlog in hearing board cases, the FY 2000 budget provides an additional half-time contract attorney to the Police Department. The Office of the County Attorney and Police Department should jointly evaluate this year's experience and consider requesting permanent additional legal support for the Police Department in FY 2001.

Improve Efficiency/Case Management

OLO recommends the Department immediately establish a case management system in OIA. OIA should institute a system of firm deadlines and record keeping, both for its own complaint investigations and those conducted by District Station personnel. The OIA Director should have responsibility for insuring that investigators meet deadlines and that OIA record keeping is logical, clear, and thorough.

Investigations. OLO recommends that a FY 2000 priority be to reduce the amount of time it takes to conduct internal investigations. OLO recommends the Department adopt CALEA's goal of 30 days for the investigation of minor complaints (that do not need to follow LEOBR procedures), and a goal of 90 days for the resolution of complaints that must be investigated according to LEOBR procedures.

In order to work through the current backlog of cases, the Department should temporarily increase the staff assigned to conduct (and support) internal investigations. The additional staff can be assigned either at OIA and/or at the District Stations. Permanent staff adjustments should be evaluated only after the backlog is cleared and other process changes are implemented.

Scheduling of Hearing Boards. OLO recommends that another FY 2000 priority be to reduce the time between the Department's bringing charges against an officer and the resolution of the case involving a hearing board. The solution here requires cooperation among the Police Department, the Office of Human Resources (OHR), the Office of the County Attorney, and the Fraternal Order of Police.

Explanations of the current delays include the limited number of arbitrators (at present there are four); limited availability of Fraternal Order of Police attorneys; and limited availability of the Police Department's legal advisor. Without doubting the legitimacy of these explanations, OLO believes that these resource problems are all surmountable.

Use of Investigator's Time. To use investigators' time more efficiently, OIA should consider delegating additional tasks to administrative staff. For example, it is not clear why an investigator needs to operate the tape recorder at a hearing board. Also to use investigators' time more efficiently, OLO recommends the Department scale the formality of internal investigation to the seriousness of the allegation and explore establishing different "tracks" for formal complaints.

OLO also recommends the Department explore alternative means, such as mediation, for resolving some complaints. Many citizen complaints result from a citizen's misunderstandings about police procedure or inexperience on the part of an officer. Mediation provides a non-adversarial approach that can lead to a satisfactory resolution for all parties. Using trained mediators on contract to the Department would further reduce the demands on OIA investigators' time. Other police departments in Maryland have instituted an Alternative Disciplinary Process that could also be instructive.

Reduce OIA Investigation of Performance Issues. OLO supports the Department's decision not to use OIA staff time to investigate complaints concerning the performance of non-sworn employees.

The Department should also minimize the use of the OIA process to deal with officer performance. Some cases assigned to OIA for investigation are internally generated complaints that concern officer performance issues, such as consistently reporting late for work. OLO recognizes that performance and conduct issues can overlap. Nonetheless, many of the performance issues that currently rise to the formal OIA investigation level can and should be addressed at the supervisory level.[1]

[1]A comprehensive review of how the Department handles performance issues was outside the scope of OLO's review. However, OLO recommends the Department evaluate why so many performance issues persist until they require the formal OIA structure for discipline and resolution.

Recommendation #2

Improve communication and enhance MCPD's accountability with respect to complaint handling and discipline.

Given its mission, the Montgomery County Police Department can expect to be the subject of ongoing scrutiny by the media, accrediting organizations, elected officials, and the public. OLO recommends the Department act to improve its communication and oversight of complaint-related issues, which in turn should enhance internal and external accountability.

Improve Internal and External Communication

All Police Department employees and the general public are entitled to information about complaints and how the Department responds to complaints about employee conduct. Providing this information gives officers, interested citizens, elected officials, and others an opportunity to understand what the Department does in this critical arena. Failure to provide the information conveys the impression that the Department is hiding something. Accurate information disseminated within and outside the Department will also help to counteract the spread of erroneous information.

Communication within the MCPD about complaints needs improvement. OLO recommends that, except in rare cases, the Department should notify an officer and his/her commander promptly upon receipt of a complaint. Both the officer and his/her commander should be kept apprised of the status of any complaint investigation.

The Office of Internal Affairs (OIA) should generate regular reports to inform MCPD personnel at all ranks about complaints received and the results of complaint investigations. These internal reports can provide useful information without violating the due process and confidentiality rights of the involved parties.

OLO recommends that the Department also publish reports that can be shared with the public. At a minimum, the reports should include data on:

- The number and general content of complaints;
- How the complaints came into the department;
- Where the complaints were investigated and how long the investigations took;
- What the outcomes were;
- How many cases were appealed, type of hearing board, and result; and
- What discipline was imposed for what rule violations.

The Department's reports should also highlight changes being made in response to complaint data. A sample report from the Auditor of the San Jose Police Department is attached at page 94a. It provides a good example of providing complaint-related data that is forthcoming and easy to understand, while at the same time, not interfering with the due process or confidentiality rights of complainants or officers.

Communication with Complainants. During the past year, the Office of Internal Affairs made notable improvements to the process for informing complainants about the receipt, status and resolution of individual complaints. OIA should continue to improve both the timing and content of its communications with complainants. District Station commanders should similarly establish standards for routine communication with complainants.

OLO recommends that the Department pay special attention to further improving the letter that informs a complainant about the final outcome of an investigation. In this letter, the MCPD needs to be as specific as possible about how the Department handled the incident while respecting the officer's legal rights to confidentiality on personnel matters.

Improve Data Collection/Analysis

A prerequisite to better internal and external communication is to improve how the Department collects and evaluates data related to complaints, officer conduct, and discipline.

Central tracking. MCPD needs a central, automated system for recording, tracking, evaluating, and reporting data related to complaints, complaint handling, and discipline. Senior management in the Department needs this information in order to exercise adequate oversight of complaint sorting and assignment, investigation, and discipline. A reliable data system is also a prerequisite for instituting a formal process for learning from complaints about individual and department-wide conduct issues.

An Office of Internal Affairs case database has been in development for some time. This database, with some modification, should logically be able to serve as the beginning of a comprehensive data system. The Department must decide what data to collect and maintain. These decisions should be guided by how the Department intends to use the information it compiles.

Early Identification System. OLO recommends that one use of this database be an early identification system. OLO supports an early identification system for the explicit purpose of pro-active, non-punitive intervention. OLO recommends the MCPD look to the early identification system implemented by the Prince George's County Police Department as a model.

At present, use of force reports in the Montgomery County Police Department are retained in the Office of Professional Compliance (and not the Office of Internal Affairs). Modifications to how MCPD currently tracks use of force are probably necessary for the implementation of a credible, well-functioning early identification system.

Improve Oversight/Quality Control

Internal Oversight. A strong system of internal oversight is required to ensure that changes result in a more effective complaint handling system. A system of oversight that is well known both within and outside the Police Department also sends the message that excellence in complaint handling is a priority of the Department, and signals that the Department is a continuous learning organization.

OLO recommends that the Chief of Police appoint an internal staff committee to review complaint and discipline data for trends and consistency. The committee should include MCPD staff with different vantage points on Department operations, and should meet at least quarterly. The committee should be asked to recommend improvements in the complaint handling process, to insure consistency, thoroughness, and fairness. The committee should also recommend changes in training, policy and directives, as well as collective bargaining issues, to respond to lessons gleaned from complaints.

The Department should also better integrate OIA's work with the audit function of the Office of Professional Compliance. While OIA's work is central to assuring that the Department is accountable for its officers' conduct, other elements of the Department are significant in maintaining overall accountability.

Quality control of investigations. To address questions raised about the quality of internal investigations, OLO recommends that the Chief of Police hire a qualified independent consultant to evaluate a sample of internal investigations conducted by OIA and District Stations staff. The Chief should ask the consultant to evaluate the integrity and fairness of the sample investigations and findings. Without violating the privacy rights of complainants or officers involved, the bottom line of the consultant's findings and recommendations should be shared with the Executive, the Council, and the public.

The Department should publicize whatever steps it will take to address any shortcomings noted by the consultant. After two years, OLO recommends that the Chief revisit whether the outside evaluations of investigation quality are worthwhile to continue.

Continue to seek and publicize citizen and officer feedback. Using Peter D. Hart Research Associates' 1999 survey results as baseline data, OLO recommends that the Police Department undertake regular (and statistically reliable) surveys of public and police officers' perceptions and expectations. The survey results should be shared within and outside the Department, along with the Chief's recommendations for any actions that will be taken in response to the survey results.

Recommendation #3

Strengthen the reputation of the Office of Internal Affairs.

To be effective, the internal investigative function in a police department must hold the respect of all police department employees. For the community's confidence in a police department's ability to police its own conduct, the internal investigation function also needs a good reputation outside of the department.

The surveys conducted by Hart Research indicate that the Office of Internal Affairs is not universally well regarded. OLO recommends that the Department act promptly to strengthen OIA's reputation both within and outside of MCPD. This becomes crucial if OIA is going to successfully manage a more centralized system of complaint tracking and analysis. A number of suggestions are listed below:

Raise the stature of the Office of Internal Affairs. One way to increase the stature of OIA is to increase the rank of OIA's director. (OLO recommends the Department consider raising the OIA Director's rank from lieutenant to captain.) Equally important to the rank itself, the Director of OIA needs to belong to MCPD's senior management team.

Create incentives to work in OIA. The Department should create incentives to attract highly qualified officers to OIA. These incentives could include pay adjustments, training opportunities, and desirable assignments after leaving OIA.

OLO supports the Department's current philosophy that working in OIA should not be a career by itself. A police department benefits if it has officers scattered throughout its units who have had experience working in internal affairs. Officers also benefit because they develop a first-hand understanding of the internal affairs function.

OLO recommends that MCPD encourage qualified officers to rotate through OIA as part of a well-rounded series of assignments in the Department. The Department should consider requiring Internal Affairs investigators (assigned to OIA in the future) to be at least the rank of sergeant. This is a common practice of internal affairs operations in large departments across the country.

Skills of OIA Investigators. OLO recommends that MCPD staff OIA primarily with officers who come to OIA with proven experience in investigation. This reduces the training time required and will reinforce the view that OIA investigations are of high quality.

OLO does not believe, however, that MCPD must restrict OIA staff to experienced investigators. Allowing talented officers who have only minimal investigative experience to rotate to OIA increases the likelihood that skilled personnel will come to OIA as a training experience, and will return to the field and "seed" the department with an understanding of the internal affairs function.

Recommendation #4

The County Council should delay action on adding a citizen review element in the complaint handling process until the new Chief has had a reasonable period of time to improve the current system.

OLO recommends the Council delay action on adding a citizen review element to MCPD's complaint handling system. If the Police Department successfully implements improvements to its existing system, then many of the benefits ascribed to citizen review by its supporters should become available in Montgomery County without creating a new administrative structure.

The limited empirical evidence on the results of citizen review does not indicate that greater involvement of citizens in the review of complaints about officer conduct guarantees a more "effective" complaint handling system. In addition, there is virtually no data to evidence that greater citizen involvement in the complaint process improves police-community relations.

OLO recommends that the Council give the new Police Chief the opportunity to bring improvements to how MCPD handles complaints. An evaluation of the Chief's progress after a reasonable time (OLO recommends waiting at least 12-18 months) should indicate if the Council needs to take further action.

In the 1999 session, the Maryland General Assembly approved a new citizen review process for the Baltimore City Police Department. This legislative action raises some legal issues about the limitations that LEOBR places on civilian participation in responding to complaints about police conduct. If and when the Council decides that it wants to pursue creation of a citizen review process in Montgomery County, OLO recommends that the Council ask the County Attorney for an updated opinion that reflects the recent changes in State law.

Recommendation #5

The Council should examine whether changes to County law could improve how the Police Department responds to complaints and manages officer conduct.

It is certainly feasible to implement considerable improvements to the Police Department's complaint handling system without making any changes to County or State laws. Nonetheless, OLO recommends that some elements of the governance structure be evaluated for possible changes in the future. This becomes especially relevant if proposed improvements to the complaint handling system encounter difficulties because of constraints in the governance documents.

Because it is most directly under the purview of the legislative branch, OLO recommends that the Council first examine pieces of the Police Labor Relations Law. Specifically, OLO recommends the Council look at the how the "effects bargaining" provision in the law has, in practice, affected police management's ability to manage conduct issues.[2] The Police Labor Relations Law is the only one of the County's three collective bargaining laws that implements effects bargaining.

Another issue in the law that deserves review involves the eligibility of police officer candidates for union membership. The law specifies that officers up to the rank of sergeant as well as police officer candidates are members of the bargaining unit. Police officer candidates are the only County employees who are eligible for membership in a bargaining unit before they attain status as permanent employees.

Police officer candidates are in probationary status for twelve months after attaining sworn status. This summer, OHR clarified that this period includes six months in the Training Academy, and twelve months on assignment in the field. To strengthen its recruitment efforts, MCPD recently began an early employment program that employs recruits before the next recruit class at the Training Academy session begins. Early hires must also serve a twelve month probationary period after attaining sworn status.

LEOBR does not apply to probationary employees, except in the case of an allegation of brutality committed in the line of duty. However, the collective bargaining agreement between the County and the Fraternal of Police includes considerable protections for probationary employees. Even though they are not as extensive as those provided in LEOBR, the degree of protections must be weighed against making it relatively simple for management to identify and terminate candidates who are identified during their first year as unable to meet the County's standards of conduct.

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[2] The list of subjects that the County Government must bargain includes "the effect on employees of the employer's exercise of rights" that are listed in the law. This phrase is referred to as implementing "effects bargaining," because it means that while the areas identified as management rights are not subject to bargaining, the effects of the exercise of those rights are subject to bargaining.

Related to the police collective bargaining law, OLO recommends the Council also learn more about how the negotiation process between the County and the union works in practice. The negotiations are complex because of the number of separate interests and the politics involved in the bargaining. Police management is only one of the interests represented on the employer side in the negotiations. The Office of Human Resources is designated as the County's lead agency in police collective bargaining.

During the course of OLO's research for this report, a frequently expressed opinion by police management was that management's rights, including those related to dealing with officer conduct, have suffered as a result of recent contract negotiations. The Council should make an effort to determine whether this opinion is or is not supported by fact.

As an example, OLO recommends the Council take a closer look at the negotiation process surrounding the alternative hearing board option in the current contract. (It is OLO's understanding that Police Department management generally opposes the alternative board structure.) By State law, the alternative hearing board option is not subject to binding arbitration, which means that the County Government can unilaterally remove it, or refuse to include it in the agreement. After removing it once, the County Government agreed to include it again, and the alternative board option remains in the current contract. The Council's review of the collective bargaining process should seek to understand the dynamics that led to the County Government's support of the alternative board structure.

Office of the Independent Police Auditor

City of San José

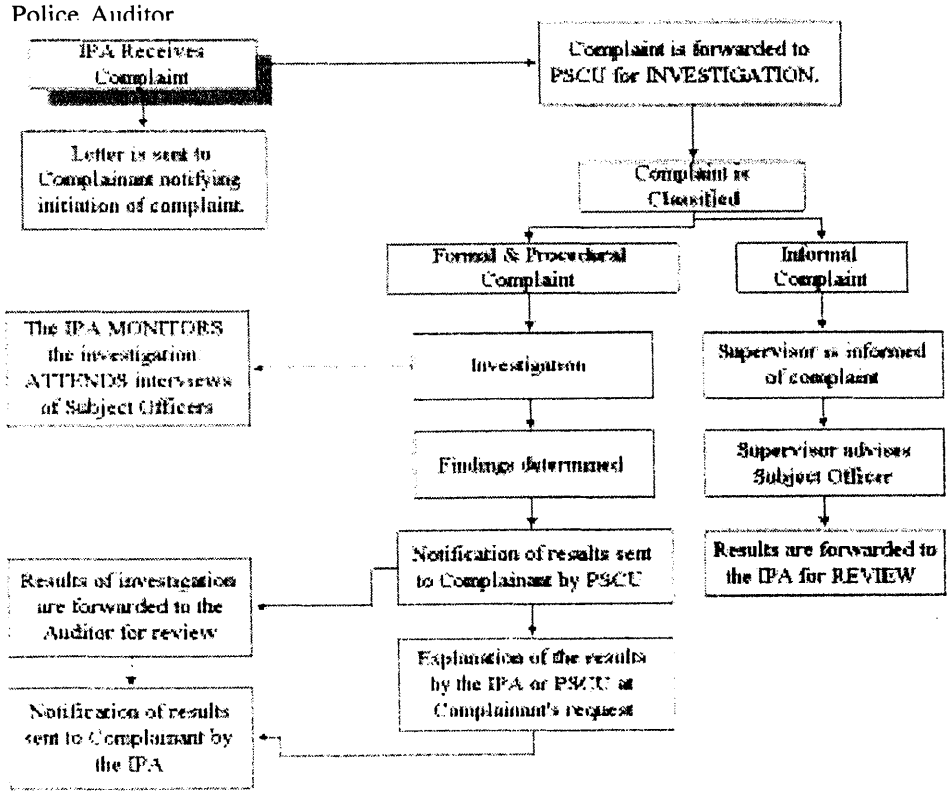
AUGUST 1998 | http://www.ci.san-jose.ca.us/ipa/home.html | VOLUME 4, NUMBER 1

In an effort to better inform San José residents of their right to file a complaint, the IPA's office continually attempts to educate the public about the complaint process and the availability of the IPA. The IPA, along with SJPD personnel, has made numerous presentations at community group and organization meetings. The presentations give a basic overview of the complaint process and allow the public the opportunity to raise questions or concerns about police issues and filing a complaint. The auditor has also given interviews to local and national media regarding police issues, police complaints and the role of the IPA. Other inquiries have been made by both local and out of state sources. In addition, the IPA distributes informative pamphlets which include information about the IPA office and a form used to initiate a complaint. Information about the IPA and the complaint process can also be accessed on the internet at http://www.ci.san-jose.ca.us/ipa/home.html.



What happens to a complaint filed at the IPA?

The following flow chart describes the process that is involved once a complaint against a member of the San José Police Department is filed at the Office of the Independent Police Auditor



Bulletin

- Civilian Initiated complaints drop by 30%.
- San José Police Department changes policy for the forcible drawing of blood(page 3).
- IPA received 45% of total complaints filed.

Are you interested in a Presentation regarding the IPA or the Complaint Process? Contact us at 408.977.0652

MID YEAR STATISTICS

ANALYSIS OF COMPLAINTS RECEIVED

January 1 through June 30, 1998

Classified complaints account for 178 of the 208 complaints received between January 1 through June 30, 1998. The remaining 30 In-process complaints were awaiting classification as of June 30, 1998. Of those 178 complaints, 111 were closed between January 1 through June 30, 1998. The IPA received 45% of the total complaints filed during this reporting period. Data was rounded off to the nearest percentage.

	Formal					Total	
Council Districts	CI	DI	IN	PO	PR	Complaints	%
1 JOHNSON	6	0	0	0	2	8	4%
2 POWERS	3	1	2	1	1	8	4%
3 PANDORI	29	10	12	9	10	70	39%
4 FERNANDES	5	1	1	1	4	12	7%
5 DIAZ	10	1	3	0	3	17	10%
6 FISCALINI	5	3	0	2	3	13	7%
7 SHIRAKAWA, JR.	5	1	4	0	3	13	7%
8 WOODY	6	4	1	1	2	14	8%
9 DIQUISTO	2	0	2	1	1	6	3%
10 DANDO	2	0	1	0	3	6	3%
Unknown/Outside City Limits	1	10	0	0	0	11	6%
Total Cases Received	74	31	26	15	32	178	100%
Cases Closed	30	8	26	15	32	111	

Formal: CI = Civilian-Initiated & DI = Department-Initiated,
IN = Informal, PO = Policy, PR = Procedural

SUSTAINED CASES

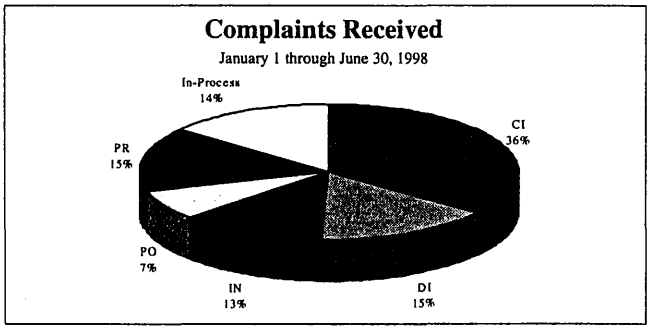
Of the 111 closed cases, only 38 Formal cases were of the type where the officer involved could have been disciplined. A finding was reached in 21 cases, of which three complaints were sustained. The other 13 cases were omitted from the illustration below because the cases involved non-sworn officers of the SJPD or because the investigations resulted in a No Finding.

	Closed Formal Cases		Sustained Formal Cases	
Council Districts	CI	DI	CI	DI
1 JOHNSON	1	0	0	0
2 POWERS	0	0	0	0
3 PANDORI	8	0	0	0
4 FERNANDES	0	0	0	0
5 DIAZ	1	0	0	0
6 FISCALINI	2	1	0	1
7 SHIRAKAWA, JR.	3	0	0	0
8 WOODY	1	1	0	1
9 DIQUISTO	0	0	0	0
10 DANDO	0	0	0	0
Unknown/Outside City Limits	1	2	1	0
Total Cases	17	4	1	2

DISCIPLINE IMPOSED

In the 21 complaints that resulted in a finding, a discipline was imposed on five complaints. The disciplines are listed by increasing level of severity.

Type of Disciplines Imposed	Formal CI	Formal DI	Total	%
Training and/or Counseling	1	1	2	40%
Documented Oral Counseling (D.O.C.)	0	1	1	20%
20-Hour Suspension	1	1	2	40%
Total	2	3	5	100%

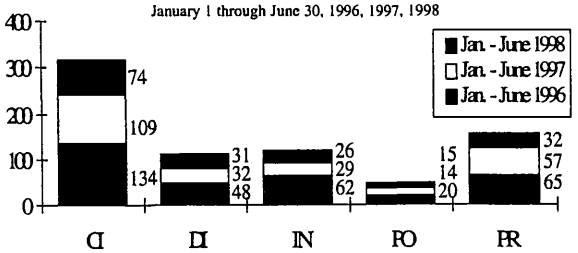


THREE MIDYEAR ANALYSIS OF COMPLAINTS

The following chart presents a comparative three six-month study for 1996, 1997, and 1998 complaints. The total number of complaints received from January 1 through June 30, 1998, do not include the In-process complaints.

Classified Complaints Received in the Three Six-Month Periods

January 1 through June 30, 1996, 1997, 1998

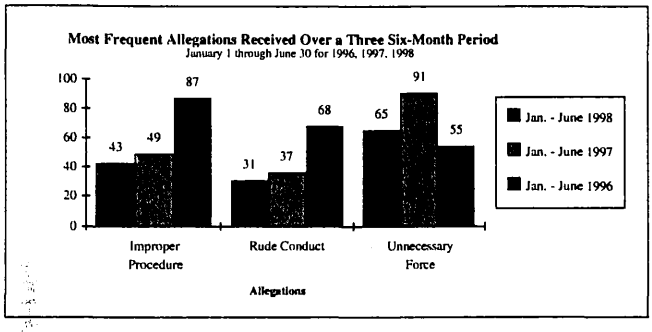


1998 Complaints = 178	1997 Complaints = 241	1996 Complaints = 329

Formal: CI=Civilian-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural

MOST FREQUENT ALLEGATIONS FILED

Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consistently yield the highest number of complaints. To compare these three types of allegations in the three six-month periods of 1998, 1997, and 1996, please refer to the following illustration.



Comparing the 1998 allegations to 1997 and 1996, both Improper Procedure allegations and the Rude Conduct allegations decreased, Unnecessary Force allegations decreased 29% from 1997 and increased 18% from 1996.

UNNECESSARY FORCE ANALYSIS

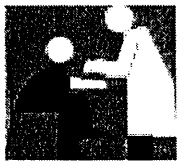
Type of Alleged UF	
Baton	10
Canines	3
Car (officer)	6
Car (complainant)	1
Chemical Agent	4
Feet	9
Ground	8
Hands	30
Handcuffs (tight)	7
Knee	4
Object	1
Other	4
Unknown	2
Total	89

Area Afflicted by Alleged UF	
Head	20
Torso	9
Limbs	15
MBP	9
Unknown	4
Total	57

Degree of Injury	
Major	11
Moderate	4
Minor	19
None	6
Unknown	4
Total	44

There were 105 Formal complaints received from January 1 through June 30, 1998; forty-three (43) were Unnecessary Force complaints, which produced 65 allegations. The illustration above presented the type of alleged force, the area afflicted by the alleged force, and the degree of injury. The total figures exceed the number of allegations received because there may be multiple types of alleged force or area of affliction associated with each complaint.

BLOOD SAMPLE TAKEN BY FORCE



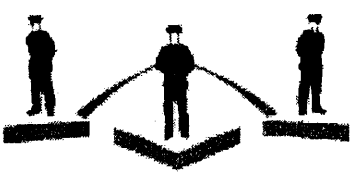
Complaints alleging that blood samples were taken against a person's will, at a place not suited or appropriate for the safe and sanitary process, were a focus of the 1997 Year End Report. Complainants alleged that blood was drawn by a technician at the request of a police officer while the complainants were handcuffed, physically restrained or pinned to the ground outside the SJPD parking lot. Several of the people that came to the IPA or the PSCU to file a complaint had visible injuries to the area where the blood was drawn. This precipitated a closer review of existing SJPD policy and guidelines.

When a person is arrested for a suspected felony, San José police officers transport the arrestee to the Preprocessing Center located adjacent to the San José Police Department. At this center, the arrestee will generally be booked, fingerprinted, interviewed, and placed in a locked cell to await transfer to the county jail. This center has over ten individual holding cells which are monitored by police staff. If the arrestee is not combative, his/her blood will be drawn in one of these rooms. If the arrestee is violent or combative, the arresting officer is barred from bringing the suspect into the center. Reasons given to the IPA were that it is difficult to move the arrestee to and from the center, and because the arrestee can create a disturbance. Therefore, the blood sample from individuals deemed violent or combative was extracted in the parking lot of the Preprocessing Center, or the individual was taken directly to the county jail where the blood was drawn in what appeard to be a loading ramp and/or a parking lot for authorized personnel. It is an undisputed fact that when necessary, a handcuffed individual , would have been forced over the hood of a patrol car or held down by officers on the ground where a technician would extract the blood.

The courts have held that it is lawful to physically restrain an arrestee for the purpose of drawing a blood sample provided it poses virtually no risk, trauma or pain, and is performed in a reasonable manner by qualified medical personnel in a medically accepted environment. The police parking lot would not be deemed an appropriate medical environment. The SJPD and county jail parking lots are poorly lit, the ground is dirty, and equipment such as arm boards which reduce the risk of infection or injury to the subject's veins or tissue are not available. Risk of injury to the technician or officers is also increased whenever a subject is wrestled to the ground and restrained for the extraction of blood.

RECOMMENDATION

The IPA recommended that when taking blood specimens as evidence relevant to the crime at hand, the San José Police Department should do so in a medically accepted environment, according to accepted medical practices and without excessive force.



UPDATE

Blood is now drawn at a designated area within the Preprocessing Center which provides sanitary and well lit conditions for condcuting the procedure safely.



RECOMMENDATIONS MADE BY THE IPA



The IPA formally and informally makes recommendations to the San José Police Department. The following chart highlights some of the issues and their related status.

ISSUES RAISED:	DISPOSITION:	CONCLUDED IN:
1993 Year End Report		
Create a new system for the classification of complaints	Adopted	1994 Year End Report
Apply Intervention Counseling to all complaints	Adopted	1994 Year End Report
1994 Year End Report		
Implement citizen "Onlooker Policy"	Adopted	1995 Year End Report
Contact complainants at regular intervals through updates and closing letters	Adopted	1994 Year End Report
Enact policy for collecting physical evidence in use of force cases and immediate investigation by supervisor	Adopted	1995 Year End Report
1995 Year End Report		
Review Off-Duty Employment Practices	Adopted	1997 Year End Report
1996 Year End Report		
Implement process for responding to citizen's request for officer identification	Pending	
Establish Class I and Class II of use of force categories (Class I cases within 180 days & all cases within 365 days)	Adopted	1996 Year End Report
1997 Year End Report		
When forcibly taking a blood speciman from an uncooperative suspect, do so in an accepted medical environment	Adopted	
Time limits and a reliable tracking system should be set for every bureau and department involved with the complaint process	Pending	

To file a complaint against a SJPD officer, contact:

The Office of the Independent Police Auditor
4 N. Second St., Ste. 650
San José, CA 95113
Tel (408) 977-0652
Fax (408) 977-1053
email: Ind_Pol_Aud@ci.sj.ca.us
or visit our website at:
http://www.ci.san-jose.ca.us/ipa/home.html

or

The Professional Standards & Conduct Unit
777 N. First St., Ste. 666
San José, CA 95112
Tel (408) 277-4094

IPA STAFF
Teresa Guerrero-Daley, Police Auditor
Pablo Castro, Assistant Auditor
José Manuel Cuéllar, Complaint Analyst
Leanne Wang, Complaint Analyst

We welcome your comments regarding this newsletter!



Office of the Independent Police Auditor
City of San José
4 N. Second Street, Suite 650
San José, CA 95113

Please reprint and circulate

CHAPTER IX: EXECUTIVE BRANCH COMMENTS ON FINAL DRAFT

In August, OLO sent a draft of this report to the Chief Administrative Officer for Executive branch comments. The final report reflects the technical corrections received from Executive branch staff. The written comments transmitted by the Chief Administrative Officer are included in their entirety beginning on the following page.

OLO greatly appreciates the time taken by Bruce Romer, Chief Administrative Officer, Charles A. Moose, Chief of Police, and others to review OLO's draft report. OLO looks forward to a continuing discussion of the issues raised as the Council reviews the report in the coming months.

OFFICES OF THE COUNTY EXECUTIVE

Douglas M. Duncan
County Executive

Bruce Romer
Chief Administrative Officer

MEMORANDUM

September 9, 1999

TO: Karen Orlansky, Director, Office of Legislative Oversight

FROM: Bruce Romer, Chief Administrative Officer

SUBJECT: Office of Legislative Oversight DRAFT Report 99-2, A Study of the Montgomery County Police Department's Complaint Handling System

Thank you for the opportunity to comment on the DRAFT OLO Report 99-2, A Study of the Montgomery County Police Department's Complaint Handling System. We value OLO's professionalism and objectivity. This report is comprehensive, an excellent reference document, and offers opportunities for us to become more effective and efficient.

Charles A. Moose, Chief of Police; Police Department staff; and I spent considerable time reviewing this draft report and the Hart Research Survey. The Police Department's comments are attached. The Police Department went beyond comment and has developed a number of initiatives based upon the findings and recommendations. I am confident that these initiatives will improve the complaint handling process, improve community relations, and make the Police Department even more responsive to the needs of our citizens.

I look forward to the release and Council discussion of this report.

BR:rsd

Attachment

Introduction

The department is extremely pleased to have this opportunity to comment on the work done by the Office of Legislative Oversight. The Department used this opportunity not just to comment but to lay out the steps taken, in progress, and planned to improve the complaint-handling process within the Montgomery County Police Department (MCPD).

The findings of the community survey conducted by Hart and Associates go far to validate issues that we all have known for some time. The Montgomery County Police Department is an excellent organization, which enjoys a high level of confidence from the community. It is especially heartening that the citizens of Montgomery County, from all races, feel better about their police department than the national average. Obtaining excellence, however, is not a one-time occurrence, but rather a process that is never ending. The quest for excellence must not and will not end in this Department. Just as critical in the Hart survey is the perception of differential treatment by the police department. While there is no substantiation of this, perception wields the force of reality and must be dealt with just as strongly and forcefully as if there were definitive proof.

Findings

In reviewing the Findings #1-4, the Department is in complete agreement with the OLO report. There is no question that an *effective and efficient* complaint-handling system is essential to a well functioning police department. Effectiveness and efficiency builds community trust, internal trust and supports the legal and policing concepts upon which our society is built. This Department has a well-documented history and mission of community service. Our ability to promote and maintain the trust of our community is essential for mission accomplishment. MCP also has a strong set of Core Values; *Partnership, Respect, Integrity, Dedication and Empowerment.* These values reinforce the organization's commitment to its members and the community that it serves for fair, equitable and consistent treat for all.

Finding #5, "Is MCPD's Current System for Handling Complaints Effective?" has been the source of great external and internal review for this Department. As the OLO report correctly points out, the Department has made great strides over the past few years but still has some distance to go. It is obvious from the data in the Hart Survey that both an internal and external marketing approach is needed. As a result, a new informational brochure has been developed and will be placed in all police, and county facilities. Additionally, we intend to work with the County Office of Public Information to increase dissemination of the brochure and to use Cable TV to enhance the message. It is also clear that our internal communication needs to improve. Effective immediately, we will begin developing an annual report of our complaint process. This annual report is for public dissemination and will go far to increase community understanding and trust. The Office of Internal Affairs will increase its visibility at roll call and in-service training and address the specific shortcomings identified in the survey.

From the senior command level, there will be a reinforcement of our organizational values with particular emphasis on *Respect, Integrity and Dedication.* Our Core Values are what makes this Department great and it will be the responsibility of every leader and supervisor to instill them in every member and in everything that we do. Senior leadership will be spreading the message of our Core Values through staff meetings, counseling, performance appraisals and training sessions.

The Department is committed to supporting and enhancing the role of the Police-Community Relations Facilitator. As such, we will continue to utilize this office as a vehicle for receiving complaints and in building trust with the community. As stated earlier, a new brochure has been developed explaining the process for compliments as well as complaints. As quickly as possible, it will be translated into Spanish and appropriate Asian languages.

Effective immediately, our Department policy regarding the acceptance of complaints at district stations has been changed. Front desk personnel will now accept complaints and will forward them to their respective supervisors. In turn, the supervisor will contact the complainant to acknowledge receipt and address any questions regarding the complaint process. This change will be incorporated into the appropriate Department directives.

The timeliness of the complaint process is of great concern to this department. Every effort will be made to complete investigations within a 90-day time limit. To accomplish this, the Department has added additional skilled investigative resources to the Office of Internal Affairs. These additional resources will not only improve the timeliness but also the quality of the case-management system. The Department has implemented a suspense- tracking system, which requires written notification for case investigations that extend beyond the 90-day time limit.

The need for open communication in the complaint process is essential in building and maintaining trust. Current procedures require OIA investigators to contact complainants on a monthly basis in order to apprise them of the status of the case. This procedure will also be extended to those cases, that are not handled at OIA. Documentation of the contact will be annotated in the investigative case file. Equally important is building internal trust, which is achieved through internal communication. Therefore, except in cases of alleged criminal activities or with specific approval of the Chief, all members who are subject to an investigation and their respective commanders will be notified as soon as practical after an investigation is initiated. Since the philosophy of discipline in this department is to change inappropriate behavior, immediate notification of inappropriate behavior is essential in changing such behavior.

Findings # 6 & 7 deal with complaint numbers and their meaning. The statements in the report are correct in saying that data is not readily available and is not in a suitable fashion for analysis. One of the limiting factors is the lack of an automated data system for tracking complaint information. The Director of OIA has been charged for some time to identify or develop an automated data collection system that will provide a complete analytical package. The need for data and analysis is so critical that senior command staff

will review the files and conduct an analysis of the available data. It is the goal of the department to have, within 30 days, an annual report of 1998 complaints, and to publish a similar report on a yearly basis. Additionally, an internal quarterly analysis will be conducted for command review, policy change and training enhancement.

Finding # 8 deals with the myriad of regulations, laws and agreements that govern the discipline process within MCPD. There is no disagreement with this finding. The Department appreciates the thoroughness of OLO staff in identifying all of these factors.

Finding # 9 deals with comments regarding the department's internal review process of completed investigations. The Department believes that this review is critical for several reasons. First, discipline is a command responsibility so input from the appropriate command within the department is critical to the chief in evaluating the case. Second, since the purpose of discipline is to modify/correct inappropriate behavior, command input is vital in determining whether or not the involved party has taken action to correct the inappropriate behavior.

Finding # 10 deals with the concept of a Discipline Matrix. Comments concerning the Department's actions and plans in regard to the discipline matrix are delineated in the section of Recommendation #1 relative to with improvements in consistency.

Finding # 11 & 12 deals with the establishment of an "Early Identification System" and the benefits of improved tracking and reporting. The Department has no issue with and is in complete agreement with an improved tracking and reporting system for the complaint process. It is our top priority in that area. The Department also supports the concept of an early identification system as a non-disciplinary process to identify and take corrective action before employees become involved in serious disciplinary matters. Accordingly, the Department command staff will be working with the Office of Internal Affairs, Office of Professional Compliance and the FOP in developing a system that is acceptable to all and provides for an effective means of early intervention.

Finding #13 deals with greater citizen involvement in the complaint process. The department has initiated several steps to enhance citizen involvement reviewing the trend data and making recommendations for policy and or training changes. The department's position and comments concerning the specific aspect of incorporating a citizen review component is incorporated in the response to recommendation # 4.

Recommendations

The Department has reviewed the recommendations proffered by OLO and concurs with its analysis regarding the package approach. While many initiatives are underway to improve the complaint-handling process, we realize that there are a number of steps to take to fix the process for both the external and the internal customer. Some will involve procedural changes. Some will be more complex and involve resource requirements. We appreciate the Council's willingness to evaluate these recommendations and, where necessary, to support the resource requirements.

Recommendation # 1

Improve Accessibility

1.As stated earlier, the policy on complaint-form dissemination and acceptance has been changed. Front-counter administrative personnel will now be authorized to accept complaints at all Department facilities. Training will be provided and procedures established to provide for prompt supervisory follow-ups to complaints. The appropriate Department directives will be annotated to reflect this change.

2.The Department has developed a new brochure that advises citizens on the proper procedure to use if they want to comment on an employee's performance. The brochure provides clear guidelines to be followed in complimentary or complaint circumstances. Currently, the brochure will be available in English and Spanish. The Department will have the district commanders, working with Park and Planning, identify other potential language users.

3.The Department will add complaint/compliment information to our web page to enhance community accessibility. Further, we will work with the County's Office of Public Information, with particular emphasis on Cable TV access, to further inform the public. It will be a future goal to develop capabilities to file complaints or compliments on-line.

4.Through a Headquarters Memorandum, Department directives, as well as media publications, will also recognize the role of the Police-Community Relations Facilitator in explaining the complaint process. One of the department concerns regarding the police-community facilitator is the uncertainty with the tenure of this position.

Improve Consistency

It is the Department's goal to have a fair, consistent, and equitable approach to case assignment, case review, and discipline. The Department has studied a number of discipline matrices and currently has one in the final stages of development. The Chief

has had initial discussions with the FOP President and has detected opposition to this endeavor. The buy-in from the department is critical and the danger of labor grievances to tie up the matrix concept may be counterproductive. Rather than risk needed reform being held up in protracted labor negotiations, the Department is proposing several sweeping changes to ensure that all complaints, investigations, and discipline recommendations are done in a fair, consistent, and equitable manner. Concurrently, the department will continue to explore the discipline matrix concept.

- All complaints will be forwarded to the Director of OIA for initial screening. The director will determine, based upon criteria established in the directives, which cases will be investigated by OIA, by units, or not investigated. A new tract designed to deal specifically with performance issues will also be established. This tract will return performance complaints to units to be dealt with in a non-disciplinary manner. Each week the director will conduct a review of the assignments with the bureau chiefs. This review will serve several purposes;
    a. Provide a timely picture to the senior command staff of the nature of complaints that are being received. This will allow for immediate corrective action should trends be identified.
    b. Provide for command-level consensus to support the case assignment. Should the Bureau Chiefs disagree with the discipline case assignments by the OIA Director, then the assignments can be changed by a consensus vote.
    c. Allow for command involvement in assignment of suspense dates in particular for cases being handled at unit levels.
    d. Cases that indicate alleged criminal wrongdoing will be diverted to the proper criminal investigative unit. Once the criminal investigation is complete, then the administrative case track will be initiated.

- Completed investigations will be forwarded to the Director of OIA. The director will review the case to ensure completeness and proper formatting. The director will then return the case file to the accused's commander. The commander will review the case file and make a determination of finding. The unit commander will then forward the file to his/her Bureau Chief for quality review. After completing the quality review, the Bureau Chief will forward the case file to the Director of OIA. The Director will review the file and make a determination of finding independent of the finding or reasoning of the unit commander. If both the unit commander and director OIA agree that the finding is either unfounded or exonerated then the case will be closed. In all other cases the Director will convene a review panel consisting of the following; Director OIA, all Bureau Chiefs, Unit Commander of the affected party, Director Personnel Division, Legal Advisor, and Director Office of Labor Relations. The Directors of Personnel and Labor Relations and Legal Advisor are non-voting members and will serve as resources to the review panel. Each voting member will review the case and make a determination of guilt or innocence. Note the actual classifications will be those annotated in

the directive. Each voting member must state his/her reasons for their finding. If the vote results in a recommendation of Unfounded or Exonerated, then the case will be closed and no further action will be taken. If the vote indicates policy failure, then the appropriate bureau chief will recommend appropriate policy changes to the chief. If the finding results in not sustained, the review panel will make a determination if this complaint should be considered in the early identification program. For sustained cases the panel will also make a recommendation for punishment, with justification and forward to the Chief. During the punishment determination phase, the Directors from Personnel and Labor will advise of labor implications and past disciplinary action for similar offenses. This may require that we start from scratch in tracking our disciplinary history, but over a period of time we will have a complete history of previous disciplinary action that will serve as a guide in ensuring fair, consistent, and equitable treatment. Decisions will be made by a plurality of the vote.

- Over the next 90 days, the Department will review all appropriate directives governing the discipline and complaint process. Where required, and where collective bargaining is not required, changes will be made to reflect new procedures. In those cases where bargaining is required, all attempts will be made to negotiate the changes as rapidly as possible. Additionally, a guide for investigators will be provided to all members of the Department who will have complaint- process investigatory responsibility.

- For FY00, the County Attorney's Office will be providing additional support through the use of contract legal assistance to the Police Legal Advisor. While on the surface this action will clearly help in cleaning up backlogs and in more timely hearing boards, it will also allow the Legal Advisor to take a more proactive role earlier in the process. This will result in many procedural errors being eliminated.

Improve Efficiency / Case Management

The Department has taken a number of steps prior to the issuance of the OLO report in order to achieve significant improvements in efficiency and case management. Specifically:

- Addition of two additional Sergeant positions under the FY00 budget. As a side note, the Department has worked out an agreement with OMB to immediately bring on these positions rather than at the .7 year period as originally budgeted. This will bring the assigned staff to a director and nine investigators.

- The Department has assigned two highly experienced criminal investigators from the Major Crimes Division to develop an efficient and effective case-management system. Their assignment also will include the training of all OIA personnel in the proper usage of the case-management system.

- The Director of OIA has also been charged with reviewing the workload of each investigator and ensuring that the Department is getting the maximum return. Where possible, re-engineering will be the course of action. Possible examples of process re-engineering may include voice conversion software for transcription, alternate staffing schedules, digital recording equipment, etc If re-engineering is not possible, then alternate means of delivery such as contract clerical or recording support will be utilized.

- The Department is also committed to develop a performance tract designed to remove performance-related issues from the disciplinary process and the LEOBR requirements. This ambitious goal will require some significant support from OHR and the County Attorney.

The goal of a timely resolution of disciplinary matters is an absolute with the Department. It is our goal to resolve complaints within a 90-day window. Because of factors beyond the direct control of this Department, the 90-day goal may not always be possible. The specific factors that influence the scheduling of hearing boards have significant impact on delaying the process. As a result, the department will be initiating several new initiatives:

1. Each side (County or FOP) will be allowed only one continuance.
2. The additional support of contractual legal support will increase departmental resources for case presentation.
3. The Department will work with OHR and the FOP to identify additional qualified arbitrators to serve on the Alternate Hearing Board.
4. The Department will attempt to maximize summary-punishment provisions of the LEOBR.
5. Utilization of a Performance Tract.

Recommendation # 2

Improve Internal and External Communication

The Department is in full agreement with the recommendation concerning improved internal and external communications. Trust is essential for effective policing and communication is one of the principal tools that the Department must use in order to develop and maintain trust.

The Department is implementing immediate steps to improve both internal and external communications. Specifically:

1. Senior command staff, within the next 30 days, will review the 1998 complaint data and prepare a report for public dissemination.
2. OIA will, effective 1 Jan 2000, produce the following reports:
   - Year-end report (1999) published NLT 1 April 2000.
   - Quarterly reports (published NLT 30 days after the end of the quarter) Subject to the Collective Bargaining Agreement, every effort will be made to include Use of Force data in these reports.

The annual report will be designed specifically for public consumption. In contrast, the quarterly report's primary focus will be on the internal customer and reinforcing the fairness and equality in the complaint process. Each report will highlight statistical information, changes made in policies or training, as well as be cognizant of the due process and confidentiality requirements.

As the OLO report points out, the Department has made a significant effort to improve its responsiveness to complainants. This effort has involved keeping complainants informed on case status as well as appropriate explanation at case resolution. The process of case status notification will be expanded to unit levels as well. Complainants are now sent a letter from the Chief at case closures. The letter provides the complaint with a clear understanding of the findings while remaining within the bounds of due process and confidentiality requirements.

Data Collection / Analysis

The Department is in agreement with OLO's recommendation concerning the need for central tracking of complaints. The process outlined above will provide a clear and effective mechanism for central tracking. Additionally, it will provide senior leadership with an immediate picture of the number and nature of complaints, thus allowing proactive action to be initiated early on.

The need for a comprehensive relational data system to track complaints and provide a comprehensive picture is also very evident. The Director of OIA has been charged to identify a viable system or systems requirements for such a data system. The goal of the police department is to have this system operational by 1 January 2000 or as soon as possible thereafter.

Early Identification System

Clearly, early intervention is an effective component of a fair, consistent and equitable discipline system. With our philosophy of discipline (inappropriate behavior modification, rather than punishment) early identification and remediation steps are essential. It is the Department's intent to incorporate early identification capabilities in the tracking system.

The Use of Force reports generated by Department personnel are appropriate components of an early identification system. It is not clear, however, that the current Collective

Bargaining Agreement will allow for their inclusion. The Department will work with OHR and the FOP through the Labor Management Relations Committee (LMRC) to obtain an agreement that will allow inclusion of these reports without punishment potential for Department members. Additionally, the Department will work with the leadership of the FOP to devise response intervention programs for those identified through the early identification program.

Improved Oversight / Quality Control

OLO recommends that the Chief establish an internal-review committee to review complaint and discipline data for trends and consistency. The Department has re-engineered its complaint screening and case review process to accomplish this task. In addition, the Department will task various members (Bureau Chiefs, Training Director, Legal Advisor, Labor Relations, Field Commanders, Police-Community Relations Facilitator and representatives from the community) to review quarterly reports to identify trends and ensure consistency.

The Department has the utmost faith in the integrity of the Office of Internal Affairs and the decentralized investigators who conduct internal investigations. However, as a progressive police department, which continually seeks excellence, we would be foolish to decline any offer to improve our department. The department would welcome a quality review of the quality of our internal investigations. An independent, qualified expert in the field of internal investigations should conduct this evaluation. This action would require additional funding for the department and we would look to the Executive and Council for support in this endeavor.

The Department does support the HART Survey and the continuation of community surveys to that level of sophistication and validity. The CALEA requirements for a community survey must be met (every other year) and it is the Department's intent to include requests for comprehensive community surveys in our operating-budget requests. The department also calls for the release of the Hart Survey. We believe that the positive nature of the results will go far in improving police community relations and internal morale.

Recommendation # 3

Increase the Rank of the OIA Director / OIA Staff Incentives

The OLO report recommends raising the rank of the OIA Director to the position of Captain. The Department has a goal that all unit commanders/directors should be at the rank of Captain. The reclassification of these positions has implications within OHR, OMB and the Council. Regardless of rank, the Department does consider the Director of OIA to be an important member of the senior management team. Not only under current operations but also as is evident by the director's role in the process re-engineering, he/she will continue to be an important component of the Department's senior management team.

The Department is migrating to a position where OIA investigators will be sergeants. In the FY00 budget, the Department used creative civilianization to obtain two additional sergeant positions for OIA. We will not, however, do immediate wholesale replacements of the non-sergeants. That would destroy valued institutional memory, remove skilled investigators, and negatively impact unit morale. It is the Department's belief that the more effective manner is through attrition. Regarding the recommendation of offering incentives for OIA Investigators, the Department believes that this would be counterproductive to overall Department morale. It is the Department positionbelieves that the mission of OIA is vital to the operation and integrity of the department. As such, its members are held in high regard, have unique access to the Chief, and senior commanders. While tangible incentives may not be possible, the honor and standing of this unit is second to none within the Department command.

The Department has taken steps to increase the number of skilled investigators in the unit by recently assigning two highly skilled and experienced investigators from our Major Crimes Unit. Additionally, the Department is exploring every possible training opportunity for the staff in OIA to increase their proficiency in investigative and disciplinary-process topics.

Recommendation # 4

OLO staff has recommended delaying any action on adding a citizen review element to MCPD's complaint-handling process. The Department concurs with OLO's research, which shows that there is no empirical data that demonstrates that a citizen-review component will restore trust, increase accountability, or improve the process. However, MCPD is a valued driven organization that is committed to a community policing philosophy. The key tenet of community policing and the department's first core value is *Partnership*. True partnership requires open communication and trust. Thus, we believe that the question of citizen review is not one to be decided by the department or by the political process. Rather it is a community decision that must be made by the citizens of this county. MCPD is truly committed to community policing, is value driven, and focused on our customers, the community. As such we are ready to move forward in whichever direction the community deems appropriate.

Recommendation # 5

The Department is concerned with the impact of "EFFECTS" bargaining on its ability to govern employee conduct and manage discipline issues. When policy failures are identified or complaint trend analysis indicates a shortcoming in a Department directive, it is necessary for management to take timely steps to remedy the situation. Effects bargaining renders that action very difficult if not impossible. When it is necessary to get union approval for policy changes or to have to wait until the next bargaining session to effect change, management's ability to lead the Department and ensure proper conduct has been eroded. The department understands the role of OHR as the designated lead agency in labor relations and accordingly attempts to work with OHR staff concerning

labor issues. The Labor Management Relations Council is but one example. Concerning the issue of probationary status of police officer candidates, the Department pointed out the shortcomings of the situation to OHR. To its credit, OHR worked the issue and has now advised the Department that probationary status for POCs will now extend 12 months from the date of graduation from the Police Academy.

Conclusion

Once again, the Department would like to thank the staff of the Office of Legislative Oversight for its professionalism, thoroughness and support during this process. This was a monumental undertaking with which the Department fully and openly cooperated. We did not pull any punches and as a result we believe that this analysis is an accurate and true picture. The Department knew going into this review that there was a need for process re-engineering and that's why a number of initiatives were started during the course of the OLO review. We also realize that we have only just begun. While our citizens express high levels of confidence in and respect for our police force, we cannot and will not stop seeking ways to improve and striving to make the Montgomery County Police Department the best police department in the country.

Office of Legislative Oversight Report 99-2
Appendices

Appendix		Circle Number
	Background Information and Data	
A	Montgomery County Demographic Data	1
B	Montgomery County Police Department: General Information	2
C	Selected Chronology of Events Related to Police-Community Relations in Montgomery County: January 1996 – June 1999	12
D	Recommendations Contained in Reports Related to Police-Community Relations: • Police-Community Liaison's Final Report Recommendations (3/10/98), • Montgomery County Task Force on Community-Police Relations (8/12/98)	 17 18
	Governing Documents	
E	Annotated Code of Maryland Article 27, Section 727-734D - Law Enforcement Officers' Bill of Rights	20
F	Montgomery County Code, Chapter 33, Article V, Police Labor Relations	31
G	Collective Bargaining Agreement between Fraternal Order of Police, Montgomery County Lodge 35, Inc. and Montgomery County, Maryland, for the years July 1, 1998 to June 30, 2001: • Table of Contents; • Article 43, Discipline; • Article 51, Personnel Files; and • Article 61, Directives and Administrative Procedures.	 47 49 55 60
	MCPD Forms and Documents	
H	Function Code 210, Department Mission and Organizational Values, effective 10-25-92	61
I	Function Code 301, Disciplinary Process, effective 11-15-94 • 301.B, Memorandum of Notification, MCP 242, effective 5-23-97 • 301.C, Administrative and Suspension Hearing Boards, effective 3-17-97 • 301.D, Expungement of Internal Affairs Records, effective 10-9-95 • 301.F, Disciplinary Process for Civilians, effective 11-15-94	63 77 79 95 97
J	"How Do I File a Complaint Against a Police Department Employee?" MCPD	107
K	MCPD Complaint Form, MCP 580, revised 1998	110
L	Office of Internal Affairs Intake Form, MCP 302, revised 10/98	113
	Other Documents	
M	Models of Citizen Involvement in Complaint Handling: Examples	114
N	Council Resolution 13-1389, Establishment of an Office of Legislative Oversight Resource Committee, adopted August 4, 1998	126
O	Bibliography, OLO Report No. 99-2	129
P	Table of Contents and Executive Summary, "Review of Police Disciplinary Procedures in Maryland and Other States," IGS, Univ. of Maryland, 1999	135

Appendix A: Montgomery County Demographic Data

Montgomery County spans approximately 497 square miles. According to the Maryland-National Capital Park and Planning Commission's 1997 census update survey, the County's total household population is 823,500. This represents a household population increase of approximately 66,500 people (9%) since 1990. The table below shows the age, gender, race and Hispanic origin of the County population in 1990 and 1997.

Table : Montgomery County Demographic Data – 1990 and 1997

	1990	1997[1]
Household Population[2]	757,027	823,500
Age Distribution		
Under 5	7.5%	7.1%
5 to 19	18.1%	20.3%
20 to 29	16.5%	11.3%
30 to 39	19.3%	18.1%
40 to 49	15.1%	16.4%
50 to 59	9.3%	11.6%
60 to 64	4.0%	3.7%
65 to 74	6.1%	6.5%
75 and Older	4.1%	5.1%
Total	100%	100%
Distribution by Race and Hispanic Origin		
White	76.7%	73.0%
Black	12.1%	13.4%
Asian/Pacific Islander	8.3%	10.9%
Other	2.7%	2.8%
Total	100%	100%
Hispanic (all races)	7.4%	8.6%
Gender Distribution		
Female	51.8%	53.2%
Male	48.2%	46.8%
Total		100%

Source: Montgomery County Department of Park and Planning, Research and Technology Center

[1] 1997 Census Update Survey

[2] Population living in households does not include persons living in group quarters such as jails, dormitories, nursing homes, orphanages, etc

Appendix B: Montgomery County Police Department: General Information

This Appendix provides general background information about the Montgomery County Police Department. Specifically, it presents:

- The mission statement and organizational values;
- An organization chart and description of the Department's three bureaus;
- Statistical information on the number, gender, race/ethnicity, age, and years of service of the sworn officers; and
- A description of recruitment and training activities.

A. Mission Statement and Organizational Values

The MCPD has high standards of conduct for its officers. The Department rewrote its mission statement and organizational values in 1992 to reflect the Department's transition to a community policing philosophy. The MCPD's mission statement reads as follows:

> We, the Montgomery County Department of Police, are committed to providing the highest quality of police services by empowering our members and the community to work in partnership with the goal of improving the quality of life in Montgomery County, while at the same time, maintaining respect for individual rights and human dignity.

The Department's organizational values together spell PRIDE:

> **P**artnership: We are committed to working in partnership with the community and each other to identify and resolve issues which impact public safety.
>
> **R**espect: We are committed to respecting individual rights, human dignity and the value of all members of the community and the Department.
>
> **I**ntegrity: We are committed to nurturing the public trust by holding ourselves accountable to the highest standards of professionalism and ethics.
>
> **D**edication: We are committed to providing the highest quality of professional law enforcement service to the community and the goal of enhancing the quality of life within Montgomery County.
>
> **E**mpowerment: We are committed to empowering our members and the community to resolve problems by creating an environment that encourages solutions that address the needs of the community.

B. Organization of the Police Department

According to County Code Chapter 1A, the County Executive appoints the Chief of Police, subject to County Council confirmation. The law (Chapter 35) states that the Chief of Police is subject to the orders, rules and regulations issued by the County Executive, and is responsible to the Executive for the conduct, control and discipline of the Police Department.

The chart on © 4 depicts the basic organizational structure of the Police Department[1]. The Department is made up of three bureaus, Field Services, Investigative Services, and Management Services, which operate under the Office of the Chief of Police.

Office of the Chief of Police: The Chief of Police, at the rank of Colonel, directs the Department. The Lieutenant Colonel serves as the deputy director of the Department and supervises the following offices/sections:

- The Office of Professional Compliance;
- Office of Internal Affairs;
- Office of Legal and Labor Relations;
- Office of the Legal Advisor;
- Office of Stress Management; and
- Office of Media Services.

In total, the FY 2000 approved budget allocates 30.5 workyears to the Office of the Chief. The remaining 1,412.4 workyears allocated to the Department are organized under one of the three bureaus.

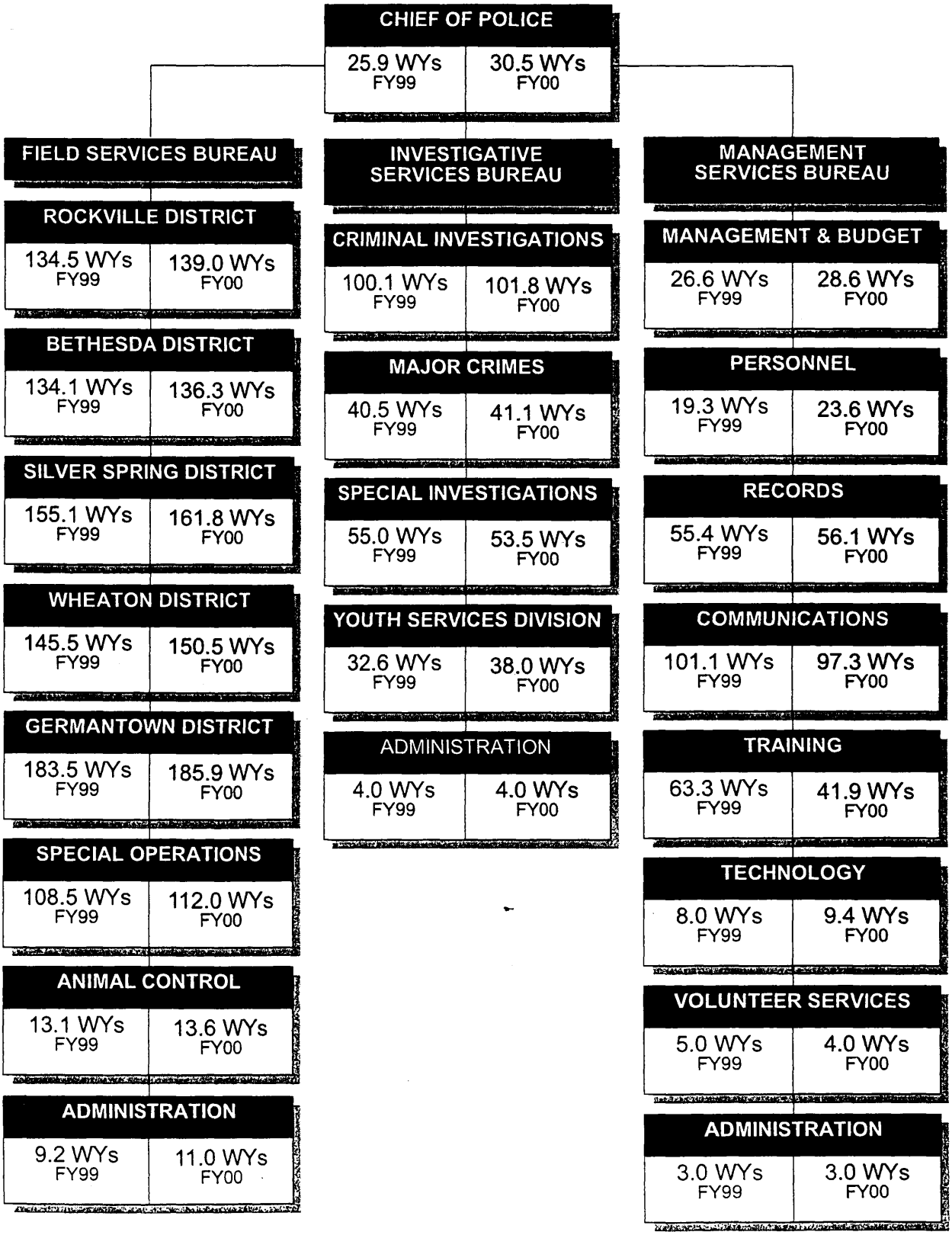
Field Services Bureau: With 910.1 workyears approved in FY 2000, Field Services is by far the largest of the three bureaus. Patrol operations at the five District Stations account for 773.5 workyears, or 85%, of the Field Services staff. Another 112 workyears are assigned to the Special Operations Division, which includes the Canine Section, Tactical Section (SWAT), Alcohol Initiative Unit, School Safety Section (crossing guards), and the Community Services Section. The Field Services Bureau also includes the Division of Animal Control (13.6 WY) and an Administration section (11 WY).

Investigative Services Bureau: The Investigative Services Bureau investigates reported crimes. This fiscal year, the Bureau consists of 238.4 workyears in four major sections: Major Crimes, Special Investigations, Youth Services Investigations, Criminal Investigations and Administration. Forty-three percent of the workyears are assigned to the Criminal Investigations section. The Bureau also houses a number of specialty units, e.g., Pawn Unit, Auto Theft Unit, Fraud Section, and Circuit Court Liaison.

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[1] Source: Approved FY 2000 Personnel Complement, July 1999, Office of Management and Budget.

Department of Police



Department Summary	FY99	1423.3 WYs	FY00	1442.9 WYs

Management Services Bureau: Management Services includes a range of functions to support the patrol and investigative functions of the Department. The FY 2000 budget allocates 263.9 workyears to Management Services, which consists of the following divisions:

- The Management and Budget Division includes budget preparation, supply, fleet management, abandoned vehicle control, the False Alarm Reduction Unit, and planning and policy management.
- The Personnel Division is responsible for recruitment, examination and investigation of police-specific job classes.
- The Communication Division operates the Emergency Communication Center, which receives 911 calls and dispatches patrol officers.
- The Records/Technology Division manages the Department's records related to police reports, criminal history information, and photographs. It also houses the Fugitive Unit and Warrant Control Section.
- The Training Section is responsible for developing and implementing training for all members of the Department, including entry level training and in-service training provided to all officers.
- The Volunteer Services Division recruits, screens, and assigns volunteers, and administers the Americorps program and the Victim Witness Assistance Section.
- The Administration Division provides management oversight to the bureau, serves an advisory function to the Chief, and develops strategic plans.

C. Statistical Data on Sworn MCPD Officers

The tables on ©6-8 present summary data on the complement of sworn Montgomery County Police Department officers with respect to:

- Bureau,
- Rank,
- Gender,
- Race/ethnicity,
- Age, and
- Years of service. [2]

As of February 1999, the Department employed 1,308 individuals. Of the total, 985 (75%) were sworn police officers, 37 (3%) were Police Officer Candidates, and 286 (22%) were civilian employees. The data presented here describe the characteristics of the 985 sworn officers.

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[2] The source of the data in Tables through is the Montgomery County Office of Human Resources (OHR). The information is based on OHR's payroll data as of February 25, 1999. While Police Department employment data fluctuates, the overall patterns represented in the tables remain relatively constant.

Three Bureaus: Table A shows the number of sworn officers in each of the three MCPD bureaus and the Office of the Chief of Police. The data indicate that of the 985 sworn officers, 76% (749) worked in the Field Services Bureau; 17% (170) worked in Investigative Services; 5% (46) worked in Management Services; and 2% (20) worked in the Office of the Chief.

Table A: Distribution of Sworn Officers by Bureau

	Number of Officers	Percent of Total
Office of the Chief	20	2.0%
Field Services Bureau	749	76.0%
Investigative Services Bureau	170	17.3%
Management Survey Bureau	46	4.7%
Total	**985**	**100.0%**

Rank: Table B presents data on the rank of sworn police officers. In addition to the Chief (the Colonel), there are nine ranks ranging from Police Officer I to Lieutenant Colonel. In February 1999, 15% of the officers were ranked Sergeant or above. The remaining 85% of the MCPD officers were ranked Police Officer I, II, or III, or a Master Police Officer. More than half of all sworn officers (55%) was ranked as Police Officer III.

Table B: Distribution of Sworn Officers by Rank

Rank	Number	Percent of Total
Lt. Colonel	1	0.1%
Major	3	0.3%
Captain	12	1.2%
Lieutenant	29	2.9%
Sergeant	104	10.6%
Master Police Officer	100	10.2%
Police Officer lll	543	55.1%
Police Officer ll	80	8.1%
Police Officer l	113	11.5%
Total	**985**	**100.0%**

Gender: OHR reports that in February 1999, 806 (82%) of the sworn MCPD officers were male and 179 (18%) were female. Table C shows the distribution of males and females by rank. All of the officers ranked Lt. Colonel, Major and Captain were male. Of the remaining ranks, females represented between 7% and 22% of the officers in each rank. The data indicates that the rank with the highest proportion of females was Police Officer III.

Table C: Distribution of Police Officers by Gender and Rank

	Male		Female		
Rank	**Number**	**Percent**	**Number**	**Percent**	**Total Officers**
Lt. Colonel	1	100%	0	0%	1
Major	3	100%	0	0%	3
Captain	12	100%	0	0%	12
Lieutenant	23	79%	6	21%	29
Sergeant	97	93%	7	7%	104
Master Police Officer	86	86%	14	14%	100
Police Officer lll	424	78%	119	22%	543
Police Officer ll	66	83%	14	18%	80
Police Officer l	94	83%	19	17%	113
Total	**806**		**179**		**985**

Race/Ethnicity: Table D identifies the race/ethnicity of the 985 sworn officers. The "Total Officers" row of the table shows the number and percent of total sworn officers in each race/ethnicity category. The data indicate that 81% of the sworn officers were white, 15% were African Americans, 2% were Hispanic, and 2% were Asian.

The table also shows race/ethnicity by officer rank. As of February 1999, all of the officers ranked Captain or above were white. African American, Hispanic, Asian and Native American officers appeared in the ranks of Police Officer I through Lieutenant. For example, there were 113 officers ranked PO I, of which 87% were white, 6% were African-American, 4% were Hispanic, 2% were Asian, and 1% were Native American. African Americans also represent:

- 13% of the Police Officer IIs;
- 19% of the Police Officer IIIs;
- 13% of the Master Police Officers;
- 11% of the Sergeants; and
- 7% of the Lieutenants.

Table D: Distribution of Officers by Race/Ethnicity and Rank

	White		African-American		Hispanic		Asian		Native American		Total
	#	%	#	%	#	%	#	%	#	%	#
Total Officers	**793**	**81%**	**148**	**15%**	**23**	**2%**	**15**	**2%**	**6**	**1%**	**985**
Lt. Colonial	1	100%	0	0%	0	0%	0	0%	0	0%	1
Major	3	100%	0	0%	0	0%	0	0%	0	0%	3
Captain	12	100%	0	0%	0	0%	0	0%	0	0%	12
Lieutenant	27	93%	2	7%	0	0%	0	0%	0	0%	29
Sergeant	91	88%	11	11%	0	0%	1	1%	1	1%	104
Master PO	85	85%	13	13%	2	2%	0	0%	0	0%	100
PO III	413	76%	105	19%	13	2%	9	2%	3	1%	543
PO II	63	79%	10	13%	3	4%	3	4%	1	1%	80
PO I	98	87%	7	6%	5	4%	2	2%	1	1%	113

Age and Years of Service: As expected, the average age and average years of service in MCPD increases with rank. For example, the average age for Police Officer I was 27 years old with 1.8 years of service. In contrast, the average age for Captain was 47, with 24.6 years of services. The largest cohort of sworn officers, the Police Officer IIIs, had an average age of 37 with an average of 12.5 years of service. Table E lists the average age and years of service for each of the nine officer ranks.

Table E: Average Age and Years of Service by Rank

	Number of Officers	Average Age	Average Years of Service
Lt. Colonel	1	45	24
Major	3	46	24.1
Captain	12	47	24.6
Lieutenant	29	45	22.2
Sergeant	104	42	18.3
Master Police Officer	100	41	17.2
Police Officer lll	543	37	12.5
Police Officer ll	80	30	4
Police Officer l	113	27	1.8
Total	**985**		

D. Recruitment Activities

The Recruitment Section of the Montgomery County Police Department's Personnel Division uses various activities to recruit qualified police officer candidates. According to the Recruitment Activity Reports and the MCPD Annual Report, the Department primarily recruits potential employees via:

- Job fairs, career/community days, and other special events;
- Radio, TV, and print advertisements and announcements; and
- Internet sites that advertise public safety positions.

Job Fairs and Career/Community Days: During 1998, MCPD recruitment officers participated in approximately 75 employment related job/career fairs, community presentations and other activities. Representatives of MCPD attend many job fairs at colleges and university in the Baltimore–Washington metropolitan area, as well as other locations along the East Coast. They conduct presentations to local high school career classes and University of Maryland criminal justice classes. Recruiters also attend local community events to increase awareness of the MCPD careers, such as the Bethesda Family Day at the Strathmore Center and the Latino Community Unity Festival.

Radio, TV, and Print Advertisements: MCPD runs recruitment videos on local television stations and advertises positions on local radio stations and newspapers. For example, in 1998 and 1999, the Department advertised on the Cable TV News Channel 21 Community Calendar, WPGC Radio, and in the Washington Post, Montgomery Gazette, and the University of Maryland Diamondback newspapers. The Department regularly advertises in the University Reporter Newspaper, which is distributed to colleges and universities in the metro area.

MCPD also recruits individuals through advertisements in public safety journals and newspapers distributed outside the Baltimore-Washington region, including the United States Law Enforcement Services Career Digest, the American Police Beat newspaper, and the New Jersey "COPS" Law Enforcement Journal.

Internet Recruitment: The County Government's web site includes information about positions available in the Police Department. The Police Department also posts positions on other public safety and employment related web sites.

Targeted Recruitment: According to the Department of Police Field Operations Manual, "Through the Department's recruitment program, the Department is committed to a goal of having a culturally diverse work force that is reflective of the community served."

The Recruitment Activity Reports list activities that target minority groups. For example, in 1998 and 1999 the Police Department attended job fairs sponsored by the National Association for Equal Opportunity in Higher Education, the Republican NAACP Committee, and El Pregonaro. The Police Department also participated in Latino festivals, an Ethnic Heritage Festival, the University of Maryland Multicultural Fair, and the Chinese American National Convention and Job Fair.

Some print advertisements also target minorities. For example, the Police Department advertised in Black Equal Opportunity Employment Journal, the El Pregonera Newspaper, and the National Minority Update.

E. Training Activities

The Training Division is located within the Police Department's Management Services Bureau. The Division plans and conducts training for all sworn and non-sworn MCPD personnel and maintains training records. The Training Division also provides training for other law enforcement personnel in the County.

The Division's training responsibilities include:

- Initial training of all new police officer candidates in MCPD and other law enforcement agencies;
- Annual in-service training for sworn officers;
- In-service training for civilian or non-sworn personnel; and
- Elective training courses for sworn and non-sworn personnel.

Initial Training: All new MCPD police officer candidates must complete the Entrance Level Training program. The 26-week course provides basic law enforcement knowledge and skill development. Recruits must pass numerous examinations and assignments to graduate from the program. According to the Police Department's annual report, the Entrance Level Training program surpasses the minimum training mandates of the Maryland Police Training Commission.

Broad topics covered during Entrance Level Training include:

- Ethics,
- Problem solving,
- Use of firearms,
- Emergency driving,
- Traffic laws,
- Defense tactics, and
- Use of force guidelines.

According to the Program of Instruction, the majority of the course hours are spent on patrol operations and law enforcement skills, in particular officer safety and survival/patrol procedures; physical training/defensive tactics, firearm proficiency, and field report writing.

Candidates who successfully complete the Entry Level Training Program become probationary officers and participate in the 14 week Field Training and Evaluation Program (FTEP). This program helps probationary officers apply classroom principles to actual field situations by placing them with a highly trained veteran officer, or field training officer (FTO), for supervised fieldwork. Probationary officers are evaluated daily by their FTO and meet weekly with the training sergeant, corporal, and FTO to assess progress and identify problems.

In-Service Training: The Maryland Police Training Commission requires that every sworn officer receive at least 18 hours of in-service training annually. In-service training supplements officers' knowledge, skills and abilities in general police responsibilities and specialty areas. According to MCPD, during 1998, sworn officers received in-service instruction in a number of topics, such as firearm use, cultural diversity, response to nuclear, biological, and chemical weapon threats, and safety and survival tactical scenarios. Sworn officers assigned to a new specialty area may receive training through the On the Job Training Program and new supervisors receive Supervisory and Management Training.

Civilian and Elective Training: The Police Training Academy also provides specialized training and in-service instruction for non-sworn or civilian personnel. In 1998, for example, employees received training in cultural diversity and how to handle critical incidents. The Academy also publishes a catalog of elective courses offered at the academy for any employees that want to increase their knowledge and skills.

Other Training Issues: Recognizing the increasing diversity of the County and the potential for misunderstandings and conflict, the Montgomery County Police Department provides training in cultural awareness and public interactions. Entrance Level Training for new recruits includes instruction in cultural diversity and dealing with people/conflict management, as well as use of force and police ethics.

The Training Division recently developed a new mandatory in-service course for sworn officers on contemporary issues in policing. Some of the issues discussed include "racial profiling", police integrity, and public confidence. In addition, the Department is considering establishing a Citizen Advisory Committee for Training Curriculum to increase community involvement in the Department's training program.

Appendix C: Selected Chronology of Events Related to Police-Community Relations in Montgomery County: January 1996 – June 1999

A series of events preceded the County Council's decision last summer to request the Office of Legislative Oversight (OLO) to examine the Montgomery County Police Department's complaint handling system. Based on a review of the Council's records, the following list summarizes the major requests, meetings, decisions, and reports from January 1996 through June 1999 that led up to and followed the Council's assignment to OLO in August 1998.

Jan.–Feb. 1996
The County Council President requests information from the Montgomery County Chief of Police about specific complaints sent to Councilmembers from citizens concerning dissatisfaction with police officer conduct. The Chief of Police responds in writing about the specific instances. The Chief assures the Council that all charges are being fully investigated and that appropriate disciplinary action would be taken.

March 1996
The Montgomery County Chapter of the National Association for the Advancement of Colored People (NAACP) requests a meeting with the County Executive and Chair of the Council's Public Safety Committee to discuss police conduct issues.

March 1996
The Council's Public Safety Committee requests that the Police Department review its testing and recruitment procedures to determine if they adversely affect minorities.

Summer-Fall 1996
The County Executive, the Chief of Police and representatives of the NAACP hold meetings about incidents of alleged police misconduct. The Council President is invited and attends.

Fall 1996
Chief Mehrling announces recruitment of community members to serve on the Montgomery County Task Force for Police-Community Relations.

November 21, 1996
Chief Mehrling sends a letter to U.S. Attorney requesting that the Department of Justice conduct an independent assessment of the Montgomery County Police Department's strengths and weaknesses with respect to ensuring that officers and citizens are treated with the utmost respect and consideration. The Chief pledges the County's full cooperation and assistance if such a review is undertaken.

December 12, 1996
The U.S. Department of Justice (DOJ) informs Montgomery County that DOJ's Civil Rights Division is initiating an administrative investigation of complaints alleging discrimination on the basis of race by Montgomery County police officers. DOJ's letter references complaints from the Montgomery County Chapter of the NAACP, and acknowledges receiving a copy of the Chief's November 21, 1996 letter to the Attorney General.

January 3, 1997
The Chief Administrative Officer enters into a contract with Mr. Greg Wims to provide police-community relations consultant services. The purpose of the contract was "to address concerns raised regarding police relations with the minority communities and to determine what can be done to heighten the Department of Police's effectiveness in positive relations with the minority communities in Montgomery County." Mr. Wims' working title is Police-Community Relations Liaison Officer.

January 28, 1997
Chief Mehrling appoints 12 community members to the Department's Task Force on Police-Community Relations. The Chief appoints Mr. John Q. Porter as Chair of the Task Force. The Chief asks the Task Force to understand and examine police operations and how they affect members of the minority communities in Montgomery County.

August 4, 1997
Mr. Wims issues his six-month (interim) report to the Chief of Police.

October 16, 1997
The Task Force on Police-Community Relations issues an interim report.

November 12, 1997
The Montgomery County Chapter of the NAACP submits a draft proposal to the County Council for a Community Police Review Commission. The proposed Commission would be authorized to review all complaints and subsequent investigations related to police conduct, to collect and review summary data of complaints received, and to report any patterns of questionable behavior which merit further examination.

November 20, 1997
The Council's Public Safety Committee receives a briefing from the Chief Administrative Officer and Mr. Wims on Mr. Wims' interim report.

December 31, 1997
At the request of the Council President, the Council's Senior Legislative Attorney formally requests advice from the County Attorney on whether the NAACP's proposed Community Police Review Commission would comply with the Maryland's Law Enforcement Officer's Bill of Rights, whether the Council has authority under State law to establish such a commission, and whether establishing or operating such a commission would be subject to the collective bargaining process.

February 5, 1998
Mr. John Q. Porter, Chair of the Task Force on Police-Community Relations, and other task force members brief the Public Safety Committee on their interim report.

March 10, 1998
Mr. Wims issues his final report to the Chief Administrative Officer. (Appendix D contains a summary of Mr. Wims' final report recommendations.)

March 10, 1998
The County Council holds a public hearing on Police-Community relations. The Council's stated intent is: to afford community members an opportunity to tell the Council directly about their experiences and concerns about the Montgomery County police; and to afford the Police Department an opportunity to share its perspective, results of its own internal investigations, and any changes in procedure and or practice the Department is implementing to address these concerns.

March 16, 1998
Council President Leggett presents his proposal for a Community Policing Ombudsman to the County Executive. Mr. Leggett recommends appropriating FY 99 funds for the Ombudsman, who would serve as a facilitator, mediator, and troubleshooter for citizens in their interactions with the Police Department.

April 2, 1998
The Montgomery County Chapter of the American Civil Liberties Union (ACLU) submits a letter to the Council President. The letter asks the Council to consider an enclosed report prepared by Piper and Marbury L.L.P. in 1995 on the D.C.'s Civilian Complaint Review Board.

April 9, 1998
The County Executive sends a memorandum to the Council President that states the Executive's support for the creation of a Community Policing Ombudsman to facilitate citizen interaction with the established complaint handling procedures of the Police Department. The memorandum also outlines a number of additional strategies, including plans to: move the Office of Internal Affairs to a non-police facility, create a Community Task Force to deal with community concerns, and continue to develop additional sensitivity training.

April 9, 1998
Community members Mr. James Robinson, Mr. Mack Davis, Mr. Owen Nichols, and Mr. Roscoe Nix submit a letter to the Council that recommends the Council create a Police Community Relations Oversight Committee (PCROC). The letter recommends that the Council create PCROC for the purpose of monitoring the citizen complaint process, the number, types, and sources of complaints of police abuse, and reporting in terms of timeliness and ultimate disposition of complaints.

May 1998
The Public Safety Committee holds several worksessions to discuss the various proposals for civilian review and the creation of a police-community relations facilitator position in the Executive Branch. The Public Safety Committee also considers an expansion of OLO's work program to design a system for tracking, reporting and monitoring the performance of the Police Department's Office of Internal Affairs.

May 1998
Acting on the recommendation of the Public Safety Committee, the Council approves the Police-Community Relations Facilitator position in the FY 99 budget.

August 4, 1998
The Council adopts Resolution 13-1388 to approve OLO's FY 99 Work Program. The Work Program includes a project for OLO to examine how the Police Department responds to complaints, and to conduct surveys about expectations and perceptions of citizen/police interactions.

August 4, 1998
The Council adopts Resolution 13-1389 to establish a Resource Committee to assist OLO in its study. (Appendix N contains a copy of this Resolution.)

August 12, 1998
The Task Force on Police-Community Relations issues its final report. (Appendix D contains a summary of the recommendations in Task Force's final report.)

September 2, 1998
The County Executive sends a letter to the Attorney General asking for information about how long it will take for the Department of Justice (DOJ) to complete its investigation and when a full report might be released. The letter indicates that the Executive sees the DOJ report as a vital component in determining what further steps, if any, are necessary to ensure that all Montgomery Countians are treated fairly and with respect. The Executive explains that he has indicated to the Task Force on Police-Community Relations and to the community that he will not make any decisions until such time that he has received the full report from DOJ.

September 24, 1998
The County Government advertises to fill the position of Police-Community Relations Facilitator. The application deadline is set for October 9, 1998.

October 28, 1998
The Department of Justice sends a letter to the County Executive on the status of DOJ's investigation into various allegations of racial discrimination made by the Montgomery County Chapter of the NAACP against the County Police Department. DOJ indicates that the investigation is ongoing and that it is difficult to provide an exact date for completion.

October 27, 1998
The Council appoints members to the Office of Legislative Oversight Resource Committee.

October 29, 1998
Mr. John Q. Porter, Chair of the Task Force on Police-Community Relations, briefs the Public Safety Committee on the Task Force's final report.

December 20, 1998
The County Attorney transmits a memorandum to the Council's Senior Legislative Attorney that responds to the Council's earlier request for legal advice on the NAACP's proposal to establish a Community Police Review Commission. The County Attorney concludes that the structure proposed by the NAACP could not be lawfully established under existing laws. The County Attorney's memo points out that existing laws do not preclude all forms of citizen review, and he identifies the models of Citizen Review Boards already established in Prince George's County and Baltimore City.

February 4, 1999
The Office of Legislative Oversight presents a project status report to the Public Safety Committee.

February 22, 1999
Ronald Clarkson begins works as the County's Police Community Liaison Facilitator.

March 31, 1999
The County Executive sends a letter to the Attorney General calling on the Department of Justice to complete its investigation into allegations of racial discrimination made by the Montgomery County Chapter of the NAACP against the Montgomery County Police Department.

May 6, 1999
The Office of Legislative Oversight presents another project status report to the Public Safety Committee.

June 1999
Charles A. Moose, Phd., is appointed by the County Executive and confirmed by the County Council as the new Montgomery County Chief of Police. Chief Moose was sworn in as the Chief of the MCPD on August 2, 1999.

Appendix D: Recommendations Contained in Two Reports Related to Police-Community Relations

This Appendix summarizes the recommendations contained in the final written reports issued in 1998 by the Police-Community Relations Liaison and the Task Force on Community-Police Relations.

The Police-Community Liaison's Final Report Recommendations

Mr. Greg Wims, the Police-Community Relations Liaison, issued his final report on March 10, 1998. Mr. Wims' report contains the following recommendations:

1. The Chief should implement immediate action to eliminate the use of profanity by officers toward citizens. Specifically, excessive or unwarranted use of profanity should be a cause for disciplinary action.
2. The Chief should increase the annual in-service training requirements related to customer service and sensitivity training.
3. The Police Department should continue to participate in activities that "increase community/police relations." Examples of such activities include holding regular community forums and supporting ongoing community service and special programs involving police and public contact, e.g., the Police Athletic League (PAL), DARE, and the Junior Ambassadors Program.
4. The Department should increase its efforts to recruit more minority officers. Related to this effort, the County should increase the starting salaries for police officers, and modify the current two-year college requirement.
5. The County should provide the Office of Internal Affairs with an upgraded computer system to provide for adequate tracking and reporting of complaints and discipline.
6. The County should assign at least three more permanent investigators to the Office of Internal Affairs, including members of minority groups.
7. The County should institute a Spanish language program for all corporals and dispatchers who receive emergency calls.
8. The Office of Internal Affairs should modify its complaint form to include race.
9. The Task Force on Community Relations should investigate specific allegations of mistreatment and discrimination by supervisors toward civilian employees of the department.

The Montgomery County Task Force on Community-Police Relations

The Montgomery County Task Force for Community-Police Relations issued its final report on August 12, 1998. The Task Force report contained the following specific recommendations.

1. **Recruitment**
   - The Department should streamline the recruitment process.
   - The Department should reexamine hiring and training policies that are barriers to lateral transfers.
   - The Department should increase efforts for minority recruitment; and hire an outside minority-consulting firm to assist in these efforts.

2. **Training**
   - The Department should increase the number of hours required for in-service diversity training; the training should be conducted by an outside non-police oriented organization.
   - The Department should hold monthly meetings between rank-and-file officers and bureau chiefs.
   - The Department should consider reducing the size of future recruit classes until there are a sufficient number of officers PO III or above to serve as FTOs.
   - The Department's training should emphasize the ethical components of policing.

3. **Office of Internal Affairs (OIA)**
   - The OIA should be more proactive in looking at indicators that would identify officers who might be headed for trouble or misusing their authority.
   - Police complaint forms should be available in County libraries, service centers, and district substations.
   - The County should provide OIA with additional investigators.

4. **Citizen Concerns**
   - The Department should investigate the Germantown District to insure there is proper training, supervision, and a priority for community policing.
   - Supervisors should monitor all incidents of alleged police abuse occurring on their shifts.
   - There should be a mechanism for feedback and follow-up for complaints handled at the District station level.

5. **Community Policing**
   - The Department should intensify efforts to fully implement community policing.
   - Officers should participate in community activities as part of their work schedule.
   - All police services to the community should be more accessible and friendlier.
   - Formal police/student liaison committees should be established in each district.

6. **Community Oversight**
   - The County should establish a Civilian Oversight Commission that reports to the County Executive.
   - The Commission's functions should include policy review, use of complaints as an early warning system, and quality control.
   - The Commission should consist of five members, who are paid a stipend similar to that paid to the Planning Board.
   - A full-time Executive Director, two investigators, and clerical staff should staff the Commission.

7. **Other issues**
   - The Department should replace the current aluminum flashlight with a comparable, lightweight, rechargeable polymer flashlight.
   - The Department should audio tape all radio channels and telephone lines.
   - The Department's policies and regulations should address the issue of multiple officers showing up to handle minor calls or traffic stops; and supervisors should exercise control to stop this practice.
   - The Department should issue written regulations against routine wearing of leather gloves by patrol officers except with long-sleeved shirts or jackets in inclement weather.
   - The Department should expand the Department's staff psychologist's responsibilities to include offering stress and anger management sessions, and offering counseling to troubled officers identified through data analysis by OIA or supervisors.

Appendix E: Annotated Code of Maryland Article 27, Section 727-734D – Law Enforcement Officers' Bill of Rights

Article 27
§ 727.
(a) As used in this subtitle, the following words have the meanings indicated.

(b) "Law enforcement officer" means any person who, in an official capacity, is authorized by law to make arrests and who is a member of one of the following law enforcement agencies:

(1) The Department of State Police;

(2) The Baltimore City Police Department;

(3) The Baltimore City School Police Force;

(4) The police department, bureau, or force of any county;

(5) The police department, bureau, or force of any incorporated city or town;

(6) The office of the sheriff of any county or Baltimore City;

(7) The police department, bureau, or force of any bicounty agency, or the University of Maryland;

(8) The police forces of the Department of Transportation;

(9) The police officers of the Department of Natural Resources;

(10) The Investigative Services Unit of the Comptroller's Office;

(11) Housing Authority of Baltimore City Police Force;

(12) The Crofton Police Department;

(13) The police officers of the Department of Health and Mental Hygiene;

(14) The police officers of the Department of General Services;

(15) The police officers of the Department of Labor, Licensing, and Regulation; or

(16) The State Fire Marshal or a full-time investigative and inspection assistant of the Office of the State Fire Marshal.

(c) "Law enforcement officer" does not include an officer serving in a probationary status except when allegations of brutality in the execution of his or her duties are made involving an officer who is in a probationary status. The provisions of this subtitle do not apply to persons serving at the pleasure of the Police Commissioner of Baltimore City or the appointing authority of a charter county or to a police chief of any incorporated city or town. The term "probationary status" includes only an officer who is in that status upon initial entry into the Department.

(d) "Hearing board" means:

(1) A board which is authorized by the chief to hold a hearing on a complaint against a law enforcement officer and which consists of not less than three members, except as provided in paragraphs (2) and (3) of this subsection, all to be appointed by the chief and selected from law enforcement officers within that agency, or law enforcement officers of another agency with the approval of the chief of the other agency, and who have had no part in the investigation or interrogation of the law enforcement officer. At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint has been filed.

(2) (i) The provisions of this paragraph may not be the subject of binding arbitration.

(ii) An agency or an agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the exclusive collective bargaining representative an alternate method of forming a hearing board.

(iii) A law enforcement officer may elect the alternate method of forming a hearing board instead of the method described in paragraph (1) of this subsection if the law enforcement officer works within an agency described in subparagraph (ii) of this paragraph and the law enforcement officer is included in the collective bargaining unit.

(iv) An agency described in subparagraph (ii) of this paragraph shall notify the law enforcement officer in writing before the formation of the hearing board that the law enforcement officer may elect an alternate method of forming a hearing board if one has been negotiated under this paragraph.

(v) If the law enforcement officer elects an alternate method of forming a hearing board under this paragraph, the alternate method shall be used to form the hearing board.

(vi) An agency or an exclusive collective bargaining representative may not require a law enforcement officer to elect an alternate method of forming a hearing board under this paragraph.

(vii) If the law enforcement officer has been offered summary punishment, an alternate method of forming a hearing board may not be used.

(3) If a law enforcement officer is offered summary punishment imposed pursuant to § 734A and refuses, the chief may convene a one-member or more hearing board and the hearing board shall have only the authority to recommend the sanctions as provided in this subtitle for summary punishment. If a single member hearing board is convened, that member need not be of the same rank. However, all other provisions of this subtitle shall apply.

(e) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation, at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or adducing testimony or receiving other evidence.

(f) "Summary punishment" is punishment imposed by the highest ranking officer of a unit or member acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days suspension without pay or a fine of $150.

(g) "Chief" means the superintendent, commissioner, chief of police, or sheriff of a law enforcement agency, or the officer designated by the official.

(h) "Interrogating officer", "investigating officer", and all other forms of those terms mean:

(1) Any sworn law enforcement officer; or

(2) If requested by the Governor, the Attorney General of Maryland or the Attorney General's designee.

§ 728.

(a) A law enforcement officer has the same rights to engage in political activity as areafforded to any State employee. This right to engage in political activity shall not apply to any law enforcement officer when he is on duty or when he is acting in his official capacity.

(b) Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

(2) The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, unless otherwise waived by the law enforcement officer, or at any other reasonable and appropriate place.

(3) 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 consistent with the provisions of subsection (b)(6) of this section.

(4) A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member of the aggrieved person's immediate family, or by any person with firsthand knowledge obtained as a result of the presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality.

(5) (i) The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation.

(ii) Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness and all charges and specifications against the officer not less than 10 days prior to any hearing.

(iii) In addition, the law enforcement officer under investigation shall be furnished with a copy of the investigatory file and any exculpatory information, but excluding:

1. The identity of confidential sources;

2. Any nonexculpatory information; and

3. Recommendations as to charges, disposition, or punishment.

(iv) The law enforcement officer under investigation shall be furnished with a copy of the investigatory file and the exculpatory information described under subparagraph (iii) of this paragraph not less than 10 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.

(6) Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

(7) (i) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

(ii) This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath, or urine tests for controlled dangerous substances, polygraph examination, or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol test, blood, breath, or urine test for controlled dangerous substances, polygraph examination, or interrogation, as may be required by the law enforcement agency under this subparagraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the administrative hearing.

(8) A complete record, either written, taped, or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. Upon completion of the investigation, and upon request of the law enforcement officer 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.

(9) If the law enforcement officer under interrogation is 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.

(10) (i) 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.

(ii) Counsel or any other responsible representative of a law enforcement officer under interrogation as provided under subparagraph (i) of this paragraph, may:

1. Request a recess at any point during the interrogation for consultation with the officer;

2. Enter an objection to any question posed during the interrogation; and

3. State on the record the reason for an objection outside the presence of the officer.

(iii) The interrogation shall be suspended for a period of time not to exceed ten days until representation is obtained. However, the chief may, for good cause shown, within that ten-day period, extend that period of time.

(11) A statute may not abridge and a law enforcement agency may not adopt any regulation which prohibits the right of a law enforcement officer to bring suit arising out of his duties as a law enforcement officer.

(12) (i) A law enforcement agency may not insert any adverse material into any file of the officer, except the file of the internal investigation or the intelligence division, 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.

(ii) A law enforcement officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:

1. The law enforcement agency investigating the complaint has exonerated the officer of all charges in the complaint, or determined that the charges were unsustained or unfounded, or an administrative hearing board acquits, dismisses, or makes a finding of not guilty; and

2. 3 years have passed since the findings by the law enforcement agency or administrative hearing board.

(13) (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in this State shall function as the law enforcement officer of the same rank on the hearing board.

(ii) If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of another law enforcement agency as the law enforcement officer of the same rank on the hearing board.

(iii) If the chief of a county or municipal law enforcement agency is under investigation, the official who may appoint the chief's successor shall appoint the chief of another law enforcement agency as the officer of the same rank on the hearing board.

(iv) If the chief of a State law enforcement agency or the chief of a county or municipal law enforcement agency is under investigation, the official who may appoint the chief's successor, or that official's designee, shall function as chief for the purposes of this subtitle.

(14) The law enforcement officer's representative need not be present during the actual administration of a polygraph examination by a certified polygraph 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 examination, and if a copy of the final report of the examination by the certified polygraph 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.

(c) This subtitle does not limit the authority of the chief 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 that action is not punitive in nature and where the chief determines that action to be in the best interests of the internal management of the law enforcement agency.

§ 729.

A law enforcement officer may not be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his family or household) unless that information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, or unless such disclosure is required by State or federal law.

§ 729A.

A law enforcement agency may not prohibit secondary employment but may promulgate reasonable regulations as to a law enforcement officer's secondary employment.

§ 730.

(a) If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, except as provided under subsection (c) of this section and except in the case of summary punishment or emergency suspension as allowed by § 734A of this subtitle and before taking that action, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing.

(b) (1) Administrative charges may not be brought against a law enforcement officer unless filed within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.

(2) The 1-year limitation of paragraph (1) of this subsection does not apply to charges related to criminal activity or excessive force.

(c) A law enforcement officer is not entitled to a hearing under this section if the law enforcement officer has been charged and convicted of a felony.

(d) The hearing shall be conducted by a hearing board. Both the law enforcement agency and the law enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel.

(e) 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 conducting the hearing 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 made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(f) Every party has the right of cross-examination of the witnesses who testify, and may submit rebuttal evidence.

(g) The hearing board conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or 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 utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(h) With respect to the subject of any hearing conducted pursuant to this subtitle, the chief or the officer designated by the chief shall administer oaths or affirmations and examine any individual under oath.

(i) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the law enforcement agency.

(j) (1) The chief, or hearing board, as the case may be, shall in connection with any disciplinary hearing have the power to administer oaths and to issue summonses to compel the attendance and testimony of witnesses, and the production of books, papers,

records, and documents as may be relevant or necessary. These summonses may be served in accordance with the Maryland Rules pertaining to service of process issued by a court, without cost. Any party may request the chief or hearing board to issue a summons or order under the provisions of this subtitle.

(2) In case of disobedience or refusal to obey any of these summonses, the chief, or hearing board, may apply to the circuit court of any county where the summoned party resides or conducts business, for an order requiring the attendance and testimony of the witness and the production of books, papers, records, and documents, without cost. Upon a finding that the attendance and testimony of the witness, or the production of the books, papers, records, and documents sought is relevant or necessary, the court may issue an order requiring the attendance, testimony, or production of books, papers, records and documents without cost, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

§ 731.

(a) Any decision, 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 upon 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, and consider the law enforcement officer's past job performance and other relevant information as factors before making its recommendations to the chief. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record and to the chief. The person who may take any disciplinary action following any hearing in which there is a finding of guilt shall consider the law enforcement officer's past job performance as a factor before he imposes any penalty.

(b) After the disciplinary hearing and a finding of guilt, the hearing board may recommend punishment as it deems appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment, or other similar action which would be considered a punitive measure.

(c) The written recommendations as to punishment are not binding upon the chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall review the findings, conclusions, and recommendations of the hearing board and then the chief shall issue a final order. The chief's final order and decision is binding and may be appealed in accordance with this subtitle. Before the chief may increase the recommended penalty of the hearing board, the chief personally shall:

(1) Review the entire record of the hearing board proceedings;

(2) Meet with the law enforcement officer and permit the law enforcement officer to be heard on the record;

(3) Disclose and provide to the officer in writing at least 10 days prior to the meeting any oral or written communication not included in the hearing board record on which the decision to consider increasing the penalty is based, in whole or in part; and

(4) State on the record the substantial evidence relied on to support the increase of the recommended penalty.

(d) (1) Notwithstanding any other provisions of this subtitle, the decision of the hearing board, both as to findings of fact and punishment, if any, is final:

(i) If a chief is an eyewitness to the incident under investigation; or

(ii) If an agency or its superior governmental authority has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.

(2) The provisions of paragraph (1)(ii) of this subsection may not be the subject of binding arbitration.

(3) The decision then may be appealed in accordance with § 732 of this subtitle.

§ 732.

Appeal from decisions rendered in accordance with § 731 shall be taken to the circuit court for the county pursuant to Maryland Rule 7-202. Any party aggrieved by a decision of acourt under this subtitle may appeal to the Court of Special Appeals.

§ 733.

A law enforcement officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to his employment or be threatened with any such treatment, by reason of his exercise of or demand for the rights granted in this subtitle, or by reason of the lawful exercise of his constitutional rights.

§ 734.

Any law enforcement officer who is denied any right afforded by this subtitle may apply at any time prior to the commencement of the hearing before the hearing board, either individually or through his certified or recognized employee organization, to the circuit court of the county where he is regularly employed for any order directing the law enforcement agency to show cause why the right should not be afforded.
§ 734A.

The provisions of this subtitle are not intended to prohibit summary punishment or emergency suspension by higher ranking law enforcement officers as may be designated by the head of a law enforcement agency.

(1) Summary punishment may be imposed for minor violations of departmental rules and regulations when: (i) the facts which constitute the minor violation are not in dispute; (ii) the officer waives the hearing provided by this subtitle; and (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached.

(2) (i) Emergency suspension with pay may be imposed by the chief when it appears that the action is in the best interest of the public and the law enforcement agency.

(ii) If the officer is suspended with pay, the chief may suspend the police powers of the officer and reassign the officer to restricted duties pending a determination by a court of competent jurisdiction with respect to any criminal violation or final determination by an administrative hearing board as to any departmental violation.

(iii) Any person so suspended shall be entitled to a prompt hearing.

(3) (i) Emergency suspension of police powers without pay may be imposed by the chief if a law enforcement officer has been charged with the commission of a felony.

(ii) Any person so suspended shall be entitled to a prompt hearing.

§ 734B.

Except for the administrative hearing process provided for in Article 41, § 4-201 concerning the certification enforcement power of the Police Training Commission, the provisions of this subtitle shall supersede any State, county or municipal law, ordinance, or regulation that conflicts with the provisions of this subtitle, and any local legislation shall be preempted by the subject and material of this subtitle.

§ 734C.

Any person who knowingly makes a false statement, report, or complaint in the course of an investigation or any proceeding conducted under the provisions of this subtitle is subject to the same penalties as provided in § 150 of this article.

§ 734D.

Any officer may waive in writing any or all rights provided in this subtitle.

Source: Statute Text-1999 Session, Maryland Legal Links, Maryland State Law Library
http://mlis.state.md.us/cgi-win/web_statutes.exe

(c) The provisions of this section shall not apply to an employee of the police department, as defined in section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of article V, title "Police Labor Relations," of this chapter.

(d) This section is automatically repealed upon certification that the county merit system employees in the units established under article VII are represented for the purpose of collective bargaining under article VII of this chapter. (1979 L.M.C., ch. 39, § 2; 1981 L.M.C., ch. 45, § 1; 1982 L.M.C., ch. 47, § 1; 1982 L.M.C., ch. 53, § 2; 1983 L.M.C., ch. 40, § 1; 1986 L.M.C., ch. 70, § 2.)

ARTICLE V. POLICE LABOR RELATIONS.*

Sec. 33-75. Declaration of policy.

It is the public policy of this county, pursuant to charter section 510, enacted as a result of citizen initiative, and purpose of this article to promote a harmonious, peaceful and cooperative relationship between the county government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom; and that any collective bargaining between the county government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that agreements reached through collective bargaining be implemented.

It is also recognized, however, that police employee organizations and the county government each possess substantial means by which they may initiate actions regarding the wages, hours and working conditions of employees. Consequently, in order to preserve an appropriate balance between labor and management in the police service, the council hereby declares that once a representative has been voluntarily selected, collective bargaining shall be utilized in place of, but not in addition to, existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this article. (1982 L.M.C., ch. 53, § 3.)

***Editor's note**—Article V, sections 33-75 through 33-85, was added by § 3 of 1982 L.M.C., ch. 53, enacted Apr. 6, 1982, effective July 16, 1982. Section 2 of 1982 L.M.C., ch. 58, changed the effective date to the date on which ch. 53 became law.

Charter reference—Collective bargaining for police, § 510.

Sec. 33-76. Definitions.

When used in this article:

Agency shop means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To bargain collectively means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this article.

Certified representative means an employee organization selected in accordance with the procedures of this chapter to represent the unit.

Employee means any police officer in the classification of master police officer I, master police officer II, police officer I, police officer II, police officer III, and police officer candidate, or equivalent nonsupervisory classifications, but not those in the classification of police sergeant or any equivalent or higher classification.

Employer means the county executive and his designees.

Employee organization means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization. Such organization shall not admit to membership any person other than law enforcement officers.

Lockout means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

Mediation means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

Strike means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights,

privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

Unit means all employees. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-77. Permanent umpire.

(a) There is hereby created the position of permanent umpire, so as to provide for the effective implementation and administration of sections 33-79 and 33-82 of this article concerning selection, certification and decertification procedures and prohibited practices. The permanent umpire shall exercise the following powers and perform the following duties and functions:

(1) Adopt regulations under method (1) of section 2A-15 of this Code, for the implementation and administration of sections 33-79 and 33-82 as are consistent with this article;

(2) Request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the permanent umpire to properly carry out his functions;

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue said certification or decertification;

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices; however, if the employer and a certified representative have negotiated a valid grievance procedure, the permanent umpire must defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this article; furthermore, the permanent umpire shall defer to state procedures in those matters which are governed by the law enforcement officers bill of rights, article 27, sections 727 et seq., Annotated Code of Maryland.

(6) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) Exercise any other powers and perform any other duties and functions as may be specified in sections 33-79 and 33-82 of this article.

(b) The permanent umpire shall be appointed by the county executive, with the confirmation of the county council, shall serve for a term of five (5) years and shall be eligible for reappointment; provided, however, that the permanent umpire shall not be reappointed if, during the period between sixty (60) days and thirty (30) days prior to the expiration of his term, the certified representative files a written objection to such reappointment with the county executive. The permanent umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation, can be classed as a representative of the interests of the employer or any employee organization.

(c) The permanent umpire shall be paid a per diem fee as set forth by contract with the county and shall be reimbursed for necessary expenses. (1982 L.M.C., ch. 53, § 3; 1984 L.M.C., ch. 24, § 39.)

Sec. 33-78. Employee rights.

(a) Employees shall have the right:

(1) To form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs; provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended under section 33-84. No collective

bargaining agreement may include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-79. Selection, certification and decertification procedures.

(a) The certification or decertification of an employee organization as the unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of the unit shall file a petition stating its name, address and its desire to be certified with the permanent umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty (30) percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the permanent umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employees, for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty (30) percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the permanent umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between July 1, 1982, and July 31, 1982. Thereafter, petitions may be filed between September 1 and September 30 of any year, but no sooner than twenty-two (22) months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement is in effect, no petition shall be entertained unless filed during September of the final year of the agreement.

(6) If, during the period of July 1 to July 31, 1982, a petition is filed by the incumbent representative of unit employees certified under the employer-employee relations article of this chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the permanent umpire, of majority representation.

(b) If the permanent umpire determines that a petition is properly supported and timely filed, the permanent umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the permanent umpire and shall be conducted by secret ballot at such time and place as the permanent umpire may direct. The permanent umpire may select and retain services of an agency of the State of Maryland, or similarly neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten (10) percent representation of the employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the permanent umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the permanent umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the challenged ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the permanent umpire in the presence of the observers.

(6) The permanent umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the permanent umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has

received the votes of a majority of the employees, the permanent umpire shall certify no representative, but if a majority of the employees do not vote for no representation, a runoff election shall be conducted. The runoff election shall contain the two (2) choices which received the largest and second largest number of votes in the original election.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the permanent umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The permanent umpire shall investigate the objections and, if substantial factual issues exist, the permanent umpire shall hold a hearing thereon. Otherwise, the permanent umpire may determine the matter without hearing. The permanent umpire may invite, either by rule or by invitation, written or oral argument to assist in determination of the merits of the objections. If the permanent umpire finds that the election was conducted in substantial conformity with this article, the permanent umpire shall confirm the certification initially issued. If the permanent umpire finds that the election was not held in substantial conformity with this article, the permanent umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the county.

(e) Voluntary recognition is prohibited under this article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6). (1982 L.M.C., ch. 53, § 3.)

Sec. 33-80. Collective bargaining.

(a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, as provided in section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;

(2) Pension and retirement benefits for active employees only;

(3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;

(4) Hours and working conditions, including the availability and use of personal patrol vehicles;

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;

(6) Matters affecting the health and safety of employees; and

(7) The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.

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

(1) To determine the overall budget and mission of the employer and any agency of county government;

(2) To maintain and improve the efficiency and effectiveness of operations;

(3) To determine the services to be rendered and the operations to be performed;

(4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;

(5) To direct or supervise employees;

(6) To hire, select and establish the standards governing promotion of employees and to classify positions;

(7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;

(8) To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;

(9) To take actions to carry out the mission of government in situations of emergency;

(10) To transfer, assign and schedule employees.

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

(d) *Time limits.* Collective bargaining shall commence no later than November 1 preceding a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded by January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) *Term of agreement.* Any provision of automatic renewal or extension of a collective bargaining agreement shall be void. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end June 30.

(f) *Effective date of agreement.* Any collective bargaining agreement shall become effective only after ratification of the agreement by the employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) *Council review.* A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer, and the employer shall make a good faith effort to have such term or condition implemented by Council action. On or before May 1, the County Council shall indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. Any agreement shall provide either for automatic reduction or elimination of conditional wage and/or benefits adjustments if the Council fails to take action necessary to implement the agreement, or if sufficient funds are not appropriated for any fiscal year in which the agreement is in effect. (1982 L.M.C., ch. 53, § 3.; 1993 L.M.C., ch. 12, § 1.)

Sec. 33-81. Impasse procedure.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral shall be required to be available during the period from January 20 to February 1. Fees, costs and expenses of the impasse neutral shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the impasse neutral. The impasse neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the impasse neutral shall choose. If only complete package proposals are required, the impasse neutral shall require the parties to submit jointly a memorandum of all items previously agreed upon.

(4) The impasse neutral may, in the impasse neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The impasse neutral may hold a hearing for this purpose at a time, date and place selected by the impasse neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the impasse neutral shall select, as a whole, the more reasonable, in the impasse neutral's judgment, of the final offers submitted by the parties. The impasse neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;

b. Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;

c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;

d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;

e. The interest and welfare of the public;

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

(6) The impasse neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the impasse neutral. However, the impasse neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the impasse neutral, integrated with the previously agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(g) above. The parties shall execute such agreement. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-82. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of any rights granted to them under the provisions of this article;

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision as provided herein and to reasonable use of county facilities for communicating with employees;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, wages, hours or conditions of employment, provided that nothing in this article shall preclude an agreement from containing a provision for an agency shop;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative pursuant to this article;

(9) Engaging in a lockout of employees.

(b) Employee organizations, and their agents, representatives and employees, are prohibited from:

(1) Interfering with, restraining or coercing the employer or employees in the exercise of any rights granted under this article;

(2) Restraining, coercing or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or egress from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring the employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed or to be performed.

(c) A charge of prohibited practice may be filed by the employer, employee organization, or any individual employee. The charge or charges shall be filed with the permanent umpire, with copies to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the permanent umpire to investigate the charge. The permanent umpire may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The permanent umpire shall have authority to maintain such independent investigation as the permanent umpire determines necessary and to develop rules and regulations therefor. If, upon investigation, the permanent umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the permanent umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the permanent umpire determines that the person charged has committed a prohibited practice, the permanent umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this article. Remedies of the permanent umpire may include, but shall not be limited to, reinstating employees with or without back pay, making employees whole for any loss relating to county employment suffered as a result of any prohibited practice, withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits. If the permanent umpire finds that the party or parties charged have not committed any prohibited practices, the permanent umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The permanent umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than six (6) months prior to the filing of the charge. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-83. Expression of views.

The expression of any views, argument or opinion, or the dissemination thereof, whether orally, in writing or otherwise, shall not constitute or be evidence of a prohibited practice under any of the provisions of this law nor be grounds for invalidating any election conducted under this law if such expression or dissemination contains no threat of reprisal or promise of benefit. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-84. Strikes and lockouts.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer, after adequate notice and a fair hearing before the permanent umpire who finds that the aforesaid violations have occurred and finds that any or all of the following actions are necessary in the public interest, may, subject to the law enforcement officer's bill of rights, article 27, section 727 et seq., Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in such conduct;

(2) Terminate or suspend employee organization's dues deduction privilege, if any;

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-85. Effect of prior enactments.

Nothing contained in this article shall be construed to repeal any laws, executive orders, legislation, rules or regulations adopted by the county and any department or agency thereof not inconsistent with the provisions of this article. (1982 L.M.C., ch. 53, § 3.)

ARTICLE VI. DISABILITY BENEFITS.*

***Editor's note**—Article VI, §§ 33-86--33-100, was added by 1985 L.M.C., ch. 49, § 3. Section 4 of the law as amended by 1986 L.M.C., ch. 29, § 4 and § 1 of 1987 L.M.C., ch. 37, reads as follows:

"*Option for members of the county retirement system.* On or before June 1, 1987, every individual who is a member of the Montgomery County Retirement System under chapter 33 before May 15, 1986, has the option to transfer from the disability retirement program under section 33-43 of chapter 33 to the disability benefits program under article VI of chapter 33. This option is not available to retired members of the Montgomery County Retirement System.

The chief administrative officer of the county must hold seminars and provide clear written information to inform all those individuals of:

(1) The provisions of the disability benefits program;
(2) The changes to the disability retirement program; and
(3) The option of changing programs that is available to them."

Sec. 33-86. Applicability.

The provisions of this article only apply to individuals who:

(1) Are members of the retirement system under this chapter on or after May 15, 1986, and submitted an application for disability benefits on or after May 15, 1986, but before July 1, 1989, or is an elected official on July 1, 1989, and submitted an application for disability benefits on or after May 16, 1986, but before December 3, 1990;

Collective Bargaining Agreement

Between

Fraternal Order of Police

Montgomery County Lodge 35. Inc.

and

Montgomery County, Maryland

For The Years

July 1, 1998 - June 30, 2001

NOTICE: At the time of printing of this document the parties to this Agreement received an interest arbitration award impacting Articles 11, Chronic Incapacity, and Article 57, Retirement, of this Agreement. Upon final approval by County Council these changes will be included in the Agreement.

COLLECTIVE BARGAINING AGREEMENT

July 1, 1998 - June 30, 2001

TABLE OF CONTENTS

ARTICLE		Page
1	RECOGNITION	1
2	ADMINISTRATIVE LEAVE	1-2
3	AGENCY SHOP AND DUES CHECKOFF	3
4	PREVENTION OF SUBSTANCE ABUSE/EMPLOYEE REHABILITATION	4
5	TECH PAY	4-5
6	CLOTHING ALLOWANCE	5-6
7	COMMUNICATIONS FACILITIES	6
8	CONTRACT GRIEVANCE PROCEDURE	6-8
9	COPIES OF THE CONTRACT & OTHER INFORMATION	8
10	COURT TIME	8
11	CHRONIC INCAPACITY	9
12	SENIORITY	9
13	DESIGNATION OF SMOKING AREAS	9
14	HOLIDAY LEAVE AND PAY	10-13
15	HOURS AND WORKING CONDITIONS	13-21
16	PARENTAL LEAVE	21-22
17	DISABILITY LEAVE AND INJURY ON THE JOB	22-23
18	ANNUAL LEAVE	24-25
19	SICK LEAVE AND SICK LEAVE DONOR PROCEDURE	25-28
20	LEAVE WITHOUT PAY	28
23	LEAVE WITHOUT PAY BENEFITS (Art. 23 § A.7)	30
21	COMPENSATORY LEAVE	29
22	PROFESSIONAL IMPROVEMENT LEAVE	29-30
23	MAINTENANCE OF STANDARDS/RETENTION OF BENEFITS AND CONDITIONS	30-31
	§ A.1 Deferred Compensation	
	§ A.2 Use of Blood Bank	
	§ A.3 Physical Examinations	
	§ A.4 Workers' Compensation	
	§ A.5 Pay Differentials	
	§ A.6 Local and Non-Local Travel	
	§ A.7 Leave Without Pay Benefits	
24	INSURANCE COVERAGE AND PREMIUMS	31-33
25	TRANSFERS	33-34
26	NON-DISCRIMINATION	34
27	SECONDARY EMPLOYMENT	34-40
28	SERVICE INCREMENTS	40-41
29	PHYSICAL FITNESS AWARDS	41-42
30	UNIFORMS AND EQUIPMENT	42-44
31	REOPENER	44
32	SAFETY COMMITTEE	44-45
33	LABOR - MANAGEMENT RELATIONS COMMITTEE	45
34	GRIEVANCE REPRESENTATION	45
35	VEHICLES	46-52
36	WAGES	52-53

ARTICLE		Page
37	SPECIAL MEDICAL EXAMINATIONS	53
38	SEVERABILITY	53
39	TUITION ASSISTANCE	53
40	DEPENDENT CARE	53
41	SHIFT DIFFERENTIAL	54
42	MANAGEMENT AND EMPLOYEE RIGHTS	54-55
43	DISCIPLINE	55-58
44	PROMOTIONS	58
45	NON-LEOBR PERSONNEL ACTIONS	58
46	PROTECTION FROM COMMUNICABLE DISEASES	58-59
47	DURATION OF CONTRACT	59
48	ACTION BY MONTGOMERY COUNTY COUNCIL	59
49	AWARDS	59
50	REDUCTION-IN-FORCE AND FURLOUGH	59-60
51	PERSONNEL FILES	61-65
52	TERMINATION	65
53	PERFORMANCE EVALUATION	65
54	DEMOTION	65
55	JOB SHARING PROGRAM	66-69
56	RESIGNATION	69
57	RETIREMENT	69-71
58	STRESS COUNSELING	71-72
59	FAMILY MEDICAL LEAVE ACT	72-75
60	CAREER DEVELOPMENT STUDY COMMITTEE	76
61	DIRECTIVES AND ADMINISTRATIVE PROCEDURES	76

b. To be fairly represented by their certified representative, if any.

2. The employer shall have the duty to extend to the certified representative the exclusive right to represent employees for the purpose of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

Article 43 *Discipline*

Section A. Law Enforcement Officers' Bill of Rights

1. Any "law enforcement officer" as defined in Section 727 of the Law Enforcement Officer's Bill of Rights ("LEOBR", Article 27, Section 727, *et seq.*, Annotated Code of Maryland) who is the subject of a sustained complaint involving proposed punishment which is not summary punishment as defined by the LEOBR § 734A, may elect the alternate method of forming a hearing board. Said alternate method is not available with regard to a hearing convened pursuant to LEOBR § 734A(2)(iii).
2. The officer shall make such election in writing using the Notice of Election of Hearing Board form (attached and made a part of this agreement as **Appendix K**). In making such election, the officer shall waive his/her right to the formation of a hearing board pursuant to LEOBR § 727(d)(1). Such Notice of Election of Hearing Board form must be: completed by the officer; approved by the FOP Lodge 35; and delivered to the chief of police or designee within seven (7) calendar days after the date upon which the officer receives the notice of a sustained complaint together with the form.

3. The alternate method of forming a hearing board shall be as follows:

   (a) The board shall consist of 3 members: two (2) law enforcement officers and a neutral chairperson. The chairperson shall be chosen from a standing panel of arbitrators maintained for such purpose by the County and FOP Lodge 35. The chairperson shall be selected to hear cases in rotation in the order their names appear. If the arbitrator slated to hear a case cannot hold the hearing within a reasonable time, the next arbitrator shall be selected.

   (b) The chief shall appoint one (1) law enforcement member, and the FOP Lodge 35 the other. These appointments shall be announced simultaneously, without undue delay. The law enforcement member appointed by FOP Lodge 35 shall be scheduled to day work for the duration of the hearing board.

   (c) No member of the hearing board shall in any way be involved in, or a witness to, any incidents which are the subject to the complaint before them.

   (d) Except as provided in subparagraph (e), FOP Lodge 35's choice of a law enforcement member shall be any member in the bargaining unit; and The chief's choice may be any law enforcement officer in the rank of sergeant or above. Therefore, it is not required that either law enforcement member be of the same rank as the accused officer.

   (e) If the chief of police decides to select a law enforcement member from another law enforcement organization, the FOP Lodge 35 shall receive sufficient notice in time to select a law enforcement member from another law enforcement organization, if it so desires. FOP Lodge 35's choice of a law enforcement member shall be of a rank comparable to the ranks within the collective bargaining unit.

4. The fee and expenses of the neutral chairperson of the board shall be borne equally by the Department of Police and FOP Lodge 35.

(49)

5. The written decision of a hearing board formed under this section shall be processed pursuant to Article 27 § 731 (c) of the Annotated Code of Maryland, in effect as of 1/26/96.

6. Any controversy concerning this Section, excluding paragraph 5 *supra*, may be submitted to the chairperson of the hearing board for his/her hearing and/or decision. Such decision of the chairperson shall be contested pursuant to LEOBR Sections 732 or 734.

Section B. Notice of Interrogation. When the department notifies a member of the bargaining unit in writing that he/she will be interrogated, the department will also give the officer a form (MCP Form 242, **Appendix L**).

Section C. Personnel Regulations. The parties agree that there will be no change in § 27-3 of the Personnel Regulations of 1986 (as amended through August 1988) during the term of this Agreement.

Section D. Unit Members Not Covered Under The LEOBR.

1. Investigation of a Complaint

   a. Prior to any interview of an employee under investigation, the employee shall be advised of the nature of the investigation. Such notification may be verbal in nature.

   b. Representation during Interview. At the request of an employee under investigation, he/she shall have the right to be represented by counsel or any other responsible representative of his/her choice who may be present during any interview.

      An employee under investigation shall be afforded at least 24 hours to arrange for representation.

   c. Record of Interview. Upon completion of the investigation, and upon request of the employee under investigation or his representative, a copy of the transcript of the tape recorded interview (if one has been made) shall be made available to the employee.

   d. Use of MCP #50, Interrogation Rights & Waiver Form. If the employee being interviewed is under arrest or is likely to be placed under arrest as a result of an interview, he shall be completely informed of his/her Miranda rights prior to the commencement of the interview.

   e. Time, Place and Manner of Interviews.

      (1) Any interview shall take place either at the office of the command of the investigator or at the office of the police unit in which the incident allegedly occurred, as designated by the investigator unless otherwise waived by the employee, or at any other reasonable and appropriate place.

      (2) Any interview shall be conducted at a reasonable hour, preferably at a time when the employee is on duty, unless the seriousness of the investigation is of such a degree that an immediate interview is required.

      (3) Interview sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

   f. Required Interrogations and Tests Employees under investigation may be compelled to submit to Blood Alcohol Tests, blood, breath, or urine tests for controlled dangerous

substances where there is reasonable suspicion of alcohol or unlawful drug use, or interrogations which specifically relate to the subject matter of the investigation. Such tests shall be conducted consistent with the provisions of Article 4, *Prevention of Substance Abuse/Employee Rehabilitation* of this Agreement.

2. Notification of a Complaint

   a. Whenever a Statement of Charges (**Appendix L.2**) is executed, it will serve as written notification of the investigation.

   b. The chief of police, or his designee must give the employee a copy of the charges and provide a minimum of five (5) workdays to respond. Disciplinary actions affected by this requirement include written reprimands, within-grade reductions, suspensions, demotions, and dismissals.

   c. The department will provide the union any written statements (citizen complaints, employee observations) in the possession of the department and used in connection with an adverse action taken against a bargaining unit employee. These statements will be sanitized (name, address, phone number deleted) to protect privacy rights in accordance with the law.

   d. The written statements referred to in subsection 2.c above will be provided to the union when the employee receives the Statement of Charges.

   e. The department is under no obligation to permit the employee or union to interview the author of the statement. If the statement is used as evidence on appeal, the employee or union will have the opportunity to examine the witness.

   f. Records will be maintained in accordance with Article 51, *Personnel Files* of this Agreement.

3. Disposition

   a. An investigation shall result in no punitive action where the employee's conduct was exonerated or when there is not substantial evidence of misconduct found. In such cases, employees will be furnished a copy of any reply to a complaint or, if there is none, they will be provided a written notification of the investigative outcome.

   b. Oral admonishments and written reprimands may be given at the discretion of the chief of police. In all cases, the employee should be told why their conduct is inappropriate, what action will occur if changes are not made.

   c. In cases of within-grade reduction, demotion, suspension, and dismissal, the chief of police must provide written notice of such action at lease five (5) days prior to the effective date of the action. Exceptions to this requirement are theft and serious violations which pose a health or safety risk.

   d. The following shall apply regarding written notices to the employee from the employer pertaining to Disciplinary Action, Termination, RIF Notices, Demotions, Promotion or Reduction-In-Salary. In all instances the notices to employees identified above shall contain the following language at the bottom of the last page of the document:

NOTICE TO BARGAINING UNIT EMPLOYEES

You are entitled to be represented in this matter by FOP Lodge 35 (Union). If you wish a copy of this document sent to the union, indicate by checking the appropriate space below:

____*I do wish the union to receive this document*

____*I do not wish the union to receive this document*

_____ _____
Employee's Signature *Date*

Section E. Investigatory Files. The employer agrees that investigatory files will be provided free of charge.

Article 44 *Promotions*

Section A. Promotional Program. Promotions to positions in the unit must be made on a competitive basis after an evaluation of each individual's qualifications. Any promotional program for positions within the unit shall provide that qualified employees are given an opportunity to receive fair and appropriate consideration for higher level positions.

Section B. Appeal of Promotion. **Promotion, selection and non-selection to unit positions from a properly constituted list of employees in the highest rating category, or any category used for such purposes by the County shall be grievable under Article 8 *Contract Grievance Procedure*.**

Section C. Temporary Promotion/Assignment to Higher Classified Job. Unit members who are temporarily assigned or promoted to a higher classified job for a period of more than twenty (20) days shall receive the rate of pay of the higher classified job retroactive to the first day the unit member assumed the higher position.

Section D. Review of Examinations. All unit members participating in any promotional process for a position within the unit shall be given the opportunity to review all of their examination test scores. Unit members participating in a promotional process for a position outside the unit shall have the substantive and procedural rights accorded by state law.

Section E. Notice of Phase-in for Minimum Qualifications for MPO. Changes of minimum qualifications for the MPO rank will apply to promotional processes occurring after the 1996 scheduled examination.

Article 45 *Non-LEOBR Personnel Actions*

When any personnel action is taken or not taken regarding an employee, which action is not required to be processed pursuant to the procedures set forth in the Law Enforcement Officers' Bill of Rights, "LEOBR", (Article 27 § 727, *et seq.*, Maryland Annotated Code), the employee shall have the right to grieve and/or arbitrate said action pursuant to the procedures set forth in Article 8 of this Agreement.

Article 46 *Protection From Communicable Diseases*

Section A. Medical Tests For Communicable Diseases. Unit members shall receive medical testing for AIDS, tuberculosis, hepatitis and any other communicable diseases when an employee

believes he/she has been exposed to such diseases on the job. The costs for such tests shall be payable by the County or otherwise compensable in accordance with existing workers' compensation benefits.

Section B. Coordination and Location of Testing. The Occupational Medical Section, Office of Human Resources, will be responsible for coordinating the testing which may occur at hospital emergency rooms, private physicians or occupational medical section facilities.

Section C. Flu and Hepatitis Shots **The Employer shall provide hepatitis and flu shots to unit members desiring same.**

Article 47 *Duration of Contract*

This Agreement shall become effective on July 1, 1998 and terminate on June 30, 2001.

Article 48 *Action By Montgomery County Council*

Pursuant to § 33-80(g) of the Montgomery County Code, any wage and/or benefit adjustment set forth in this Agreement which requires the Montgomery County Council to take action necessary to implement the Agreement, or to appropriate funds, shall be automatically reduced or eliminated if the County Council fails to take the necessary action to implement the Agreement, or if funds are not appropriated or if a lesser amount is appropriated.

Article 49 *Awards*

Awards programs for unit employees shall be established and administered in a manner determined by the employer.

Article 50 *Reduction-In-Force and Furlough*

Section A. Reduction-In-Force. Reductions-in-Force shall be conducted pursuant to Administrative Procedure 4-19, *Reductions-in-Force*, as provided in **Appendix M**.

Section B. All Unit Positions Are A Single Class. For the purposes of determining job classes within the unit which may be subject to a reduction in force, all bargaining unit positions shall be considered as a single class.

Section C. Furlough.

1. *When applicable.* A furlough is a permanent relief from duty and loss of pay for hours of services which would otherwise be performed by members of the bargaining unit and which is required by the chief administrative officer due to lack of funds or work. Lost furlough pay must not be made up by the same or other employees in overtime hours or compensatory time. All reductions in salary and furlough leaves must take place within the "furlough period" designated by the chief administrative officer, ordinarily the period between the effective date of the chief administrative officer's determination to relieve members of the bargaining unit from duties due to lack of funds or work and the end of the fiscal year in which that determination is made. It is agreed that the County's determination to require the bargaining unit to make up for services lost by virtue of a furlough by reducing the bargaining unit members' opportunity to be absent on authorized leave of any other kind (other than compensatory leave) during the furlough period establishes a violation of this

Agreement for which all affected unit members will be compensated by a restoration of salary denied pursuant to § C.2 hereof.

2. *Reduction in Total County Salary.* Whenever the County determines to furlough employees for one or more eight hour days during a fiscal year the base salary as provided in the Collective Bargaining Agreement then in effect shall be reduced for all bargaining unit members by an amount equal to eight hours pay for each such furlough day. The amount of each reduction shall be spread evenly over the pay periods remaining in the fiscal year during which the furlough day(s) occur(s). The reduction or reductions shall cease and the appropriate level of base salary shall be restored at the end of the fiscal year in which the furlough day(s) occurred.

3. *Compensatory Leave and Furlough Days.* The County shall grant each unit member whose salary it reduces pursuant to § 2, eight (8) hours of compensatory time for each eight (8) hour furlough day the County decrees. The department may schedule the use of furlough time for the mutual convenience of the department and the member, or may direct a member to use furlough compensatory time on a day or days selected by the department, provided, in either event, that the use does not conflict with that or any other unit member's right to take annual or other leaves pursuant to this Agreement, established practices, or applicable law. In other respects, Compensatory Leave and Annual Leave shall be treated as provided in Articles 18 and 21 of this Agreement.

4. *Effect On Other Benefits and Payments.* The County agrees that no reduction in salary provided for herein shall reduce the amount of the pension payable upon retirement of any unit member. It is further agreed that the provisions governing payment for unused compensatory time upon retirement or separation shall apply to the compensatory time granted pursuant to this Article and that the reduction in salary agreed upon in this Article shall not reduce any other payments or benefits, including but not limited to service increments, awards, salary upon promotion or demotion, or any other pay amounts based on the employee's base salary which would have been due the officer by law or under an applicable Collective Bargaining Agreement.

5. *Effect on Secondary Employment.* During a furlough period and in accordance with existing regulations, if there is no question regarding conflict of interest, the personnel director shall act upon a request for approval of outside employment with a duration of six (6) weeks or less within seven (7) days after the member submits his/her application to the personnel director.

6. *When Furlough May be Implemented.* The salary reduction provided for herein shall be restored and all compensatory leave balances shall be appropriately adjusted if an appropriate third party determines that the County did not relieve the members of the bargaining unit from duty or did not do so due to lack of funds or work.

7. *Notice of Furlough.* Written notice shall be given to FOP Lodge 35, by Certified Mail, thirty (30) days prior to instituting a furlough provision.

8. *Administration.* All furlough provisions shall be administered equitably within the unit and, to the extent not inconsistent with this Article and otherwise applicable to members of the bargaining unit, the provisions of §§ 2.0 - 3.8 of Administrative Procedure 4-31, dated December 4, 1991, are incorporated herein by reference. **Appendix N.**

(54)

Article 51 *Personnel Files*

Section A. Definitions

1. *Employee* - An individual in the collective bargaining unit.

2. *Personnel Records* - The repository of official information regarding an active, terminated or retired employee of the Montgomery County Government. A personnel record is any personnel, medical, or departmental operating file.

3. *Authorized Official* - Individuals or organizations as listed in paragraph B (8) as authorized to review the contents of an employee's personnel file on a "need to know" basis.

Section B. Custody and Review

1. The Personnel Office shall maintain the official personnel file for each County employee.

2. The Occupational Medical Section, Department of Finance shall maintain the official medical records file for each County employee.

3. An employee's medical records file becomes a part of the employee's official personnel file when the Personnel Office has received an application for workers' compensation, disability retirement, normal retirement, long term disability claim or upon termination of employment.

4. The Department may maintain an operating file on each employee within the department. The Department may also maintain a second operating file on an employee that shall be kept within the employee's unit. The custodian of these files will be informed by the Department as to the appropriate contents of such files as provided in § C of this Article, except that the contents shall not contain disciplinary actions, including written reprimands, or at-fault accident reports.

5. Supervisors may maintain a file on each employee under their direct supervision.

6. Employees are encouraged to review their personnel records at least once each year.

7. No information shall be placed in any employee personnel file unless the employee receives a copy of the information (subject to limitations concerning medical files as referenced in § B.10) and is provided an opportunity to submit a rebuttal, if desired, to be included in the file.

8. To preserve confidentiality and protect the privacy of employees, access to an employee's personnel records shall be restricted to the following:

   a. Employee who is the subject of the file or authorized representative.

   b. Employee's supervisor. (Need to know basis)

   c. Appointing authority or designee. (Need to know basis)

   d. Personnel director or designee. (Need to know basis)

   e. Member of Merit System Protection Board or designee. (Need to know basis)

55

f. County attorney or designee. (Need to know basis; i.e., when an employee is in litigation against the County, e.g., Merit System Protection Board, Worker's Compensation, Disability, Retirement, etc.)

g. Chief administrative officer or designee. (Need to know basis)

9. Except for verification of employment and current salary information, the release of information from an employee's personnel records to anyone other than those listed in § B.8 requires a signed authorization from the employee who is the subject of the personnel record accompanied by a statement giving the reason for the review and a description of the material requested.

10. The release of information from an employee's medical file to anyone other than the employee, the county attorney's office, personnel director, or his designee requires a signed authorization from the employee who is the subject of the medical record accompanied by a statement giving the reason for the review and a description of the material requested. Further, the custodian of medical records may determine, consistent with state law, that certain information pertaining to psychological/psychiatric medical reports will only be released to an employee through the employee's physician.

11. Except as provided at Section B.8 of this article, or as required by law, personal information of unit members maintained by virtue of the employment relationship, such as home address, telephone number, family information, marital status, and photographs will not be released without prior written authorization of the unit member. The parties agree to develop a form to be distributed to all unit members requesting that they provide their age, area of residence, spouse's name, educational background, awards or recognition received, organizations belonged to, date of employment, and previously held positions. The form shall state that the department "respect[s] your right to privacy and if certain questions appear to be too personal, you may omit them." Further, the form shall provide the unit member with the option to provide his/her own photograph to be used instead of any other photograph maintained by the county, to authorize use of county photographs, or to provide that the county shall not release any photograph unless required by law.

12. **Restricted Duty Unit files shall be maintained in the Police Personnel Division. Restricted Duty Unit files shall be destroyed after twelve months have elapsed since the employee returned to full duty, except RDU tracking forms shall be transferred to the department unit/operating file and the official personnel file.**

Section C. Contents

1. **The contents of an employee's official personnel file shall be limited to:**

a. Applications for employment or promotion which results in appointment or promotion.

b. Employment history, including personnel action documents affecting appointment, promotion, transfer, salary change, etc.

c. Copy of commendations.

d. Employee emergency information.

e. Payroll withholding documents.

f. Insurance and retirement records.

g. Education and training records.

h. Performance evaluations - limited to last five years only.

i. Leave records - limited to last five years only.

j. Results of tests and examinations successfully completed - limited to two years from date of test of examination.

k. Copy of disciplinary actions.

l. Copy of reprimands - limited to two years only.

2. The contents of an employee medical file shall be limited to:

a. County medical examination records.

b. Records obtained or received from any physician in reference to an employee's or applicant's medical fitness.

c. Any medical waiver or release signed by the employee.

d. Requests to the Occupational Medical Section, Department of Finance, by an employee's supervisor and/or appointing authority for any additional or special medical examinations, the record of the actions taken by the Occupational Medical Section and the results of the additional or special medical examination.

3. Employee files held by a department shall contain documents necessary for program operations limited to:

a. Employee home address and telephone number.

b. Present job information (i.e., description, location, etc.)

c. Employee emergency information.

d. Payroll data and supporting documentation.

e. Copies of leave records - limited to five years.

f. Copies of performance evaluations including supporting documentation and the Annual Skills Inventory and Career Development forms, limited to five years.

g. Copies of commendations, awards, and disciplinary actions, including supporting documentation - limited to last five years.

h. Written reprimands limited to the last two years.

i. Copies of at-fault accident reports and supervisor documentation.

j. Copies of training requests, approvals and certificates of completion.

4. **The contents of the Restricted Duty Unit files shall be limited to:**

a. **First Report of Injury Forms.**

b. **Medical and Health Status Reports and memos from the Occupational Medical Section.**

c. RDU tracking forms.

d. Medical evaluations from physicians as they pertain to the employee's ability to work/return to work, and his/her ability to perform the essential functions of the position, in addition to limitations and prognosis.

e. Memos from supervisors regarding the medical condition and the transmittal of documents.

f. Memos scheduling special medical examinations.

g. Disability leave payroll memorandums.

h. Supervisor's Incident Investigation Report (SIIR) forms.

i. Other Worker's Compensation/Trigon/Risk Management forms.

Section D. Supervisory Files

1. Supervisors may maintain a file for each employee under their supervision which contains informal notes by the supervisor concerning the employee's job performance or conduct, notes made in performance review or other counseling sessions with the employee, copies of completed work assignments, drafts or work in progress and informal written communications between the employee and the supervisor concerning performance or conduct issues.

2. A supervisory file is reviewable by the subject employee on request, and is to be safeguarded from review by any other individual except on a need to know basis as provided in §B.8.

3. The purpose of supervisory files is to encourage supervisors to maintain an informal record on a continuing basis which will provide substantiation for performance ratings or other performance or conduct related actions.

4. Materials in a supervisory file are valid for a period of twelve (12) months, and may be used only during that time or during a rating period covering the period of the documentation, to support official personnel actions. These materials become a part of an employee's official or operating record only if they are incorporated in or attached to related personnel actions within twelve (12) months from the date they were originated. Materials in a supervisory file, which are not used to support a formal personnel action within 12 months of their inception, cannot serve as the basis for any further personnel actions, and shall be removed from the file.

Section E. Disposition Upon Separation

1. Except as provided below, all records including medical and internal affairs files, pertaining to separated employees shall be destroyed five (5) years after separation, unless the files are the subject of pending litigation. In which case, these files will be destroyed at the conclusion of the litigation.

2. The county may maintain records necessary to administer employee benefits programs, including health and retirement, a file containing the employee's name, address, date of birth, social security number, dates of employment, job titles, union and merit status, salary and like information.

3. Except as required by law, no information may be released from any file without the express written permission of the separated employee.

Section F. Record of Review Each file authorized by this article must contain a log on which the name of all reviewers and date of review. This log may be reviewed and copied by the employee or authorized representative.

Article 52 *Termination*

Section A. Definition. Termination is a nondisciplinary act by management to conclude an employee's service with the County. Reasons for termination include, but are not necessarily limited to, the following:

1. An employee's abandonment of position by failure to report for work as scheduled on three (3) or more consecutive workdays and failure to obtain approval for such absence;

2. Excessive absences caused by ongoing medical or personal problems that are not resolved within three (3) calendar months after the date the employee exhausts all paid leave, including any grants of leave received from the sick leave bank.

Section B. Management Responsibility. Prior to terminating an employee for the reasons stated in (2) above, management must inform the employee in writing of the problem, counsel the employee as to what corrective action to take, and allow the employee adequate time to improve or correct performance or attendance.

Section C. Appeal. A nonprobationary employee who is terminated may appeal to the MSPB pursuant to the Montgomery County Charter or may grieve pursuant to Article 8 of this Agreement, but not both. A probationary employee may grieve or appeal only to redress a failure to afford rights provided at Sections A.2 and B above.

Article 53 *Performance Evaluation*

Performance evaluations are not grievable except in cases of failure to follow established procedure.

Article 54 *Demotion*

Section A. Definition. Demotion is the movement of an employee from one merit system position or class to another with a lower grade level assignment.

Section B. Voluntary Demotion. Voluntary demotion may occur with the written consent of an employee. Such demotion must be without prejudice and may be used to retain an employee whose position has been abolished or reclassified downward or who, because of physical or mental incapacity, is unable to productively perform assigned duties and wishes to continue employment in a position for which qualified. Such demotion must not be detrimental to an employee's work record and must not adversely affect the employee's opportunity for future promotion to a position for which qualified.

Section C. Involuntary Demotion. A unit employee who received a less than satisfactory work performance evaluation after written warning, counseling and at least three (3) months to improve, may be demoted involuntarily. Such employee must receive written notice at least ten (10) working days prior to the effective date of the demotion. The notice must contain the reasons for the action with specific charges, or reasons, the effective date, and appeal rights.

Section D. Appeals. A unit employee may appeal an involuntary demotion.

59

Article 60 *Career Development Study Committee*

Section A. Joint Study Committee. The Study committee shall provide recommendations to the parties for the purpose of reaching further agreement on the components of a career development program. The Committee shall consist of three representatives from the Union and three representatives from the Employer.

Section B. Subjects for Review. The parties shall review in connection with their study the following subjects:

1. Training opportunities and selection
2. Career planning
3. Career counseling

Section C. Career Counseling. The County shall provide career enhancement counseling to each unit member. Such counseling shall occur annually.

Section D. Position Descriptions. The County shall develop maintain a listing of career specialty assignments which shall include the knowledge (including training), skills, and abilities ("KSA's") that are required or desired in order to be eligible for assignment to each specialized position. The completion of the listing shall be subject to the completion of a job analysis, however, as position analyses are completed, the position KSA's shall be placed on the listing.

Section E. Training Announcement. The County shall develop and annually update a listing of all internal training courses and maintain a listing of those external training courses which the Public Services Academy has identified as supporting the Department's training needs. These lists shall be available for review by all officers.

Article 61 *Directives and Administrative Procedures*

Section A. Changes to directives, rules and procedures referenced in agreement. This agreement has been negotiated in the manner set forth in the Preamble. Negotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement (including those that are part of any appendices) are subject to addition, change, amendment, or modification, only after specific notice is provided to the union with an opportunity to bargain and after the parties reach agreement. If no agreement is reached, the addition, change, amendment, or modification shall not be implemented.

Section B. Changes to directives, rules and procedures not enumerated in agreement. Changes to directives, rules and procedures not enumerated in this agreement, or the effects on employees of the employer's exercise of a management right as enumerated in Article 42 § A, which involve matters appropriate for collective bargaining will be proposed by the County to the Union for bargaining. Thereafter, and before implementation, bargaining and agreement shall occur. Failing agreement, the dispute will be resolved pursuant to the impasse
procedures (excluding dates) of Chapter 33, § 33-81(b) of the Montgomery County Code.

Section C. Procedures for Review of Directives **Draft copies of proposed changes to directives, rules, and procedures shall be forwarded to the Union along with a copy of the current directive, rule or procedure (if applicable.) All changes shall be identified in the draft document. The Union shall notify the Department of any comments it has regarding the draft document within fourteen calendar days from its receipt of the draft. Failure to respond shall be deemed a negative reply.**

Appendix H

DEPARTMENT MISSION AND ORGANIZATIONAL VALUES

FUNCTION CODE: 210
EFFECTIVE DATE: 10-25-92

Our department's mission statement has been rewritten to reflect our transition to a community policing philosophy. It reflects our commitment to providing quality service by working in partnership with the community to resolve quality of life issues. This mission statement articulates our fundamental reason for existing as an organization and provides us with a "guide" to help us shape our future.

Mission Statement

We, the Montgomery County Department of Police, are committed to providing the highest quality of police services by empowering our members and the community to work in partnership with the goal of improving the quality of life within Montgomery County, while at the same time maintaining respect for individual rights and human dignity.

Why Organizational Values

Within our society, individuals have increased their awareness of the importance of personal values. As a result, they are more insistent that government accomplish its mission in a manner which reflects the current values of society. Our values were developed by a cross-section of the department and the community. Efforts were made to allow all members of the department the opportunity to comment on them before they were adopted. Additionally, they were presented to the community for approval at numerous public forums which were hosted throughout the county. (CALEA 1.1.5)

These values set out the context in which we will accomplish our mission. They define the acceptable means we can use in our day-to-day operations. They also represent a statement of how we, as an organization and as individuals, wish to be judged by both the department and by the public. Our values should guide us in our actions and behavior. It is important that **all** members of the organization consider these values prior to taking any action, making managerial decisions or when dealing with our customers. Department members are encouraged to remind each other when our actions are not in conformance with our values. Supervisors and managers must review anticipated decisions and actions to ensure that they are in compliance with our values and have the commitment to change those that do not conform to our values.

The department is beginning its efforts to incorporate these values into our organizational culture. They will be woven into the subject matter of **all** department training programs, incorporated into our performance appraisal system and become a part of our day-to-day operations. However, values are useless unless the members of the organization live the values. The department recognizes that this will not occur overnight. We must begin this journey now!

Function Code: 210
Effective Date: 10-25-92

Organizational Values

Partnership *We are committed to working in partnership with the community and each other to identify and resolve issues which impact public safety.*

Respect *We are committed to respecting individual rights, human dignity and the value of all members of the community and the department.*

Integrity *We are committed to nurturing the public trust by holding ourselves accountable to the highest standards of professionalism and ethics.*

Dedication *We are committed to providing the highest quality of professional law enforcement service to the community with the goal of enhancing the quality of life within Montgomery County.*

Empowerment *We are committed to empowering our members and the community to resolve problems by creating an environment that encourages solutions that address the needs of the community.*

. . . PRIDE IN OUR COMMUNITY. . .
. . . PRIDE IN OUR DEPARTMENT. . .
. . . PRIDE IN OURSELVES. . .

All functional and geographic units will be issued mission and values posters and will display these posters in prominent locations visible to both the public and our members. Requests for additional posters may be forwarded to the Office of Community Policing.

Colonel Clarence Edwards
Chief of Police

DISCIPLINARY PROCESS

FUNCTION CODE: 301
EFFECTIVE DATE: 11-15-94

Contents:

I. Policy
II. Authority in Discipline Matters
III. Definitions
IV. Initial Filing of a Complaint
V. Investigation of Complaints
VI. Summary Punishment
VII. OIA Notification Procedures
VIII. Proponent Unit
IX. Cancellation

I. Policy

A relationship of trust and confidence between the department and the community is essential to effective law enforcement. Officers must be free to exercise their own judgment and take enforcement action in a reasonable, lawful, and impartial manner without fear of reprisal. It is therefore important to establish a disciplinary process which enables the department to initiate positive, corrective action for improper conduct while at the same time protecting officers from unwarranted criticism for properly discharging their duties. It is the policy of this department to provide a thorough, fair, and expeditious disposition of complaints regarding the conduct of department employees. Further, it is the policy to invite individuals to bring to the attention of the department complaints about the conduct of its employees whenever that person believes the employee acted improperly. Complaints will be received courteously, and the department will make every effort to ensure that no adverse consequences occur to any person as a result of having brought what they believe to be a legitimate complaint or information to our attention. All complaints will be investigated in accordance with the procedures described herein. The complaint disposition will be made consistent with the obligation of providing equitable process for all parties involved. The procedures enumerated within apply to allegations of misconduct against employees of the department, both on-duty and off-duty. (CALEA 26.1.5, 26.1.7, 52.1.10)

II. Authority in Discipline Matters

The Chief of Police has authority for disciplinary action involving sworn personnel (within the guidelines of the Law Enforcement Officers' Bill of Rights - L.E.O.B.R.) and department civilian employees.

III. Definitions *CALEA 52.1.9*

A. Complaint - A complaint is an allegation of misconduct made against an employee(s) of the department.

B. Serious Allegations of Misconduct - Serious complaints include, among other acts, physical brutality, complaints which allege racial prejudice, misappropriation of monies, or untruthful statements.

C. Minor Complaints of Misconduct - Minor complaints are not enumerated in this directive, but include those allegations, which if sustained, would be appropriately disciplined through the imposition of summary punishment or use of the Supervisor's Remedial Action Form (MCP 30). (CALEA 52.1.1)

D. **Brutality** - Brutality is considered the use of excessive or unjustified physical force by an officer in the exercise of official duties.

E. **Summary Punishment** - Disciplinary action implemented by the highest ranking officer of a unit, or officer acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days suspension without pay, or a fine of $150.00.

F. Counseling - Supervisory counseling of subordinates is nondisciplinary corrective action. In most cases, the action taken will not be made part of the employee's personnel record. (An exception is the action taken in at-fault accidents.)

G. **Letter of Reprimand** - This is the least severe punishment which can be given to an employee. The letter documents the violation for inclusion into the employee's personnel file.

H. Non-Punitive 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 that 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." Article 27, Section 728(c).

I. Unfounded - The investigation of the complaint indicates that the acts complained of did not occur.

J. Not Sustained - The investigation failed to disclose sufficient evidence to prove or disprove the allegation.

K. Exonerated - The incident did occur, but the actions of the accused were justified, lawful and proper.

L. Sustained - The investigation disclosed sufficient evidence to prove the allegations of misconduct.

M. Policy Failure - The incident did occur, but there was an omission of policy or the established policy was insufficient or ineffective. ***Therefore, the allegation(s) involving the affected employee will be considered Not Sustained for purposes of this finding.*** The directive will be referred to the Planning & Policy Management Section for correction and re-issue.

N. Chief - Chief of Police, Montgomery County.

IV. Initial Filing of a Complaint

A. Complaints - Individuals are encouraged to use the Complaint Form, MCP #580, (Appendix A) to document their complaints alleging misconduct. Use of the Complaint Form is not a requisite for filing a complaint. The person may, as an alternative, prepare a narrative written statement about the event including the times, dates, location and name of the officer(s), if known. An individual desiring to complain about an employee of the Department of Police either in person or by telephone, will be referred to the on-duty executive officer or highest ranking police supervisor within the district of occurrence or affected functional unit. A photocopy of the complaint will be given to the complainant as a receipt. (CALEA 26.1.4, 52.1.5)

1. Minor Cases of Misconduct: If the preliminary interview by that officer indicates the complaint is of a minor nature, it can be handled by the employee's immediate supervisor. The supervisor will

document the incident with the following information included in the report: (CALEA 26.1.4, 26.1.8, 52.1.1)

a. Date, time and location of incident.
b. The name, address and telephone number of any witness(es). (CALEA 52.2.10)
c. The details of all circumstances surrounding the incident. The results will be documented in the investigation report as outlined in Section V, G. Such complaints could result in the implementation of summary punishment as outlined in Section VI of this directive. The Office of Internal Affairs will be contacted Monday thru Friday, 8:00 a.m. - 4:00 p.m. for a control number. If the circumstances are such that it is not clear as to who should conduct the investigation, the OIA Director, when contacted for the control number, will determine on the basis of the seriousness and complexity of the case, whether the complaint will be handled at the unit level or by OIA. (CALEA 52.1.1)

2. Serious Cases of Misconduct: (CALEA 52.1.1)
   a. Serious complaints should be documented in written form by the complainant and forwarded to the Office of Internal Affairs. If the complainant refuses to document the complaint, and the allegation, if factual, would constitute misconduct, the receiving officer will document the complaint utilizing the Complaint Form and forward it to OIA. At OIA the investigative assignment will be made and a letter of acknowledgment sent to the complainant. (CALEA 52.1.5)
   b. Complaints alleging brutality by a police officer must be duly sworn to prior to any investigation. "A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member of the aggrieved person's immediate family, or by any person with firsthand knowledge obtained as a result of the presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality." Article 27, Section 728 (b)(4).
   c. Recent Maryland Court decisions have carved out some exceptions to the 90 day time limit requirement. The 90 day rule is a statutory guide that should be followed in most circumstances. However, if the 90 day period has expired but it appears that good cause has been shown for not meeting the statutory 90 day limit, the excessive force complaint will be accepted and forwarded to the Director, Office of Internal Affairs. The Director will review the facts and reasons for the lack of a timely filing. The decision to investigate or not shall be made by the Chief of Police or his designee in a case-by-case basis.

B. Complaint by an Employee of the Department - Any employee desiring to

file a complaint against another employee of the department, will document the identical information prescribed above for a complaint and submit it to the Office of Internal Affairs.

C. Anonymous or Uncooperative Complainant - Anonymous complaints are not, per se, excluded from investigation. Anonymous callers will be referred to the Office of Internal Affairs. 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, and where possible, a preliminary inquiry into the complaint will be made. The investigation will be terminated when no additional evidence can be obtained. The case will then be documented and the subject officer (if known) may be informed of the nature of the complaint and the result of the investigation.

D. Nothing precludes the department from investigating allegations against police officers from whatever source consistent with law when it is determined that such investigation is in the best interests of the department.

E. Any department employee who takes retaliatory action against a complainant or witness shall incur 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. (Article 27, Section 728 (b)(11)).

V. Investigation of Complaints (CALEA 52.1.1)

A. ***The Office of Internal Affairs has primary responsibility for conducting administrative investigations in the following instances: (CALEA 52.1.1)***

1. ***All use of force complaints.***
2. ***All firearms discharges to include intentional and accidental discharges, regardless of the employee's duty status (except for range practice or the destruction of animals).***
3. ***All racial, ethnic, and sexual harassment/discrimination complaints.***
4. ***All administrative investigations required whenever an employee is charged with a criminal offense, or while operating a motor vehicle while under the influence of alcohol or drugs, or when the employee is an operator of a county vehicle involved in a fatal accident.***
5. ***Any complaint designated by the Chief of Police or his designee.***

B. The Director of Internal Affairs will use the following guidelines in determining whether the investigation will be conducted by the Office of Internal Affairs or by the individual's commanding officers, ***excluding those complaint categories as delineated in Section V., A of this directive: (CALEA 52.1.1)***

1. Type of complaint.
2. Source of the complaint.
3. Number of individuals involved (accused and/or witnesses).
4. Whether the accused officers are assigned to the same unit.
5. Jurisdictional limitations.
6. Underlying indications of graft, corruption or other serious misconduct.
7. Any other related matter that would dictate assignment.

C. In addition, the following principles will serve as guidelines for the Director

606

of Internal Affairs when determining investigative responsibility:

1. Discipline is a command responsibility, and
2. Complaints should be investigated at the lowest possible level.

D. OIA Log - An OIA log will be maintained to record all complaints against departmental personnel. This log will include the following information:

1. The name of accused employee(s).
2. Name of complainant.
3. District of complaint.
4. Nature of complaint.
5. O.I.A. control number.
6. Date complaint received.
7. Date of incident.
8. Unit assigned to investigate.
9. Disposition.

E. Cases Assigned to Units - Unit commanders assigned cases by the Office of Internal Affairs may assign an executive officer or supervisor under his command to conduct the investigation. If, after investigation, the case is sustained and the investigator feels that summary punishment is an appropriate remedy for the violation, the investigator will include a recommendation for a specific summary punishment within the report. Upon completion of the investigation, the report and recommendation, if applicable, will be forwarded to the appropriate unit commander for his review and implementation. Should the unit commander not concur with the findings or actions of the investigator, the commander may choose one of several courses of action: (CALEA 26.1.5)

1. The commander may review the case with the investigator to point out deficiencies of supportive facts.
2. The commander may direct the investigator to continue the investigation.
3. Portions of the report may require rewriting because of non-supportive critical statements.
4. The commander may issue his own comments or modifications to a disciplinary action recommendation or investigative report.
   When the unit commander concurs with the investigator on the recommended summary punishment, punishment may be implemented by the unit commander or by the investigating supervisor at the direction of the unit commander. The Chief of Police shall reserve the right to review disciplinary actions and related matters, regardless of their origin.
5. ***All internal investigations conducted at the unit level will be reviewed by the Director, Office of Internal Affairs, prior to submission to the Chief of Police.***
6. ***All internal investigations will be completed within a ninety (90) day period unless an extension is authorized by the Director, Office of Internal Affairs or his designee. (CALEA 52.1.4)***

F. Cases Assigned to OIA - When a complaint is to be handled by OIA, the OIA Director will assign an investigator from OIA to conduct an investigation and obtain any documentary evidence. After completing the investigation, an internal report will be written which the OIA Director will review and forward to the Chief of Police.

G. Internal Reports and Case Findings - All internal reports will include:

1. The allegations.
2. A statement of facts arranged in chronological order.
3. The findings of the investigation classified as one of the following:
   a. Unfounded

(67)

b. Not Sustained
c. Exonerated
d. Sustained
e. Policy Failure

4. See Appendix "B" for format of report.

H. Interrogation of Officers Under Investigation

1. Notification (Use of Form MCP 242 - Appendix "C") - "The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness not less than ten days prior to any hearing." Article 27, Section 728 (b)(5).
   In order to ensure the protection of rights guaranteed by the Law Enforcement Officers' Bill of Rights, the "Internal Investigation Notification Form", (MCP 242), is used in the administrative investigation of any incident which could lead to disciplinary action against an officer. Once an apparent violation is discovered and the supervisor's investigation focuses on a particular officer, the "Internal Investigation Notification Form" shall be executed prior to interrogation of that officer.
   For example, since many at-fault traffic accidents result in disciplinary action, this form should be executed prior to the supervisor's questioning of the responsible officer. It is suggested that the supervisor allow the accident investigator to complete the accident report prior to the start of the supervisor's investigation.
2. Representative at Interrogation - "At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present 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 ten days until representation is obtained. However, the chief may, for good cause shown, within that ten day period, extend that period of time." Article 27, Section 728 (b)(10).
3. L.E.O.B.R. Rights Waiver - A police officer under investigation may waive, in writing, any or all rights provided under the L.E.O.B.R. It is a requirement of the law that the waiver of those rights be done in writing. To that end the L.E.O.B.R. Rights Waiver Form should be utilized for that purpose.
4. Record of Interrogation - "A complete record, either written, taped or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. Upon completion of the investigation, and upon request of the law enforcement officer 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." Article 27, Section 728 (b)(8).
5. When to Use MCP #50 - Interrogation Rights & Waiver Form - "If the law enforcement officer under interrogation is 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." Article 27, Section 728 (b)(9).

6. Time, Place and Manner of Interrogations (CALEA 52.1.6)
   a. "The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, unless otherwise waived in writing by the law enforcement officer, or at any other reasonable and appropriate place." Article 27, Section 728 (b)(2).
   b. "The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required." Article 27, Section 728 (b)(1).
   c. "Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary." Article 27, Section 728 (b)(6).
   d. "The law enforcement officer under interrogation may not be threatened with transfer, dismissal or disciplinary action." Article 27, Section 728 (b)(7)(i).
   e. "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..." Article 27, Section 728 (b)(3).
7. Required Interrogations and Tests - "This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath or urine tests for controlled dangerous substances, polygraph examinations or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath or urine tests for controlled dangerous substances, polygraph examination or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol tests, blood, breath or urine test for controlled dangerous substances, polygraph examination or interrogation, as may be required by the law enforcement agency under this sub-paragraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the Administrative Hearing." Article 27, Section 728 (b)(7)(ii). (CALEA 52.1.6, 52.1.7)
8. During the internal investigation, any officer may be ordered by the investigator to submit a statement and/or answer all questions which specifically relate to the subject

matter of the investigation regardless of the relative rank of the officers involved.

I. An investigation shall result in no punitive action where the employee's conduct was exonerated or when there is not substantial evidence of misconduct found. In such cases, employees will be furnished a copy of any reply to a complainant. In those cases where a violation is indicated, the employee will be notified via memorandum from the Chief of Police or his designee and the complainant will be advised by letter of the outcome of the case after final adjudication. (CALEA 26.1.8)

J. Reports of internal investigations, including witness statements, are confidential. Authorization for access to these reports can only be granted by the Chief of Police. (CALEA 26.1.8, 52.1.1)

K. In those cases where a charge of misconduct has been sustained and the officer has requested a hearing board, the officer will be furnished with a copy of the investigative file under the following condition (Art. 27, Sec 728, (5) (iii): (CALEA 26.1.8)

1. Excluding the identity of confidential sources.
2. Excluding any non exculpatory information.
3. Not less than 10 days before any hearing if the officer and the officer's attorney agree:
   a. 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
   b. to pay any reasonable charge for the cost of reproducing the material involved.

VI. **Summary Punishment** (See Appendix D for format to be used.) (CALEA 52.1.1)

A. Statutory Provisions - Summary punishment may be imposed for minor violations of departmental rules and regulations when: (i) "The facts which constitute the minor violation are not in dispute; (ii) the officer waives the hearing provided by this subtitle; and (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached." Article 27, Section 734 A(1).

B. Other Considerations - The above procedure does not preclude a commander from counseling a subordinate. Use of the counseling process can correct undesirable behavior while maintaining maximum harmony between a supervisor and subordinate.

C. Review - To ensure fairness and consistency in disciplinary matters involving the offer of summary punishment, all summary punishment cases will be reviewed by the Deputy Chief of Police prior to an offer being made to an employee.

VII. OIA Notification Procedures
The Office of Internal Affairs may be notified between 8:00 a.m. and 4:00 p.m., Monday through Friday. At all other times, an Internal Affairs Investigator will be available through ECC under the guidelines of this directive. (CALEA 52.1.1)

A. An OIA investigator will be notified ***of and will immediately respond whenever*** an employee is involved in any of the following circumstances:

1. ***When an employee is involved in a firearm discharge whether intentional or accidental and regardless of duty status, except*** for authorized target practice or

70

the killing of a dangerous or injured animal as authorized by the department directive on firearm discharges. (CALEA 1.3.6)

2. When an ***employee*** is charged with a criminal offense, or anytime there is an allegation of criminal activity on the part of an employee where police investigation is necessary regardless of jurisdiction of occurrence.
3. ***When an employee is charged with operating a motor vehicle while under the influence of alcohol or drugs.***
4. When an ***employee*** is the operator of a county vehicle involved in a fatal accident.
5. Any incident where an executive officer or officer in charge of the district of occurrence feels an immediate administrative investigation is necessary or where so directed by the Chief of Police or his designee.

Note: ***Refer to F.C. 310, Administrative Leave, regarding mandatory suspension of police powers and administrative leave requirements.***

B. Notifying Officer's Responsibility
When the circumstances are such that a notification of OIA is necessary (events listed in Section A), the notification will be effected by an executive officer by direct contact with OIA during business hours or by utilizing the on-call list of OIA investigators available in ECC during off-duty hours. Any doubt should be resolved in favor of making the notification. Once notification is made, the responsibility for the administrative investigation lies with the OIA investigator. If an executive officer is unavailable, the responsibility for notification will revert to the senior ranking officer on the scene of the event.

C. On-Call Investigator's Responsibility
Upon notification, the OIA investigator will immediately respond to those incidents as listed in Section A. The responsibility of any traffic or criminal investigation rests with the appropriate unit. OIA investigators will conduct a concurrent investigation which mandates inter-unit cooperation. Interrogations of accused officers by OIA investigators will be conducted independently of any other interview or interrogation. OIA investigators will not involve themselves in the interrogation of accused officers conducted by other units unless so requested.

D. Responsibility of the Director of Internal Affairs - The officer in charge of OIA shall maintain a current and continuous list of on-call OIA investigators. This list will be accessible to ECC.

E. The Director of OIA will be responsible for immediately notifying the Chief of Police in those instances as delineated in Section A. (CALEA 52.1.3)

VIII. Proponent Unit: Office of Internal Affairs

IX. Cancellation - This directive cancels Function Code 301, dated 05-10-93.

Colonel Clarence Edwards
Chief of Police

DEPARTMENT OF POLICE

Douglas M. Duncan
County Executive

To the Community:

A relationship of trust and confidence between employees of the Police Department and the community they serve is essential to effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a reasonable, lawful and impartial manner without fear of reprisal, while at the same time having a special obligation to respect the rights of all persons.

The Montgomery County Department of Police acknowledges its responsibilities to establish a system of complaint and disciplinary procedures which not only will subject the officers to corrective action when they conduct themselves improperly, but also will protect them from unwarranted criticism when officers discharge their duties properly.

It is the purpose of these procedures to provide a prompt, open and expeditious disposition of complaints regarding the conduct of employees of the Department of Police. To this end, individuals are encouraged to bring complaints about department operations and the conduct of its employees to our attention whenever they believe that such an act is improper.

Should you have any questions regarding these procedures, please contact the Office of Internal Affairs at 217-4060 (TDD 762-7619) during normal business hours, Monday through Friday. The department's procedural directive on complaints is also available for inspection, upon request.

Carol A. Mehrling

Carol A. Mehrling
Chief of Police

72

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE
COMPLAINT FORM

MCP 580
Rev. 05/95

Today's Date

Your Name (last, first, middle)

Address (number & street)

City/State/Zip

Home Phone # Work Phone #

Incident Date and Time

Incident Location

I am making this complaint against:

Name(s), if known

Witness Name (last, first, middle)

Address (number/street/city/state/zip)

Home Phone # Work Phone #

Witness Name (last, first, middle)

Address (number/street/city/state/zip)

Home Phone # Work Phone #

DESCRIPTION OF COMPLAINT

(Be detailed - use additional paper if necessary)

Your Signature

COMPLAINTS OF BRUTALITY MUST BE SWORN TO

Name of the Police Department employee to whom this complaint form is given:

Please note: Complaints against police officers are investigated within the guidelines of the Law Enforcement Officers' Bill of Rights as enumerated in Article 27 of the Annotated Code of Maryland. If you are not contacted by an investigator within a reasonable time period, please contact the Office of Internal Affairs at 217-4060.

FUNCTION CODE 301
CALEA 52.1.12
PROPONENT UNIT: Office of Internal Affairs

DISTRIBUTION:
Original - OIA
Copy - To Complainant as receipt

73

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE

MCP 242
Rev. 5/96

INTERNAL INVESTIGATION NOTIFICATION MEMORANDUM

TO: _____

FROM: _____

SUBJECT: **INTERNAL INVESTIGATION NOTIFICATION MEMORANDUM**

DATE: _____

In compliance with the Law Enforcement Officers' Bill of Rights, Article 27, Sections 727 through 736D, and the Department Directive on disciplinary process, Function Code 301, you are hereby notified that you are the subject of an internal investigation being conducted by this Department.

The nature of the investigation is:

_____

_____

_____ _____

Investigating Officer Assignment

NOTICE OF RIGHTS

You have the right to the presence and assistance of a responsible representative or attorney of your choice during the questioning. If you are an active member of F.O.P. Lodge 35, the Lodge will represent you in this matter. The interrogation shall be suspended for a period of time not to exceed ten (10) days until representation is obtained. Before making a statement, contact your Steward or the Lodge office at 948-HELP (4357). Your F.O.P. may be able to provide you with valuable assistance in this matter.

NOTICE OF INTERROGATION

YOU ARE DIRECTED TO REPORT TO THE OFFICE OF INTERNAL AFFAIRS ON _____ AT _____ HOURS FOR YOUR SCHEDULED INTERROGATION. TO REQUEST ANY CHANGE OF YOUR SCHEDULED INTERROGATION, YOU MUST CONTACT THE OFFICE OF INTERNAL AFFAIRS.

I hereby acknowledge receipt of a copy of this form and have noted the assigned interrogation date and time.

_____ _____

Officer's Signature Date

_____ _____

Serving Officer's Signature Date

FUNCTION CODE: 301, 350
CALEA: 52.1.6
PROPONENT UNIT: OIA

74

Montgomery County Government

APPENDIX "B"
FC 301

FORMAT OF INTERNAL INVESTIGATION REPORTS

TO: Chief of Police

VIA: Deputy Chief

FROM:

SUBJECT: Internal Investigation FILE: OIA # ____

DATE:

ACCUSED: DOE, John J., - PO III
Wheaton Glenmont District
(If more than one officer, list all accused officers - Accused # 1, etc.)

COMPLAINANT: JONES, Jack J.
12345 Any Street
Wheaton, Maryland 20014
Phone: 777-1234

FOR: ADAMS, William S.
94 Water Street
Rockville, Maryland 20906
Phone: 555-1234
(Use only if the complaint was made in another's half)

ALLEGATION #1: COURTESY
DEPARTMENT RULES, FUNCTION CODE 300, RULE 22.
"EMPLOYEES WILL BE COURTEOUS AND DISCREET TO MEMBERS OF THE PUBLIC, AND ALL MEMBERS OF THE LAW ENFORCEMENT COMMUNITY INCLUDING DEPARTMENT PERSONNEL. EMPLOYEES WILL MAINTAIN PROPER DECORUM AND COMMAND OF TEMPER, AND AVOID THE USE OF VIOLENT, INSOLENT OR OBSCENE LANGUAGE."

TO WIT: JONES alleges that during a traffic stop on July 6, 1980, DOE called him a "son-of-a-gun."

FINDING: SUSTAINED

Department of Police
2350 Research Boulevard, Rockville, Maryland 20850-3294, TDD 762-7619

ALLEGATION #2: CONDUCT UNBECOMING
DEPARTMENT RULES, FUNCTION CODE 300, RULE 14.
"NO EMPLOYEE WILL COMMIT ANY ACT WHICH CONSTITUTES CONDUCT UNBECOMING AN EMPLOYEE OF THE DEPARTMENT OF POLICE. CONDUCT UNBECOMING INCLUDES,BUT IS NOT LIMITED TO, ANY CRIMINAL, DISHONEST OR IMPROPER CONDUCT."

TO WIT: JONES alleges that during a traffic stop on July 6, 1980, DOE kicked the car door without provocation.

FINDING: EXONERATED

(Numerically list all other allegations)

INVESTIGATOR: Sergeant D. E. WILLIAMS

* In sustained cases, except where Summary Punishment has been accepted, list all witnesses' names, addresses, home and work numbers.

STATEMENT OF FACTS

In chronological order, relate the facts revealed during the investigation. Pay special attention to information that would affect the finding of an allegation and identify the source. (i.e., "During interrogation DOE stated....", "A witness, Mr. BROWN observed...").

FINDINGS

Allegation #1: This allegation is SUSTAINED due to DOE'S admission that he did call JONES a "son-of-a-gun."

Allegation #2: DOE is EXONERATED from JONES' allegation that he kicked the car door without provocation. This finding is based on DOE'S statement that he kicked the door when JONES tried to hit him with it. DOE'S statement is supported by the observations of Mr. BROWN.

(The preceding section will be attached to the right side of the file folder with prong type fasteners).

MEMORANDUM OF NOTIFICATION

FUNCTION CODE: 301.B
EFFECTIVE DATE: 05-23-97

Contents:

I. Procedure
II. Proponent Unit
III. Cancellation
Appendix A - Memorandum of Notification, MCP 552

I. Procedure

A. A Memorandum of Notification, MCP 552, shall be used whenever any information is to be placed into an employee's personnel file (includes unit files). This procedure does not apply when the Supervisor's ***Documentation*** Form, MCP 30, is used.

B. Mark the category(ies) that most closely represent the subject matter.

C. Distribution
One original and two copies of the MCP 552 will be distributed as follows:
1. Original to the employee,
2. One copy placed in the station level file, and
3. One copy forwarded with the rest of the package to the respective bureau chief via the chain of command.

II. Proponent Unit: Personnel Division

III. Cancellation

This directive cancels Function Code 301.B, effective 08-15-91.

Carol A Mehrling

Carol A. Mehrling
Chief of Police

Department of Police
Montgomery County, Maryland

MCP 552
Revised 04/01/97

Memorandum of Notification

TO: _____

FROM: _____

REFERENCE: _____

The Following Referenced Documentation Is Being Forwarded For Inclusion Into Your Personnel File

[ ] Employer's First Report of Injury Form

[ ] Motor Vehicle Accident or Loss notice

[ ] MCP Event Report

[ ] Maryland Vehicle Accident Report

[ ] Immediate Supervisor's Investigative Memorandum

[ ] Other (identify)_____

[ ] The documentation indicated above **may be considered "ADVERSE MATERIAL".** A copy is therefore attached for your review. You may make written comments on a separate sheet of paper. Please sign below to indicate your receipt of the materials checked above and return to your commanding officer.

_____
Employee Signature

_____ _____
Commanding Officer's Signature Date & Time Form Executed

Function Code: 301.B
CALEA: 26.1.4
Proponent Unit: Personnel Division

Distribution	
Original	- Employee
Yellow Copy	- Station
Pink Copy	- Bureau Chief

ADMINISTRATIVE AND SUSPENSION HEARING BOARDS

FUNCTION CODE: 301.C
EFFECTIVE DATE: 03-17-97

Contents:

I. Policy
II. Definitions
III. Administrative Hearing Boards
IV. Emergency Suspension Hearing Boards
V. Proponent Unit
VI. Cancellation

I. Policy - It is the policy of this department to provide fair and thorough hearings for those employees accused of misconduct in order to maintain an atmosphere of integrity and professionalism.

II. Definitions

A. **Administrative Leave** - Leave with pay (non-punitive) as opposed to an action resulting in an employee being suspended (which is a punitive action and is without pay). Placing an employee on administrative leave is not disciplinary; however, some events require this action (Refer to DD 310).

B. **Emergency Suspension** - An action by the Chief of Police, or designee, to temporarily relieve an officer of powers of arrest and use of police equipment, and to discontinue pay.

C. ***Traditional Administrative Hearing Board*** - ***The Board will consist of three members. All members of the board are selected by the Chief of Police, with one member being of equal rank as that of the accused. The chairperson will be an executive officer appointed by the Chief of Police.***

D. ***Alternative Administrative Hearing Board*** - ***The Board will consist of three members. The Chief of Police will appoint one member, as will the FOP. The third member, who will function as the chairperson, will be selected from a previously agreed upon panel of arbitrators. The Alternative Hearing Board process is not available in hearings stemming from summary punishment cases.***

III. Administrative Hearing Boards

A. *"If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, except as provided under subsection (c) of this section ("A law enforcement officer is not entitled to a hearing under this section if the law enforcement officer has been charged and convicted of a felony.") and except in the case of summary punishment or emergency suspension as allowed by Section 734A of this subtitle and before taking that action, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing."* Article 27, Section 730 (a).

B. The Administrative Hearing Board, convened by direction of the Chief of Police, conducts administrative

hearings to hear charges against department personnel. It brings forth to the Chief of Police a finding of fact concerning the charges and, in sustained cases, recommends a course of action. It is the duty of the board to judge the validity of charges made against officers. The decision will be made upon the information contained in investigative reports, statements, documents, testimony of witnesses, and other appropriate evidence introduced during the hearing. The recommendation of the board is based on a simple majority vote. A hearing by the board is an administrative proceeding in which neither life nor liberty is placed in jeopardy. The rules of evidence applicable in a criminal trial need not be strictly followed; hearsay and other evidence may be introduced for probative value. However, a hearing by the board is a quasi-judicial proceeding; as such it should be conducted in adherence to appropriate guidelines. The proceeding will be conducted with a certain amount of informality; however, a set agenda and definite rules of procedure will be established and explained to all parties at the opening of the hearing.

C. Upon completion of an investigation where an administrative charge has been sustained, a memorandum will be prepared and sent to the officer. That memorandum, bearing the signature of the Chief of Police, shall cite the charge(s) sustained, and the recommended punishment for each charge. Attached to that memorandum will be a ***"Notice of Elective Hearing Board" (Appendix A)*** informing the officer of hearing rights. The officer shall make a decision within 7 (seven) days as to acceptance or refusal of the offered punishment. If the officer declines the punishment, the type of hearing requested must be indicated. If an alternative hearing is requested, that request must be approved in writing by an authorized representative of the FOP and then forwarded to the Director, OIA. The selection form must be returned to the Director, OIA, within 7 (seven) days. Failure to return the memorandum within that time limit will result in the automatic setting of a traditional hearing board. A memorandum returned by the accused officer requesting an alternative board, but not bearing the signature of an authorized FOP representative, will result in a traditional hearing board being set. Once the accused officer has made a selection as to the type of hearing desired, that decision is irrevocable. When an officer chooses to waive the hearing, such waiver will be documented and forwarded to the Chief of Police prior to the hearing date. In consideration of the potential inconvenience to witnesses, it is required that this waiver be made in time to allow proper notification. A waiver will result in a predetermined punitive action being administered.

D. Formation of a Traditional Administrative Hearing Board
   1. The chairperson will be an executive officer appointed by the Chief of Police.
   2. The Director, OIA, will contact the applicable Bureau Chief. The Bureau Chief, or designee, will select the two remaining board members.
   3. The Bureau Chief, or designee, will make the individual selection based on the following guidelines:
      a. The officer selected is regularly scheduled for daywork on the date the hearing is scheduled.
      b. The officer selected is not assigned to the same geographic or functional unit as the accused officer.
      c. The officer selected is not a close, personal friend of the accused officer or a relative.

80

d. The officer selected is not a former immediate supervisor or subordinate of the accused officer.

4. The same guidelines will be followed for selection of the third board member who must be of the same rank as that of the accused officer.
5. The accused officer or his counsel may challenge for cause any officer selected to serve on the board. If the Chairperson of the board determines that cause for removal has been established, the challenged officer will be removed and another officer will be selected to serve on the board in accordance with this Directive.

E. ***Formation of an Alternative Administrative Hearing Board***

1. ***The board shall consist of three members: two law enforcement officers and a neutral chairperson. The Chairperson shall be chosen from a standing panel of arbitrators maintained for such purpose by the County and FOP Lodge 35. The Chairperson shall be selected to hear cases in rotation in the order their names appear. If the arbitrator slated to hear a case cannot hold the hearing within a reasonable time, the next arbitrator shall be selected.***
2. ***The chief shall appoint one law enforcement officer and the FOP Lodge 35 the other. These appointments shall be announced simultaneously, without undue delay. The law enforcement member appointed by FOP Lodge 35 shall be scheduled to daywork for the duration of the hearing board.***
3. ***No member of the hearing board shall in any way be involved in, or a witness to, any incidents which are the subject to the complaint before them.***
4. ***Except as provided in subsection 5, FOP Lodge 35's choice of a law enforcement member shall be any member of the bargaining unit; and the Chief's choice may be any law enforcement officer in the rank of sergeant or above. Therefore, it is not required that either law enforcement member be of the same rank as the accused officer.***
5. ***If the Chief of Police decides to select a law enforcement member from another law enforcement organization, the FOP Lodge 35 shall receive sufficient notice in time to select a law enforcement member from another law enforcement organization, if it so desires. FOP Lodge 35's choice of a law enforcement member shall be of a rank comparable to the ranks within the collective bargaining unit.***
6. ***Any controversy concerning the formation of an alternative hearing board may be submitted to the chairperson of the hearing board for their hearing and/or decision. Such decision of the chairperson shall be contested pursuant to LEOBOR Sections 732 or 734.***

F. The Administrative Hearing Board Chairperson will contact the other board members prior to the hearing, inform them of the name of the accused officer and the charge(s), and ensure they are familiar with their responsibilities as hearing board members. Additionally, the Chairperson will explicitly instruct the board members that all information obtained through their assignment as a board member be held strictly confidential. The Chairperson will also

issue witness summonses upon request by either party to the hearing (Appendix B). The Chairperson will preside over the board proceedings and decide any questions of procedure, acceptability, and relevancy of evidence. The Chairperson will rule on objections which are raised and all other related matters. The Chairperson will inquire into any discrepancies arising from any testimony, evidence or other facts presented at the hearing. If an issue is identified at the hearing which is unrelated to the issue(s) in question, and in the opinion of the board the new issue warrants formal attention, the board should so recommend in the memorandum they forward to the Chief of Police. They will not further consider such an issue in the deliberations at hand, but if the Chief concurs with such recommendation, the Chief may direct an investigation into the newly developed issue. The Administrative Hearing Board Chairperson will be responsible for apprising the Chief and the affected employee of the Board's findings, recommendations, and actual vote in writing. After deliberation by the Board on the issue(s) in question, the Chairperson and the board members shall reach a consensus as to the appropriate finding of fact for each issue. Included within such finding of fact will be a concise statement applicable to each issue. The discussion of each issue will include references to any testimony or evidence which were relied on for the decision. In the event a Board member dissents from any portion of the finding of fact or the recommendations for action, the Chairperson will note the fact in the report to the Chief. The dissenting member will also submit the rationale for such dissent, and this opinion will be included in the report to the Chief. In setting forth the duties of the Chairperson, it is to be understood that it is not feasible to enumerate all the decisions, rulings, and findings that the Chairperson may be called upon to make. The Chairperson will make the necessary rulings according to their knowledge and objectives, keeping in mind the relevancy of the issue at hand. In the event that an objection or Constitutional challenge to the introduction of certain evidence is made and the Chairperson decides to allow admission of the evidence, the Chairman should note the objection or challenge in the record and proceed with the testimony.

G. General Administrative Hearing Board Order of Proceedings (Appendix C)
- Presentation of Department's case.
- Cross-examination by defense.
- Examination by Board.
- Presentation of defense.
- Cross-examination by Department.
- Examination by Board.
- Summation by Department.
- Summation by defense.
- Final rebuttal by Department.

H. Role of the Administrative Hearing Board
- Examination of all witnesses who testify at the hearing.
- Examination of all evidence presented at the hearing.
- Examination of all officers who testify at the hearing.
- Deliberation leading to findings of fact and recommendation(s) by the Board. This will be done in closed session.

I. The degree of proof necessary for a hearing board to make a finding of guilt is the "preponderance of the evidence". Preponderance of evidence denotes evidence which is of greater weight or more convincing than that which is offered in opposition to it; that is, evidence which as a whole shows that fact or causation sought to be proved is more probable than not.

82

The trier of facts has to determine on which side of an issue the majority or "preponderance" of credible evidence falls.

J. Should an officer disobey a direct order to testify specifically, directly, and narrowly to the facts, the officer may be subjected to disciplinary action for failing to obey a lawful and proper order.

K. Hearing Board Results and Subsequent Action

- *"Any decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by the findings of fact. The findings shall consist of a concise statement upon each issue in the case. A finding of not guilty terminates the action. ..."* Article 27, Section 731 (a). Findings should be made as a matter of principle. This is important for several reasons: the case may be subject to further review; findings apprise the parties of the basis for the decision, and finally, a statement of findings fosters the belief that matters were carefully considered. The members of the Board, during their deliberations, should consider the evidence related to each issue (charge) and come to a conclusion as to their validity.
- *"... If a finding of guilt is made, the hearing board shall reconvene the hearing, receive evidence, and consider the law enforcement officer's past job performance and other relevant information as factors before making its recommendation to the chief. ..."* Article 27, Section 731 (a). *"... The hearing board may recommend punishment as it deems appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment or other similar action which would be considered a punitive measure."* Article 27, Section 731 (b).
- *"... A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record and to the chief. ..."* Article 27, Section 731(a). The written recommendations will be completed by the Board and forwarded to the Chief of Police and the accused officer within 10 (ten) working days after the Board finally adjourns. An extension may be granted by the Chief upon request; the board will then notify the officer of that action.
- *"... The person who may take any disciplinary action following any hearing in which there is a finding of guilt, shall consider the law enforcement officer's past job performance as a factor before he imposes any penalty."* Article 27, Section 731 (a).
- *"The written recommendations as to punishment are not binding upon the chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall review the findings, conclusions and recommendations of the hearing board and then the chief shall issue a final order. The chief's final order and decision is binding and may be appealed in accordance with this subtitle. Before the chief may increase the recommended penalty of the hearing board, the chief personally shall: (1) Review the entire record of the hearing board proceedings;* ***(2) Meet with the law enforcement officer and permit the law enforcement officer to***

be heard on the record; (3) Disclose and provide to the officer in writing at least 10 days prior to the meeting any oral or written communication not included in the hearing board record on which the decision to consider increasing the penalty is based, in whole or in part; and (4) State on the record the substantial evidence relied on to support the increase of the recommended penalty." Article 27, Section 731(c). (CALEA 26.1.6)

- *"Appeal from decisions rendered in accordance with Section 731 shall be taken to the circuit court for the county pursuant to Maryland Rule B2. Any party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals."* Article 27, Section 732. (CALEA 26.1.6)

IV. Emergency Suspension Hearing Boards

A. Once an employee is placed on administrative leave and the Chief of Police is notified of the incident by the employee's Unit Commander, the Chief, or designee, shall determine if an emergency suspension is warranted. *"Emergency suspension **with pay** may be imposed by the chief when it appears that the action is in the best interest of the public and the law enforcement agency. ... Any person so suspended shall be entitled to a prompt hearing."* Article 27, Section 734 A(2). If the Chief, or designee, imposes suspension, they shall notify the employee promptly in writing of that decision and inform the employee that they are entitled to a prompt hearing. The Chief will ensure that a hearing is scheduled as soon as possible and that the employee is notified in writing of the date and time of that hearing.

An officer may waive in writing any or all rights provided in Sections 727 through 734 of the Annotated Code of Maryland.

B. Suspension Hearing Board
1. The purpose of the suspension hearing is to determine whether the suspension of an officer by the Chief of Police, or designee, is reasonable under the circumstances. The procedures for the suspension hearing will follow that of the Administrative Hearing Board with the following exceptions:
   a. The Suspension Hearing Board does not bring forth to the Chief a finding of fact, but merely examines the evidence to the point of determining the reasonableness of the suspension;
   b. Since the board does not determine guilt or innocence, the "preponderance of the evidence" rule applies only to that amount of evidence necessary to determine the reasonableness of the suspension; and
   c. The board does not recommend punishment, but merely recommends action on the issue of suspension.
2. The format to be followed can be found in Appendix D.
3. The hearing can make any of the following recommendations:
   a. The officer be placed on administrative leave.
   b. The officer be suspended without pay.
   c. The officer be returned to full duty.
   d. The officer be assigned to administrative/ restricted duty.
4. The recommendations of the Board will be put in writing and forwarded to the Chief of Police

and the employee within three (3) days of the hearing.

5. Upon receipt of the Board's recommendation, the Chief shall review the recommendation and notify the officer promptly in writing of their status.

V. Proponent Unit
Office of Internal Affairs

VI. Cancellation
Department Directive 301.C, dated 08-15-91.

Carol A. Mehrling

Carol A. Mehrling
Chief of Police

86

APPENDIX A

NOTICE

You may ACCEPT or NOT accept the punitive action offered. If you choose to NOT ACCEPT the punitive action offered, you are entitled to a regular LEOBR hearing board or an alternate hearing board. Pursuant to your collective bargaining agreement:

1. You have the right to select an alternate hearing board within seven (7) calendar days. A Notice of Election of Hearing Board is set forth below.

2. The alternate hearing board consists of:
   - A police officer selected by FOP Lodge 35 (MPO or below), and;
   - A police officer selected by the Chief of Police (Sergeant or above), and;
   - A neutral labor arbitrator selected from a list previously agreed to by FOP Lodge 35 and the County.

3. If you do not select an alternate board, your case will be heard by:
   - Three police officers all selected by the Chief of Police. One of these police officers must be of your same rank.

4. You are urged to discuss your options with your steward or other FOP Lodge 35 official right away.

5. Once you make your decision, it cannot be revoked.

6. You must deliver this document to the Chief of Police with seven (7) calendar days from the date you receive this notice.

INSTRUCTIONS: Check the appropriate box(es) and sign on the appropriate line.

( ) I ACCEPT the punitive action and WAIVE my rights to an administrative hearing.

Officer's Signature: _____ Date: _____

( ) I DO NOT ACCEPT the punitive action offered and demand an administrative hearing. (Complete Notice of Election of Hearing Board).

Officer's Signature: _____ Date: _____

NOTICE OF ELECTION OF HEARING BOARD

I desire an alternate hearing board consisting of officers selected by the Chief of Police, FOP Lodge 35, and a neutral chairperson.

Officer's Signature: _____ Date: _____

Approved by FOP Lodge 35:

Authorized Representative: _____

I desire a regular LEOBR hearing board consisting of three police officers selected by the Chief of Police.

Officer's Signature: _____ Date: _____

APPENDIX B

ADMINISTRATIVE HEARING BOARD

Montgomery County Department of Police * OIA NO.
*
*
*
*
*

VS.

SUMMONS

TO:

Pursuant to Article 27, Section 730 of the Annotated Code of Maryland, you are hereby summonsed to appear before the administrative hearing board for the Montgomery County Department of Police, at Police Headquarters, 2350 Research Blvd., Conference Room, Rockville, Maryland on the _____, 1996, at _____ a.m., to testify for the department.

_____ _____
Hearing Board Chairman Date

_____ _____
Served By Date

87

APPENDIX C

ADMINISTRATIVE HEARING BOARD PROCEDURE

(RECORDING SYSTEM ACTIVATED)

This Administrative Hearing Board is hereby convened and called to order. For the purpose of identification on the recording system, will the following parties identify themselves when called upon to do so;

A. I am _____, Chairman of the Administrative Hearing Board.

B. Will the next highest ranking officer serving as an Administrative Hearing Board member identify himself?

C. Will the officer of equal rank serving as an Administrative Hearing Board member identify himself?

D. Will the respondent's representative/attorney identify himself (if applicable)?

E. Will the respondent identify himself?

F. Will the prosecutor identify himself?

I. INTRODUCTORY STATEMENT BY CHAIRMAN OF THE ADMINISTRATIVE HEARING BOARD:

Officer _____, on the _____ day of _____, 19 __, you received a notification of the administrative charges against you which constitute the issues to be heard by this Board, convened this _____ day of _____, 19 ___, at _____ hours.

The purpose of this Administrative Hearing Board is to hear evidence and arguments concerning the charges that have been placed against you, to make a determination of facts, to recommend a course of disciplinary action if applicable, and to submit a written report, including findings of fact and recommendations, to the Director of Police who shall then determine the final action to be taken in this matter.

Pursuant to the provisions of the Law Enforcement Officers' Bill of Rights, Article 27, Sections 727-734, of the Annotated Code of Maryland, 1957 Edition as amended, you have been charged with violation(s) of Montgomery County Police Departmental rules, policies or procedures.

Note to Chairman: Read the charge(s) as specified in the letter of notification.

Charge #1: _____

_____

_____

To wit: _____

_____

_____

Charge #2: _____

_____

_____

To wit: _____

_____

_____

Charge #3: _____

_____

_____

To wit: _____

_____

_____

Etc.

89

Officer_____, you will be asked to either admit or deny the charges against you. If you admit those charges, you have the right to present any evidence and argument to this Board that you wish to be considered prior to our recommendation of disciplinary action.

If you deny the charges against you, this Board will hear evidence and arguments and determine whether or not the Police Department has proven the charges against you. If we find that the charges have not been sustained, we shall so advise the Director of Police. However, if we find that the charges are sustained, we will reconvene and receive evidence reference to your past performance as a police officer prior to a decision on a recommendation as to disciplinary action.

You may also waive your right to be present at this hearing or to present evidence and arguments in your behalf; however, whether you choose to be present or not, or whether you choose to offer any evidence and arguments or not, this Board will consider the charges against you as presented by the Department and will recommend a course of action to the Director of Police.

Do you understand what has just been explained to you?

Do you admit or deny the charges against you?

(NOTE: If the person charged stands mute, he or she shall be advised that silence will be considered a denial of the charges)

II. OATH TO WITNESSES:

The chairman of the Hearing Board will administer the following oath prior to a witness testifying:

> "Do you solemnly affirm and declare under the pain and penalty of perjury that the testimony you shall give before this Hearing Board is the truth, the whole truth and nothing but the truth."

The witness will be requested to raise his/her hand when the above oath is administered, and also he/she will be asked to respond "I do" after said oath is read by the chairman.

III. PRESENTATION OF EVIDENCE AND ARGUMENTS:

1. Department presents its case. Each department witness is first questioned by the department's counsel and then is subject to cross examination by officer and Board.

2. Officer presents his or her case. Each defense witness is first questioned by the officer's counsel and then is subject to cross examination by Department and Board.

3. Rebuttal by Department, which may only address those matters raised by the officer or the Board.

4. Surrebuttal by officer, which may only address those matters raised by the Department or the Board during rebuttal.

5. Summation by Department.

6. Summation by officer.

7. Final summation by Department.

Board adjourned at _____hours for purpose of deliberation.

IV. RECONVENING OF BOARD IF GUILT IS FOUND:

If after deliberation there is a finding of guilt, the Chairman will make the necessary verbal notification as to time and date of the reconvening of the Board. After notification, the Chairman will cause the Board to reconvene on the record for the purpose of receiving evidence of the officer's past job performance and other relevant information. The date, time and purpose for the reconvened hearing will be explained on the tape prior to receiving information. After receiving the information, the hearing will be adjourned.

Board adjourned at _____ hours for purpose of deliberation.

(91)

APPENDIX D

SUSPENSION HEARING BOARD PROCEDURE

(RECORDING SYSTEM ACTIVATED)

This Suspension Hearing Board is hereby convened and called to order. For the purpose of identification on the recording system, will the following parties identify themselves when called upon to do so;

A. I am _____, Chairman of the Suspension Hearing Board.

B. Will the next highest ranking officer serving as a Suspension Hearing Board member identify himself?

C. Will the officer of equal rank serving as a Suspension Hearing Board member identify himself?

D. Will the respondent's representative/attorney identify himself (if applicable)?

E. Will the respondent identify himself?

F. Will the prosecutor identify himself?

I. INTRODUCTORY STATEMENT BY CHAIRMAN OF THE SUSPENSION HEARING BOARD:

Officer _____, on the _____ day of _____, 19___, you received notification of suspension.

This suspension hearing is not a judicial proceeding, nor is it directed to the findings of fact or law. The hearing is limited to a presentation of circumstances surrounding the suspension. The board's findings will be submitted to the Chief of Police who shall then make a final determination concerning suspension.

Pursuant to the provisions of the Law Enforcement Officers' Bill of Rights, Article 27, Section 734A (2), of the Annotated Code of Maryland, 1957 Edition as amended, you have been suspended for alleged violation(s) of Montgomery County Police Departmental rules, policies or procedures.

Note to Chairman: Read the charge(s) as specified in the letter of notification.

Charge #1: _____

_____

_____

To wit: _____

_____

_____

Charge #2: _____

_____

_____

To wit: _____

_____

_____

Charge #3: _____

_____

_____

To wit: _____

_____

_____

Etc.

You may waive your right to be present at this hearing or to present evidence and arguments in your own behalf. However, whether

you choose to be present, or whether you choose to offer any evidence or arguments, this board will only consider the circumstances surrounding the suspension.

Do you understand what has just been explained to you?

II. OATH TO WITNESSES:

The Chairman of the hearing board will administer the following oath prior to a witness testifying:

"Do you solemnly affirm and declare under the pain and penalty of perjury that the testimony you shall give before this hearing board is the truth, the whole truth and nothing but the truth?"

The witness will be requested to raise his hand when the above oath is administered, and also, he will be asked to respond "I do" after the oath is read by the chairman.

III. PRESENTATION OF EVIDENCE AND ARGUMENTS:

1. Department presents its case, subject to cross examination by officer and board.

2. Officer presents his case, subject to cross examination by Department or board.

3. Rebuttal by department, which may only address those matters raised by the officer or the board.

4. Surrebuttal by officer, which may only address those matters raised by the department or the board during rebuttal.

5. Summation by department.

6. Summation by officer.

Board adjourned at _____ hours for purpose of deliberation.

IV. RECONVENING OF BOARD AFTER DELIBERATION:

After deliberation, the board shall reconvene and advise the participating parties of their decision. After the decision is announced, the hearing will be adjourned. The Chairman of the board shall submit a written report to the Chief of Police and the officer detailing their findings.

EXPUNGEMENT OF INTERNAL AFFAIRS RECORDS

FUNCTION CODE: 301.D
EFFECTIVE DATE: 10-09-95

Contents:

I. Scope of the Law
II. Procedures for Expungement
III. Proponent Unit
IV. Cancellation

I. Scope of the Law

A. Article 27, Section 728(b)(12)(ii) of Maryland law states, "A law enforcement officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:
   1. The law enforcement agency investigating the complaint has exonerated the officer of all charges in the complaint, or determined that the charges were unsustained or unfounded; and
   2. 3 years have passed since the findings by the law enforcement agency."

B. A case file resulting in a "Not Guilty" or "Policy Failure" finding at a hearing board will also be expunged at the officer's request.

II. Procedures for Expungement (CALEA 26.1.8)

A. If an officer wishes to have his record(s) expunged, he/she must forward a ***"Record Expungement Request Memorandum", MCP# 301,*** (original and one copy) directly to the Director, Office of Internal Affairs (OIA), requesting the expungement. Officers shall first call OIA to obtain their case number(s).

B. If the statutory requirements for expungement are met, the OIA Director will expunge the file and notify the officer within 30 days by returning directly to him/her ***a copy of the MCP# 301*** marked with the expungement date.

C. If the expungement requirements are not met, the OIA Director will notify the officer by returning ***a copy of the MCP# 301*** within 30 days indicating the request will not be granted and the reasons for the denial.

D. In both situations, the original ***MCP# 301*** will be placed in the OIA case file.

E. The method of expungement will be destruction (shredding) except in the following circumstances:
   1. The file contains names of two or more accused officers and charges against one or more of the officers were sustained. The entire file will then be placed in limited access. Any reference to those officers who were exonerated, or who had charges placed that were unfounded or not sustained, will be obliterated (marked over).
   2. Entries in the OIA log will be obliterated.

III. Proponent Unit: OIA

IV. Cancellation: *301.D, dated 11-15-94.*

Carol A Mehrling

Carol A. Mehrling
Chief of Police

95

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE

MCP 301
Rev. 08/95

INTERNAL AFFAIRS
RECORD EXPUNGEMENT REQUEST MEMORANDUM

TO: Director, Office of Internal Affairs

FROM: _____

Duty Assignment: _____ ID No.: _____

SUBJECT: **INTERNAL AFFAIRS RECORD EXPUNGEMENT REQUEST**

DATE: _____

The Law Enforcement Officers' Bill of Rights provides that records of a formal complaint that result in a not sustained, exonerated, or unfounded finding may be expunged after three (3) years. Pursuant to Maryland Code, Article 27, Section 728(b)(12)(ii), Annotated Code of Maryland, I hereby request expungement of the following files which may meet this criteria:

OIA Case No.	Final Disposition Date	OIA Case No.	Final Disposition Date

Signature of Requesting Officer: _____

Director, OIA - *check one of the following*

☐ Request granted; date expunged: _____
I have determined the request meets statutory criteria.

☐ Request denied; date: _____
Reason(s):

Signature of Director, OIA: _____

FUNCTION CODE: 301.D
CALEA: 52.1.6
PROPONENT UNIT: OIA

96

DISCIPLINARY PROCESS FOR CIVILIANS, POLICE OFFICER CANDIDATES, AND PROBATIONARY OFFICERS

FUNCTION CODE: 301.F
EFFECTIVE DATE: 08-15-91

Contents:

I. Purpose
II. Authority in Discipline Matters
III. Definitions
IV. Filing of a Complaint
V. Investigation of a Complaint
VI. Notification of a Complaint
VII. Disposition
VIII. Grievances
IX. Appeals
X. Scope of the Law
XI. Procedures for Expungement
XII. Proponent Unit
XIII. Cancellation

I. Purpose

This directive sets forth policy and procedure regarding the investigation/disciplinary process for non-sworn employees and probationary police officers of the Police Department. Any procedure or situation not addressed in this directive should be resolved by referring to the County Personnel Regulations. Any procedure set forth herein which conflicts with the County Personnel Regulations will be resolved in favor of the County Personnel Regulations or collective bargaining agreement, whichever is applicable. (CALEA 26.1.3.D, 26.1.4)

II. Authority in Discipline Matters

A. The Chief of Police has authority for all disciplinary action involving non-sworn department personnel (Personnel Regulations, Section 27.5).

B. In disciplinary matters, Police Officer Candidates and probationary police officers (except for those charged with brutality) will be treated as civilian employees.

III. Definitions

A. Minor Complaints of Misconduct - include those allegations which, if sustained, would be appropriately disciplined through the use of the Supervisor's Remedial Action Form.

B. Serious Allegations of Misconduct - include among other acts, complaints which allege racial prejudice, misappropriation of monies, untruthful statements, and allegations of alcohol or unlawful drug use.

C. Due Process - the right of an employee to be afforded those procedural and substantive protections established by applicable provisions of the Charter, Merit System Law, regulations or administrative procedures in any matter affecting terms or conditions of employment (Personnel Regulations, Section 3.2).

D. Grievance - a formal written complaint by an employee arising out of a misunderstanding or disagreement between a merit system employee and supervisor, which expresses the employee's dissatisfaction concerning a term or condition of employment or treatment by management, supervisors, or other employees (Personnel Regulations, Section 28.2).

E. Appeal - the written request of an employee for review by the Merit Board of an administrative decision on a grievance, disciplinary action, or other personnel action which adversely affects employment or opportunity for employment or promotion for which appeal privileges are provided (Personnel Regulations, Section 29.1). For members of MCGEO, Local 400, an appeal is in accordance with the terms of the collective bargaining agreement.

IV. Filing of a Complaint (CALEA 26.1.4, 26.1.8, 52.2.2)

A citizen desiring to complain about an employee of the Department, either in person or by telephone, will be referred to the on-duty supervisor or officer-in-charge of the respective district or functional unit. For both minor and serious cases of misconduct, complaints will be handled as detailed in Function Code 301, Section IV.

V. Investigation of a Complaint

A. Prior to any interview of an employee under investigation, the employee shall be advised of the nature of the investigation. Such notification may be verbal in nature.

B. Representation during Interview - At the request of an employee under investigation, he/she shall have the right to be represented by counsel or any other responsible representative of his/her choice who may be present during any interview. Under provisions of the negotiated contract between MCGEO, Local 400 and the Montgomery County Government, an employee under investigation shall be afforded at least 60 minutes to arrange for representation.

C. Record of Interview - Upon completion of the investigation, and upon request of the employee under investigation or his counsel, a copy of the transcript of the tape recorded interview (if one has been made) shall be made available to the employee.

D. Use of MCP #50 - Interrogation Rights & Waiver Form - If the employee being interviewed is under arrest or is likely to be placed under arrest as a result of an interview, he shall be completely informed of his Miranda rights prior to the commencement of the interview.

E. Time, Place and Manner of Interviews
1. Any interview shall take place either at the office of the command of the investigator or at the office of the police unit in which the incident allegedly occurred, as designated by the investigator, unless otherwise waived by the employee, or at any other reasonable and appropriate place.
2. Any interview shall be conducted at a reasonable hour, preferably at a time when the employee is on duty, unless the seriousness of the investigation is of such a degree that an immediate interview is required.
3. Interview sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

F. Required Interrogations and Tests
1. Employees under investigation may be compelled to submit to Blood Alcohol Tests, blood, breath, or urine tests for controlled dangerous substances (Personnel Regulations, Section 5.12) where there is reasonable suspicion of alcohol or unlawful drug use, or interrogations which specifically relate to the subject matter of the investigation.

2. All urinalysis testing will be coordinated through the Office of Internal Affairs. Supervisors are instructed to contact the on-call officer from the Office of Internal Affairs after normal work hours.

VI. Notification of a Complaint

A. Whenever a Statement of Charges (Appendix A) is executed, it will serve as written notification of the investigation.

B. The Chief of Police, or his designee must give the employee a copy of the charges and provide a minimum of five (5) workdays to respond. Disciplinary actions affected by this requirement include written reprimands, within-grade reductions, suspensions, demotions, and dismissals.

C. When the employee involved is a unit member of MCGEO, Local 400, SLT/OPT:
   1. The Department will provide the union any written statements (citizen complaints, employee observations) in the possession of the Department and used in connection with an adverse action taken against a bargaining unit employee. These statements will be sanitized (name, address, phone number deleted) to protect privacy rights in accordance with the law.
   2. The written statements referred to in Subsection 1 will be provided to the union when the employee receives the Statement of Charges.
   3. The Department is under no obligation to permit the employee or union to interview the author of the statement. If the statement is used as evidence on appeal, the employee or union will have the opportunity to examine the witness.

VII. Disposition

A. An investigation shall result in no punitive action where the employee's conduct was exonerated or when there is not substantial evidence of misconduct found. In such cases, employees will be furnished a copy of any reply to a complainant or, if there is none, they will be provided a written notification of the investigative outcome. In such cases where complaints are determined to be unfounded or found to be without merit by the Merit Board, the records of the case will be processed in accordance with Administrative Procedure 4-8, Review of Employee Personnel Records. (CALEA 52.2.2)

B. Oral admonishments and written reprimands may be given at the discretion of the Chief of Police. In all cases, the employee should be told why their conduct is inappropriate, what needs to be done to change, and what action will occur if changes are not made. Signed notice of disciplinary action for within-grade reduction, suspension, demotion, or dismissal must be received by the Personnel Office for review and approved by the CAO prior to the employee being advised of any action.

C. In cases of within-grade reduction, demotion, suspension, and dismissal, the Chief of Police must provide written notice of such action at least five (5) days prior to the effective date of the action. Exceptions to this requirement are theft and serious violations which pose a health or safety risk (Personnel Regulations, Section 27.4/MCGEO Contract).

D. Summary of Steps in Procedure
   1. Department
      a. Prepares Statement of Charges; gives employee

opportunity to respond (Appendix A).

b. Prepares notification document (Appendix B) and Personnel Action Form (PAF) for proposed disciplinary action.

c. Sends notification document, statement of charges, supporting documentation, and Personnel Action Form to the Personnel Director's office. The normal processing time is five workdays; the action date should be established accordingly.

d. Documentation must be submitted in duplicate to the Personnel Office.

e. For employees who are members of MCGEO, Local 400, the following shall apply regarding written notices to the employee from the employer pertaining to Disciplinary Action, Termination, RIF Notices, Demotions, Promotion or Reduction-In-Salary. In all instances the notices to employees identified above shall contain the following language at the bottom of the last page of the document:

NOTICE TO BARGAINING UNIT EMPLOYEES
You are entitled to be represented in this matter by Montgomery County Government Employees Organization, UFCW Local 400, AFL-CIO (Union). If you wish a copy of this document sent to the union, indicate by checking the appropriate space below:
____ I do wish the union to receive this document ____ I do not wish the union to receive this document

_____
Employee's Signature

_____
Date

2. Personnel Office

a. Personnel Office and County Attorney's Office review notification document for approval.

b. Returns employee and Department copies.

E. Employee Relations will coordinate and review all disciplinary actions with the County Attorney's Office rather than the Department directly contacting the latter.

VIII. Grievances

A grievance may be filed if an employee believes he has been adversely affected by an alleged:

A. Violation, misinterpretation or improper application of established law, rules, regulations, procedures or policies.

B. Improper or unfair act by a supervisor or other employee, which may include coercion, restraint, reprisal, harassment, or intimidation.

C. Improper, inequitable or unfair act in the administration of the merit system, which may include promotional opportunities, selection for training, duty assignments, work schedules, evaluation of work performance, transfers, and reduction in force.

D. Improper, inequitable or unfair application of the compensation policy and employee benefits, which may include salary, pay differentials, awards, overtime pay, leave, insurance, retirement and holidays.

E. Disciplinary action, which includes written reprimands and within-grade reductions (Personnel Regulations, Section 28.2/MCGEO Contract).

100

IX. Appeals (CALEA 26.1.6)

A. An employee shall have the right of appeal before the Merit Board from a demotion, suspension, dismissal, involuntary resignation, written reprimand, or within-grade reduction (Personnel Regulations, Sections 27.6 and 29.2). An employee has ten (10) workdays from receipt of a written decision of the CAO or notice of a disciplinary action to note an appeal in writing with the Merit Board (Personnel Regulations, Section 29.4).

B. For additional steps in the appeal process, refer to the Personnel Regulations, Section 29, entitled "Appeals and Hearings."

C. Employees who are members of MCGEO, Local 400 may choose to appeal in accordance with the terms of the collective bargaining agreement and waive their right to appeal to the Montgomery County Merit System Protection Board.

X. Scope of the Law (CALEA 26.1.8)
A member, upon written request, may have any internal affairs record of a formal complaint made against him/her expunged from any file if:

A. The law enforcement agency investigating the complaint has exonerated the member of all charges in the complaint, or determined that the charges were unsustained, unfounded ***or a policy failure***; and

B. Three (3) years have passed since the findings by the law enforcement agency.

C. For Department, unit and supervisors personnel files, copies of reprimands and disciplinary actions shall be maintained for five (5) years only.

D. For members of MCGEO, Local 400, all reprimands contained in central personnel files shall become null and void after a period of two (2) years.

XI. Procedures for Expungement (CALEA 26.1.8)

A. OIA investigative files shall be available for expungement provided:
1. Three (3) years have elapsed since the investigative report was approved by the Chief of Police and;
   - The OIA investigation resulted in a finding of not sustained, exonerated, unfounded, ***policy failure*** or,
   - A sustained finding was overturned in any subsequent hearing.
2. Investigative OIA files which resulted in a sustained finding and discipline was subsequently administered shall not be available for expungement.

B. If a member wishes to have his/her OIA record(s) expunged, he/she must forward a memorandum (original and one copy) directly to the Director, O.I.A., requesting the expungement. Members shall first call O.I.A. to obtain their case number(s) and then forward the memorandum in the format shown in Appendix D.

C. If the requirements for expungement are met, the Director, O.I.A., will:
1. Expunge the file.
2. Notify the member within thirty (30) days by returning directly the copy of his/her memorandum marked with the date the expungement was completed.

D. If the expungement requirements are not met, the Director, O.I.A., will:
1. Notify the member by returning the copy of his memorandum within thirty (30) days and

indicating the expungement request will not be granted.
2. List on the memorandum the reasons for the expungement request denial.

E. In both situations, the original of the expungement request (with the action taken indicated on it) will be placed in the case file at O.I.A.

F. The method of expungement will be destruction (shredding) except in the following circumstances:
1. The file contains names of two or more accused members and charges against one or more of the members were sustained. The entire file will then be placed in limited access. Any reference to those members who were exonerated, or who had charges placed that were unfounded or not sustained, will be obliterated (marked over).
2. Entries in the O.I.A. log will be obliterated.

XII. Proponent Unit: Office of Internal Affairs

XIII. Cancellation

This directive cancels Department Directive 86-12, Function Code 301.F and Headquarters Memoranda 86-43 and 90-55.

Clarence Edwards

Colonel Clarence Edwards
Chief of Police

102

Appendix A

MEMORANDUM

TO: (Employee)

FROM: Donald E. Brooks, Chief of Police

SUBJECT: Statement of Charges

You are hereby notified that the following reasons may serve as the basis for (type of disciplinary action). This constitutes a formal notice of statement of charges as required by Section 27.5 (b) of the Personnel Regulations.

You may respond to the charges as stated below either in person and/or writing, to this office by the close of business (minimum two workdays from receipt of notice), prior to final action being taken on this matter.

1. State specific charges and supporting reasons (include pertinent times, dates, places where appropriate).

2.

3.

4.

Appendix B

MEMORANDUM

TO: (Employee)

FROM: Donald E. Brooks, Chief of Police

SUBJECT: Notice of Disciplinary Action

You are hereby notified that the following reasons will serve as the basis for (type of action/length of time when appropriate) to be effective (minimum of five days from date of notice).

This action is being taken for the following reasons:

1. State specific charges and supporting reasons (include pertinent times, dates, places where appropriate).

2.

3.

4.

In accordance with Section _____of the Personnel Regulations, you have the right of appeal within _____ workdays from receipt of notification of this action to the Merit System Protection Board.

Appendix C

MEMORANDUM

TO: (Employee)

FROM: Donald E. Brooks, Chief of Police

SUBJECT: Written Reprimand

This constitutes a written reprimand which is being given for the following reasons:

1. State specific charges and supporting reasons (include pertinent times, dates, places where appropriate).

2.

3.

4.

You are advised that such conduct will not be permitted in the future, and should it continue, you may expect further disciplinary action, up to and including dismissal.

In accordance with Section 27.6 of the Personnel Regulations, you may appeal this action within five workdays upon receipt of this notice.

Appendix D

MEMORANDUM

TO: Director, Office of Internal Affairs

FROM: ID # _____

SUBJECT: Internal Affairs Record Expungement Request

DATE OF REQUEST:

In accordance with Article 27, Section 728(b)(12)(ii), Annotated Code of Maryland, I hereby request expungement of the following record(s):
List O.I.A. Case Number(s):

SIGNATURE OF REQUESTING MEMBER: _____

Director, OIA - Check one of the following:

___ Request granted; date expunged _____.

___ Request denied; date _____.

Reason(s):

SIGNATURE OF DIRECTOR, OIA: _____

Q. ***Will my complaint impact on any charges placed against me by the police?***

A. No. Criminal or traffic charges filed must be resolved by the courts.

Q. ***What happens at the conclusion of the investigation?***

A. If the investigation fails to sustain any misconduct, you will receive a letter from the Chief advising you of the outcome. However, if misconduct is established the Chief will make a disciplinary recommendation to the employee. If the employee accepts that recommendation the matter will be concluded. Should the employee decline the offer, the matter will follow established procedures. In the case of a civilian employee, a grievance process is implemented. In those cases involving sworn police officers, an administrative hearing will be convened and testimony will be taken under oath. In all cases the complainant will be notified of the investigative results.

Q. ***Will I be informed of the disciplinary action taken?***

A. No. Such actions are regarded as personnel actions and usually remain confidential under State Law.

Telephone Contact Numbers

Montgomery County Department of Police

OFFICE OF INTERNAL AFFAIRS

800 South Frederick Avenue
Suite 201
Gaithersburg, Maryland 20877
(301) 840-2730

District Stations

Rockville ..... (301) 279-1591
1451 Seven Locks Road
Rockville, Maryland 20854

Bethesda ..... (301) 652-9200
7359 Wisconsin Avenue
Bethesda, Maryland 20814

Silver Spring ..... (301) 565-7744
801 Sligo Avenue
Silver Spring, Maryland 20910

Wheaton/Glenmont ..... (301) 217-4400
2300 Randolph Road
Wheaton, Maryland 20902

Germantown ..... (301) 840-2650
20000 Aircraft Drive
Germantown, Maryland 20874

A Nationally Accredited Law Enforcement Agency

Montgomery County

Department of Police

Appendix J

How Do I File a Complaint Against a Police Department Employee?

Office of Internal Affairs
(301) 840-2730

Chief's Message

The Montgomery County Department of Police is recognized as one of the finest law enforcement agencies in the nation. We are proud of the high level of dedication to the community demonstrated by the men and women of the department. This dedication is the foundation on which the excellence of service to our citizenry is built. To maintain this well deserved reputation we must constantly strive for excellence.

It is crucial that all allegations of alleged police misconduct are thoroughly and objectively investigated to assure the public that official police misconduct will not be tolerated and at the same time, provide a means whereby officers unjustly accused can be vindicated. The responsibility and authority for these investigations within the Montgomery County Police is vested in the Office of Internal Affairs.

Complaints

The Office of Internal Affairs has as its major function the receipt, processing and the investigation of complaints made against both police officers and civilian members of the department. To ensure the continuing public trust and maintain the department's integrity, the office conducts immediate, thorough, objective and unbiased investigations of official misconduct. Through this process the department can correct misconduct, clear those wrongly accused, identify problem areas which can be remedied through training, identify at risk employees and, where necessary, facilitate the disciplinary process. The filing of a false complaint may lead to criminal or civil sanctions.

Frequently Asked Questions & Answers

Q. ***How do I file a complaint against an employee of the Montgomery County Police Department?***

A. Complaints will be accepted at any Montgomery County Police Department facility on a walk-in basis or may be mailed to Internal Affairs. Complaints should be in writing, either on a complaint form available at all M.C.P.D. facilities or in letter form. Be sure to include your name, address and both a daytime and home phone number.

Q. ***What happens to my complaint?***

A. All formal complaints, regardless of where submitted, are forwarded to Internal Affairs where they will be evaluated for investigative merit, and, if appropriate, assigned for investigation. Not all complaints are investigated by Internal Affairs. Based on the nature of the complaint some cases will be referred to the District or unit level for inquiry.

Q. ***Will I be contacted by the department?***

A. Yes. Following the assignment of the complaint, you will be contacted by an investigator as will any witnesses you may have. The investigator will then interview all independent witnesses and involved members of the department. At the conclusion of the investigation, all information will be viewed in the light of Departmental Rules and Directives and findings made subject to the review and approval of the Chief of Police.

Q. ***How long does the investigation take?***

A. The average investigation takes from thirty days to six months to complete. This will depend on the complexity of the case, the availability of witnesses and the involvement of other investigating agencies or units.

Appendix K: MCPD Complaint Form
MCP 580, revised 1990

DEPARTMENT OF POLICE

Douglas M. Duncan
County Executive

To the Community:

A relationship of trust and confidence between employees of the Police Department and the community they serve is essential to effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a reasonable, lawful and impartial manner without fear of reprisal, while at the same time having a special obligation to respect the rights of all persons.

The Montgomery County Department of Police acknowledges its responsibilities to establish a system of complaint and disciplinary procedures which not only will subject the officers to corrective action when they conduct themselves improperly, but also will protect them from unwarranted criticism when officers discharge their duties properly.

It is the purpose of these procedures to provide a prompt, open and expeditious disposition of complaints regarding the conduct of employees of the Department of Police. To this end, individuals are encouraged to bring complaints about department operations and the conduct of its employees to our attention whenever they believe that such an act is improper.

Should you have any questions regarding these procedures, please contact the Office of Internal Affairs at 301-840-2730 during normal business hours, Monday through Friday. The department's procedural directive on complaints is also available for inspection, upon request.

Carol A. Mehrling
Chief of Police

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE
COMPLAINT FORM

MCP 580
Rev. 10/98

DOB _____
Race _____
Sex _____

_____
Today's Date

_____
Your Name (last, first, middle)

_____
Address (number & street)

_____
City/State/Zip

_____ _____
Home Phone # Work Phone #

_____
Incident Date and Time

_____
Incident Location

I am making this complaint against:

_____
Name(s), if known

_____
Witness Name (last, first, middle)

_____
Address (number/street/city/state/zip)

_____ _____
Home Phone # Work Phone #

_____
Witness Name (last, first, middle)

_____
Address (number/street/city/state/zip)

_____ _____
Home Phone # Work Phone #

DESCRIPTION OF COMPLAINT

(Be detailed - use additional paper if necessary)

_____ _____
Your Signature

COMPLAINTS OF BRUTALITY MUST BE SWORN TO

Name of the Police Department employee to whom this complaint form is given:
Date and Time:

Please note: Complaints against police officers are investigated within the guidelines of the Law Enforcement Officers' Bill of Rights as enumerated in Article 27 of the Annotated Code of Maryland. If you are not contacted by an investigator within a reasonable time period, please contact the Office of Internal Affairs at 301-840-2730.

FUNCTION CODE: 301
CALEA: 52.1.12
PROPONENT UNIT: Office of Internal Affairs

DISTRIBUTION:
Original - OIA
Copy - To Complainant as receipt

DEPARTMENT OF POLICE

Douglas M. Duncan
County Executive

GOBIERNO DEL CONDADO DE MONTGOMERY

A La Comunidad:

Una relación de mutua confianza y apoyo entry los empleados del Departamento de Policía y la comunidad a la cual ellos sirven, es esencial para el cumplimiento efectivo de la ley. Los agentes de policía deben de ejercer su buen juicio e iniciar las acciones para hacer cumplir la ley de una manera razonable, legal e imparcial sin temor a represalias, y al mismo tiempo con la obligación especial de respeter los derechos de todas las personas.

El Departamento de Policía del Condado de Montgomery reconoce su responsabilidad de establecer un sistema de quejas y de procedimientos disciplinarios que no sólo sometan a los oficiales a acciones correctivas cuando se comporten inadecuadamente, sino que también los proteja de las críticas injustificadas cuando los oficiales cumplen adecuadamente con sus obligaciones.

El propósito de estos procedimientos es el de proporcionar un sistema para recibir las quejas relacionadas con la conducta de los empleados del Departamento de Policía de una manera rápida y eficaz. Con este fin, los exhortamos a presentar sus quejas en relación con las operaciones del departamento de Policía y de la conducta de sus empleados, siempre que consideren que sus acciones no son apropiadas.

Para mayor información o preguntas relacionadas con estos pocedimientos, por favor llame a la Oficina de Asuntos Internos, (Office of Internal Affairs) de lunes a viernes, en horas de oficina, al teléfono 301-840-2730. El regiamento del departamento de Policía sobre quejas está disponible para su inspección, si usted lo desea.

Carol A. Mehrling
Jefe de Policía

Traducción coordinada por la Oficina de Asuntos Multiculturales, Sección Hispana del Condado de Montgomery, 101 Monroe Street, Rockville, Maryland 20850. OMMA/06-93

(111)

CONDADO de MONTGOMERY, MARYLAND
DEPARTAMENTO DE POLICÍA
FORMULARIO DE QUEJA

MCP 580
Rev. 10/98

Fecha de nacimiento _____
Raza _____
Sexo _____

_____
Fecha de Hoy

_____
Su Nombre (apellido, nombre, e inicial)

_____
Dirección (número y calle)

_____
Ciudad/Estado/Código Postal

_____ _____
Número de Teléfono en su Casa Número de Teléfono en su Trabajo

_____
Fecha y Hora del Incidente

_____
Lugar del Incidente

Hago esta queja en contra de:

_____
Nombre(s) si Ud. sabe

_____
Nombre del Testigo (apellido, nombre, e inicial)

_____
Dirección (número/calle/ciudad/estado/código postal)

_____ _____
Número de Teléfono en su Casa Número de Teléfono en su Trabajo

_____
Nombre del Testigo (apellido, nombre, e inicial)

_____
Dirección (número/calle/ciudad/estado/código postal)

_____ _____
Número de Teléfono en su Casa Número de Teléfono en su Trabajo

DESCRIPCION DE LA QUEJA

(DE DETALLES - Use papel adicional si fuere necessario)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Firma

LAS QUEJAS DE BRUTALIDAD TIENAN QUE SER JURAMENTADAS

Nombre del empleado del Departamento de Policia a quien esta queja ha sido presentada:
Fecha/Hora:

NOTA: Las quejas contra los oficiales de la policia se investigan segun las normas de la ley de derechos de los oficiales enumeradas en el Articulo 27, del Codigo de Maryland. Si usted no es contactado por un investigador dentro de un periodo razonable de tiempo, por favor llame a la Oficina de Asuntos Internos (Office of Internal Affairs).

Translation by the County Executive's Office of Community Outreach, 101 Monroe Street, Rockville, Maryland 20850.

FUNCTION CODE: 301
CALEA: 52.1.12
PROPONENT UNIT: Office of Internal Affairs

DISTRIBUTION:
Original - OIA
Copia - al demandante, como recib

12

Appendix L

Department of Police
Montgomery County, Maryland

MCP 302
Rev. 10/98

OIA INTAKE FORM

COMPLAINANT'S NAME: _____

ADDRESS: _____

PHONE: (H): _____ (W): _____ DOB: _____ SEX: _____ RACE: _____

NAME(S) OF ACCUSED: SWORN ☐ NON-SWORN ☐ ID # _____ CAR # _____

1. _____ 2. _____

LOCATION OF OCCURRENCE: _____

DATE OF OCCURRENCE: _____

- COMPLAINT NAACP REFERRED YES☐ NO☐
- OTHER LAW ENFORCEMENT AGENCY YES☐ NO☐ _____
- OTHER ORGANIZATION YES☐ NO☐ _____

NARRATIVE (Brief synopsis-attach additional notes, if necessary): _____

COMPLAINT RECEIVED BY: _____ DATE RECEIVED: _____

COMPLAINT FORWARDED TO: _____(Commanding Officer of Unit/Station)

INVESTIGATED BY: _____(Assigned person at Unit/Station)

INITIAL CONTACT OF COMPLAINANT BY: _____ DATE/TIME: _____

CLOSURE CONTACT OF COMPLAINANT BY: _____ DATE/TIME: _____

~ ALL BLOCKS MUST BE COMPLETED FOR ABOVE SECTIONS, UNLESS COMPLAINANT REFUSES ~

COMPLAINT HANDLED AT DISTRICT/UNIT: YES ☐ NO ☐

DISPOSITION: FOUNDED ☐ UNFOUNDED ☐ EXONERATED ☐ NOT SUSTAINED ☐

Employee/Officer counseled	YES ☐	NO ☐
Employee/Officer Supervisors Remedial Action Form	YES ☐	NO ☐
Complaint Referred to OIA for further action	YES ☐	NO ☐

Other, Explain: _____

NOTE: THIS FORM IS TO BE COMPLETED FOR ALL COMPLAINTS RECEIVED OR GENERATED BY DEPARTMENT PERSONNEL UNLESS OTHERWISE DOCUMENTED ON THE CITIZEN COMPLAINT FORM (MCP 580). ATTACH ALL SUPPORTING DOCUMENTATION.
SUSPENSE DATE: THIRTY (30) DAYS FROM RECEIPT OF FORM.
REVIEWED BY UNIT/DISTRICT COMMANDER ON: _____
COMMANDER'S SIGNATURE: _____ **DATE:** _____

CONCUR ☐ DO NOT CONCUR ☐

Function Code: 301
CALEA: 52.1.10
Proponent Unit: OIA

Appendix M: Models of Citizen Involvement in Complaint Handling: Examples

This appendix supplements the information in Chapter V of the report. Chapter V describes the five models of complaint review (traditional investigation, auditor, appeal review, citizen monitor, and citizen review models) and police commissions. This appendix provides two examples of the four models that involve citizens in complaint review and police commissions. Additional information about each example jurisdiction is available from the Office of Legislative Oversight.

I. Auditor Model

A. San Jose, California's Independent Police Auditor

Intake	Investigation	Review	Determination of Findings	Discipline
Individuals submit complaints to the police department or the Independent Police Auditor (IPA).	The police department investigates the complaint. The auditor monitors the progress of the investigation.	The auditor reviews individual police department investigations, and analyzes patterns and trends in complaints.	Police Chief determines findings.	Police Chief imposes discipline.

The City of San Jose implemented an auditor model of complaint review by city ordinance in 1993. The Independent Police Auditor (IPA) reports directly to the mayor and city council. To help maintain the IPA's independence, the office is located at a separate facility from the police department and city hall. The IPA staff consists of the auditor, appointed by the mayor and confirmed by the city council; two analysts; and an executive assistant.

The IPA's functions include:

- Accept complaints of police misconduct from citizens;
- Review all police department investigations of complaints alleging excessive or unnecessary force;
- Review at least 20 percent of all other police department investigations of complaints; and
- Recommend changes to the police department in general areas involving policy, procedures and training to the mayor and city council.

To complete these functions, the auditor has access to any police department information relevant to policy issues studied and citizen complaints, including total access to Internal Affairs files.

The complaint review process in San Jose begins when an individual files a complaint with the Office of the Independent Police Auditor (IPA) or the police department. The police department's Professional Standards and Conduct Unit determines whether the complaint will be handled informally by the officer's supervisor or formally investigated. The Professional Standards and Conduct Unit consults the IPA on the method used to handle a complaint and the IPA audits the methods selected.

The Professional Standards and Conduct Unit investigates each formal complaint and recommends a finding. The IPA monitors the progress of the investigation and can participate in interviews of witnesses and officers. The auditor reviews completed police department investigations for thoroughness and objectivity, and to ensure that the evidence supports the police department's finding. The auditor can request additional investigation by the police department, if not satisfied that the evidence supports the finding.

The police chief makes the final determination of findings in cases of complaints of police misconduct. If the auditor does not agree with a finding, he or she can take the case to the city manager for review and resolution. The police chief has sole responsibility for imposing discipline.

In addition to reviewing individual complaints, the IPA is authorized to recommend changes to police department complaint polices and procedures to the mayor and city council. The IPA also analyzes patterns and trends in complaints and investigations. This analysis and the recommended policy changes are published in biannual newsletters and a year end report.

Part of the IPA's mandate is to promote awareness of a citizen's right to file a complaint. To this end, the auditor provides information to the citizens through radio, television, and community meeting presentations.

B. Seattle, Washington's Internal Investigations Auditor

Intake	**Investigation**	**Review**	**Determination of Findings**	**Discipline**
Individuals submit complaints to the police department, the Office for Civil Rights, or the Citizen's Services Bureau.	The police department's Internal Investigations Section investigates the complaint.	The auditor reviews all cases alleging unnecessary or excessive force, a sample of other complaints, and police department policies and procedures.	Police Chief determines findings.	Police Chief imposes discipline.

A Seattle ordinance established the Internal Investigations Auditor (IIA) position in 1992. The mayor appoints the IIA, subject to confirmation by the city council. The IIA is a private attorney working under a fixed term contract with the city. He or she reviews complaint investigations completed by the police department and provides recommendations for policy changes within the police department.

Individuals can file complaints by telephone, mail or in person at the Police Department's Internal Investigation Section, a police precinct, the city's Citizen's Service Bureau, or the city's Office for Civil Rights. Most complaints go to the police department's Internal Investigation Section for investigation. In some cases, complaints are forwarded to the officer's commander or supervisor to handle informally.

The IIA audits all completed investigations for complaints alleging unnecessary or excessive force, to ensure that each received appropriate attention. The auditor also randomly selects approximately 20% of the other complaints for review. The IIA may request additional investigative work from the police department. Following investigation and auditor review, the police chief determines findings and identifies disciplinary action.

The IIA also reviews the Internal Investigation Section's contact log and line referral investigations. These are complaints that the police department determined did not require further action and complaints that were handled by the officer's supervisor rather than the Internal Investigation Section. The IIA can request a full formal investigation of those complaints.

To complete the reviews, the IIA has access to all police department Internal Investigations Section files (unless the files relate to an active criminal investigation of an officer.) The IIA prepares semi-annual reports for city officials and the public of his or her audit activities. The auditor also meets periodically with the mayor, city council and chief of police to discuss recommendations to improve the police department's investigative process.

If a complainant is not satisfied with the outcome of their complaint, they can request an appeal. The chief of police will review the complaint and investigation to determine if it was handled properly. In some cases, the chief convenes a board of high-ranking commanders, called a Complaint Advisory Board, to conduct a hearing into the matter.

II. Appeal Review Model

A. Omaha, Nebraska's Citizen Complaint Review Board

Intake	Investigation	Determination of Findings	Review	Discipline
Police and Fire Departments receive complaints from citizens.	The Office of Professional Standards investigates the complaints.	Police Chief or Fire Chief determines findings.	If not satisfied, the complainant may request a review by the Citizen Complaint Review Board.	Police Chief or Fire Chief imposes discipline.

An Executive Order of the Mayor created Omaha's Citizen Complaint Review Board in 1993. Mayor Hal Daub amended the order on May 16, 1997. The Complaint Review Board reviews selected complaints against sworn members of the Omaha Police and Fire Departments and the Communications Department.

According to the Mayor's Executive Order, the police and fire departments have initial original jurisdiction on all complaints against sworn police or fire employees. The police and fire departments receive and investigate complaints from citizens. The chief of police or fire chief determines a finding based on the internal investigation.

Following this process, complainants who are not satisfied with the outcome may request a review by the Citizen Complaint Review Board. Board review applies to allegations of police harassment, excessive use of force, use of inappropriate language, or other violations of standard operating procedures, rules, or regulations. The Board is made up of nine members with staggered terms. The members include:

- Two sworn members of the police department (selected from a list of officers prepared by the police union),
- One sworn member of the fire departments (selected from a list of firefighters prepared by the fire union),
- Three citizens of a protected class including one woman and two minorities (appointed by the mayor),
- Three citizens who are not of a protected class, one of which must be a woman (appointed by the mayor).

Complainants who file appeals provide testimony at a Citizen Review Board hearing. Due to provisions of the collective bargaining agreements and the Omaha Municipal Code, the proceedings of the Citizen Complaint Review Board are considered confidential and not open to the public or the media.

Based on the hearing and investigation reports, the Board renders a recommendation regarding the proper disposition of the citizen's complaint to the mayor and the police or fire chief. The appropriate chief makes the final determination of findings and imposes discipline.

B. Portland, Oregon's Police Internal Investigations Auditing Committee

Intake	Investigation	Determination of Findings	Review	Discipline
Citizens submit complaints of police misconduct to the police department.	The police department's Internal Affairs Division investigates complaints.	The Internal Affairs Division determines findings.	The PIIAC reviews appeals brought forward by citizens whose complaints were not investigated or who were not satisfied with the police department investigation. PIIAC makes recommendations about the adequacy of the investigation.	Police chief determines discipline.

In Portland, individuals can file complaints directly with the police department's Internal Affairs Division (IAD) or fill out and mail in a citizen complaint form available at police precincts and Neighborhood Coalition Offices. Individuals may file a complaint against any police department employee.

The commander of the police department's Internal Affairs Division receives all complaints and determines how to proceed with the case. The IAD commander chooses one of the following approaches:

- Assign the case for mediation;
- Assign the case to the division involved (in which case, the division manager investigates the complaint and contacts the complainant to report the results);
- Assign the case for criminal investigation;
- Conduct a complete investigation within IAD; or
- Decline to look into the matter further (if the allegation is deemed false or without merit.)

When IAD investigates a complaint, the IAD Commander reviews the investigation to ensure that it is complete and determines a finding. For sustained complaints, senior commanders in the Police Chief's Office recommend discipline to the Chief. Some discipline actions are also reviewed by the mayor. IAD notifies the complainant by letter of the result of the investigation and how to appeal the decision.

Portland's Police Internal Investigations Auditing Committee reviews appeals from complainants not satisfied with the IAD commander's decision to decline an investigation. PIIAC also reviews appeals from complainants who are not satisfied with the adequacy of an IAD investigation and finding. The PIIAC is officially made up of the members of the Portland City Council who delegate duties and responsibilities to citizen advisors appointed by the City Council.

The citizen advisors meet and review appeals and make recommendations to the PIIAC about the adequacy of IAD investigations. The PIIAC members then decide whether additional investigation is warranted. The PIIAC findings are reported to the police chief, but the chief is under no obligation to change a finding of the IAD.

The PIIAC also monitors other complaints, including all use of force and disparate treatment complaints. Similar to the auditor model of complaint review, the PIIAC's Monitoring Subcommittee reviews a random sample of IAD cases that were not appealed to assess trends and patterns in complaints and identify policy and procedural changes. The PIIAC can also review and make recommendations about the IAD process to improve community credibility in the police department and the complaint review process. PIIAC produces quarterly reports that summarize citizen appeals and report complaint data and citizen feedback.

III. Citizen Monitor Model

A. Prince George's County, Maryland's Citizen Complaint Oversight Panel

Intake	Investigation	Review	Determination of Findings	Discipline
Police department, Human Relations Commission and Citizen Complaint Oversight Panel intake complaints.	Police conduct investigations. The County's Human Relations Commission may investigate complaints simultaneously with the police department investigation.	The CCOP reviews the investigation(s) and reports to the chief on the appropriateness of the police department recommendation.	The chief makes the final determination of findings.	Police chief imposes discipline.

Prince George's County implemented a citizen monitor model of complaint review in 1990. County law (CB-25-1990) created the Citizen Complaint Oversight Panel (CCOP), which consists of seven County residents appointed by the County Executive and confirmed by the County Council. The purpose of the CCOP is to review police department investigations of complaints of excessive force, abusive language or harassment, and to advise the chief if the investigations was complete, thorough, and impartial.

In Prince George's County, individuals can submit written complaints to the police department, the County's Human Relations Commission, or the Citizen Complaint Oversight Panel (CCOP) office. The Internal Affairs Division of the County Police Department investigates all complaints. The Human Relations Commission also receives a copy of every complaint alleging use of excessive force, abusive language, or harassment by a law enforcement officer. The County Human Relations Commission may investigate complaints simultaneously with the police department.

According to County law, "The investigation and hearing by the Human Relations Commission shall not be construed to constitute an investigation or hearing that could lead to disciplinary action, demotion, or dismissal of a law enforcement officer." The purpose of the Commission's comments is to provide additional information to assist the CCOP members with their analysis of the completeness and impartiality of the Internal Affairs investigation.

In cases of alleged excessive force, abusive language or harassment, the Internal Affairs Division and the Human Relations Commission each submit a report of their investigation and a recommended finding to the CCOP and the Police Chief. The CCOP reviews the investigations of the police department and the Human Relations Commission. The CCOP submits a recommended finding to the chief and comments on the appropriateness of the police department's finding. The CCOP also reports comments and findings to the County's chief administrative officer.

By law, the police chief "shall give due consideration to the comments and recommendations of the Panel" and may request further investigation by the Internal Affairs Division. The Chief determines the final disposition and discipline in each case.

The CCOP issues an annual report of its activities to the public. The reports include some background and history of the CCOP, statistical data on complaints, and discussion of concerns regarding the complaint review process in general.

B. Baltimore, Maryland's Complaint Evaluation Board

Intake	Investigation	Review	Determination of Findings	Discipline
Individuals may file a complaint at any police station, the Legal Aid Bureau, the Maryland Human Relations Commission, or the Baltimore Community Relations Commission.	The police department completes an investigation. The Civilian Review Board may investigate a complaint simultaneously.	The Civilian Review Board reviews the investigations and submits findings and recommendations to the Police Commissioner.	The Police Commissioner makes the determination of findings.	Police Commissioner imposes discipline.

Baltimore is in the process of implementing a new system for reviewing complaints of police misconduct. During 1999, the General Assembly passed a bill creating a Civilian Review Board to replace the previous Complaint Evaluation Board. The legislation takes effect in October 1999.

The recently enacted State legislation establishes a 12-member Civilian Review Board consisting of:

- One member of the public from each of the nine police districts in Baltimore City, selected by the Mayor, subject to the advice and consent of the City Council,
- One representative of the Fraternal Order of Police,
- One representative of the Vanguard Justice Society, and
- The Police Commissioner or the Commissioner's designee.

The nine citizen members are voting members. The remaining three members are non-voting. The new Civilian Review Board's jurisdiction will include allegations of harassment, abusive language and use of excessive force.

Individuals can file complaints with the police department, the Legal Aid Bureau, the Maryland Human Relations Commission, or the Baltimore Community Relations Commission. The Police Department's Internal Investigation Division and the Civilian Review Board receive copies of each complaint.

The Internal Investigative Division conducts a comprehensive investigation of each complaint and submits a report to the Board. The new law authorizes the Civilian Review Board to investigate any complaint it deems appropriate, simultaneously with the police department.[1]

Upon review of the police department's investigation and the Board investigation, if available, the Board submits written findings and recommendations to the Baltimore City Police Commissioner. The Board may also recommend appropriate disciplinary action against the police officer. The Police Commissioner has final decision making authority, but cannot take final action until after reviewing the Board's recommendation.

The new legislation gives the Board the authority to subpoena witnesses (other than the accused individual) and review internal police documents in conjunction with investigations. The legislation also indicates that the Board will publish semiannual statistical reports regarding the complaints processed for the Mayor, City Council and Police Commissioner.

---

[1] OLO believes that this new provisions may raise some legal issues regarding the limitations that the Law Enforcement Officer Bills of Rights places on civilian participation in complaint review.

IV. Citizen Review Model

A. Minneapolis, Minnesota's, Civilian Police Review Authority

Intake	Investigation	Determination of Findings	Discipline
Civilian Police Review Authority staff take written formal complaints from citizens and determine whether to recommend mediation, dismissal, or investigation.	Civilian Police Review Authority staff conduct investigations.	The Executive Director determines whether there is probable cause that a violation occurred. If so, a panel of the Civilian Police Review Authority holds an evidentiary hearing and make findings of fact and determination.	Police Chief imposes discipline.

Minneapolis established its Civilian Police Review Authority by city ordinance in 1990. The Authority receives, investigates, and recommends findings for all citizen complaints about police misconduct. The Civilian Police Review Authority has authority over complaints of use of excessive force; inappropriate language or conduct; harassment; discrimination; or failure to provide adequate or timely police protection.

The Authority is an independent city agency and includes a seven-member citizen board. The City Council appoints four of the Board members and the mayor appoints the remaining three, subject to the approval of the majority of the council.

The Civilian Police Review Authority is located in a facility separate from the police department and is staffed by a non-sworn executive director, investigators, and administrative staff. Authority investigators take written, formal complaints of misconduct from citizens. Within 30 days, the Authority's executive director recommends dismissal, mediation, or investigation of the complaint.

For all complaints recommended for investigation, one of the Authority's staff investigators conducts an investigation. The investigator submits a completed investigation report to the executive director who makes one of the following determinations:

- There is probable cause that a violation exists and the complaint should proceed to an evidentiary hearing, or
- There is no probable cause that a violation exists and the complaint should be dismissed.

Next, a panel of Civilian Police Review Board members holds a full evidentiary hearing. At the hearing, "the review authority shall weigh and consider all reliable and credible evidence presented." The executive director represents the complainant and presents evidence to the panel. A police federation attorney represents the officer.

Following the evidentiary hearing, the panel produces written findings of fact and a determination of findings. The Authority submits the findings of fact and the determination to the police chief, who makes a disciplinary decision, based on the information.

Minneapolis law requires the police department and all other city employees to cooperate with the Civilian Police Review Authority. This includes responding to requests for information, participating in evidentiary hearings, and for access to data and records for the purposes of enabling the Authority to carry out its responsibilities. Failure to do so is deemed an act of misconduct.

B. New Orleans, Louisiana's Office of Municipal Investigation

Intake	Investigation	Determination of Findings	Discipline
Departments and OMI receive complaints.	OMI conducts investigations. Departments may also conduct investigations.	OMI determines a finding. If the finding conflicts with a department's investigation and finding, the CAO makes a final decision.	The CAO and department heads determine discipline.

Established by Council Ordinance in 1981, the Office of Municipal Investigation (OMI) investigates and inquires into any alleged misconduct by a classified or unclassified city employee. OMI is a division of the city's chief administrator's office (CAO). The chief investigator, the head of the office, reports directly to the CAO.

The complaint review system in New Orleans in somewhat unique in that the Office of Municipal Investigation reviews misconduct by any city employee, with the exception of elected municipal officials or individuals appointed by and serving at the pleasure of those elected officials. According to OMI, the office investigates complaints of:

- Bribery,
- Theft of city property,
- Improper discharge of firearms,
- Coercion,
- Excessive us of force,
- Illegal or improper performance, and
- Violation of a law, rule or regulation.

Citizens or city employees may submit complaints to OMI or city departments. OMI handles complaints that involve illegal or improper conduct. The appropriate department handles complaints involving "minor infractions". After OMI conducts an investigation, the CAO and the relevant department are notified of OMI's findings. OMI and another city department may conduct parallel investigations regarding the same employee and incident. If the two investigations do not come to the same conclusion, the CAO makes a final decision.

OMI personnel may administer oaths, subpoena witnesses, and compel the production of documents. According to city ordinance, OMI has access to any documents, city records, and personnel records that are available to city law enforcement officers. OMI can also request, from an agency head, any files held by the agency. OMI is authorized to require any city employee to appear for interviews related to an investigation. The employee may be represented by an attorney at the interview, and employees who fail to answer OMI questions are subject to disciplinary action.

V. Police Commissions

A. Los Angeles Board of Police Commissioners

The five member Los Angeles Board of Police Commissioners legally directs the Los Angeles Police Department and sets overall policy. In particular, the Board receives complaints of police misconduct, reviews every incident of a weapon discharge, and has authority to appoint, discipline, and remove the chief of police. The Commissioners are appointed by the mayor and confirmed by the city council.

The Police Commissioners Office is under the direction of an executive director and divided into the Executive Section, the Commission Investigation Division, and the Office of the Inspector General. The Executive Section is the Board's liaison to the police chief and police department. The Commission Investigation Division processes, issues and investigates enforcement of Police Commission permits (e.g., massage therapists, tow unit operators, pool rooms).

The Office of the Inspector General provides oversight of the police department's internal disciplinary process and undertakes special projects for the Commissioners. The Inspector General falls most closely under the auditor model of complaint review.

Individuals submit complaints of police misconduct to the Board of Police Commissioners, the police department's internal affairs division or other police department offices. The internal affairs division investigates the complaints of police misconduct. The inspector general receives copies of every complaint, tracks each complaint through the investigation process, and reviews each completed investigation. Los Angeles reports that the inspector general also conducts systematic review of the disciplinary system and carries out the investigation when individuals submit allegations against the Chief of Police.

Examples of special projects conducted by the Inspector General for the Police Commission include analysis of the correlation between police officers' domestic violence history and their use of force, and investigating complaints of discrepancies in punishments between command and rank-and-file officers for similar departmental violations.

B. Milwaukee Fire and Police Commission

The City of Milwaukee has a Fire and Police Commission comprised of five civilians appointed by the mayor and approved by the city council. A 12-member staff headed by an executive director, carries out the Commission functions. The Commission's responsibilities include:

- recruitment and testing,
- handling citizen complaints of misconduct,
- handling appeals by members of the police and fire departments who have been disciplined by their chief, and
- policy review.

Complainants may submit complaints of misconduct to the Police or Fire Departments. Complaints filed directly with the Departments do not come to the Commission unless the Chief imposes discipline and the employee appeals that discipline.

The Commission also directly accepts complaints alleging specific acts of wrongdoing by members of either Department. Complaints are categorized as discourtesy, excessive force, or misconduct. Some complaints do not warrant further attention and are dismissed by the Commission. In other cases, the Commission passes the complaint on to the police or fire chief to handle.

The Commission refers other complaints for conciliation, in which case, the complainant and employee are encouraged to resolve the matter through discussion. If conciliation does not result in an agreement, the Commission reviews the case and decides whether to conduct a trial before the Commission or a hearing examiner. The trial is open to the public and involves presenting witnesses and exhibits. The Commission can suspend, demote, or discharge Department members for conduct in violation of Department rules and regulations.

Appendix N

Resolution: 13-1389
Introduced: August 4, 1998
Adopted: August 4, 1998

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By County Council

SUBJECT: Establishment of an Office of Legislative Oversight (OLO) Resource Committee

Background

1. Chapter 29A, Montgomery County Code, establishes the Office of Legislative Oversight (OLO) with the responsibility to serve as the principal means through which the County Council exercises its legislative oversight functions. This includes the responsibility to provide the Council with information and recommendations concerning the performance and operations of public and private agencies, programs, and functions for which funds are appropriated or approved by the Council.

2. The Office of Legislative Oversight's FY 99 Work Program, as approved by Council Resolution on August 4, 1998, includes a project to review how the Montgomery County Police Department responds to formal and informal complaints concerning the conduct of Police Department employees.

3. The County Council believes that input from a diverse group of Council-appointed individuals, including citizens and police representatives, is an important element of this Office of Legislative Oversight project.

Action

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

The Montgomery County Council hereby establishes a Resource Committee to provide the Office of Legislative Oversight with a diverse group of individuals, including citizens and police representatives, to consult with about the issues being addressed in OLO's FY 99 project to review how the Montgomery County Police Department responds to formal and informal complaints (from citizens or others) about the conduct of Police Department employees.

Scope of Work

1. It is anticipated that the Resource Committee will meet at least twice a month between October 1998 and June 1999. The Resource Committee meetings will be open to the public.

2. The Resource Committee will begin its work with a set of meetings, planned jointly by OLO and the Resource Committee Chair, that provides members with a common background about the Police Department, how complaints are received and processed, and the role and operations of the Police Department's Office of Internal Affairs.

3. At subsequent meetings, OLO will consult with the Resource Committee about specific issues being addressed in OLO's study. Examples of issues that OLO will share information and seek input on include:

    - the accessibility of the complaint process;
    - historical and current complaint data;
    - design of citizen surveys about the conduct of Police Department employees;
    - the perceived advantages and disadvantages of different models of citizen involvement; and
    - what issues deserve additional research.

4. Concurrent with OLO's interim reports to the Public Safety Committee, the Resource Committee will be invited to submit its own observations and comments on its work to date.

5. Within four weeks after OLO submits its final report to the Council, Resource Committee members will provide the Council with any written observations and comments on the issues addressed in the final OLO's report, including Resource Committee members' views concerning future citizen involvement in the oversight of Police Department complaint handling. The Resource Committee is not required to reach consensus on specific matters.

Appointment by the County Council Outreach and Membership

1. The Resource Committee will consist of 9 to 13 members, appointed by the County Council.

2. The Resource Committee will represent a balance of different points of view, and include diversity with respect to age, race, gender, and communities in the County.

3. To encourage the appointment of a broad based Resource Committee, Council staff will make a special effort to publicize the Council's establishment of the Resource Committee. The application period will remain open through September 16, 1998.

4. The County Council will designate the Chair and Vice-Chair of the Resource Committee.

5. At minimum, two of the Resource Committee members must be police representatives. At least one of the police representatives will be from a list of candidates nominated by the Fraternal Order of Police, Montgomery County Lodge 35.

Staff Support

1. Central Council office staff will assist with the Council's appointment of the Resource Committee. Central Council office staff will also assist the Resource Committee members with production of their own written comments and observations to the Council.

2. All other staff support will be provided by the Office of Legislative Oversight

This is a correct copy of Council action.

Mary A. Edgar

Mary A. Edgar, CMC
Secretary of the Council

Appendix O

Office of Legislative Oversight Report 99-2: Bibliography

1. Agreement between United Food and and Commercial Workers, Local 1994, AFL-CIO and Montgomery County, Maryland, 1998.

2. Agreement between Fraternal Order of Police Montgomery County Lodge # 35, Inc. and Montgomery County, Maryland, 1998.

3. American Productivity & Quality Center, Complaint Management & Problem Resolution, Amercian Productivity & Quality Center, 1998.

4. Anderson, David C., "Policing the Police," 1999, The American Prospect, No. 42, pp. 49-54.

5. Anne Arundel County Police Department, Resource Material on Complaint Handling Process.

6. Baltimore City Local Laws. Section 16-41 through 16-50.

7. Baltimore County Police Department, 1997 Annual Report, 1998.

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Appendix P

Review of Police Disciplinary Procedures in Maryland and Other States

Project X-47

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Contents

Acknowledgments ii
Executive Summary iii
Introduction 1
- Current Law in Maryland 1
- 1997 Proposal to Change Current Maryland Law 5
- Study Methodology 5

Comparison of State Statutes 8
- Officers Covered by Statutory Provisions 8
- Requirements Concerning Internal Investigations 10
- Requirements Concerning Disciplinary Procedures 15
- Hearing Requirements 15
- Hearing Board Composition 18
- Selection of Hearing Board Members 21
- Effect of Decision 22
- Appeals 25
- Maryland Compared to Other States 26

Disciplinary Hearing Practices in Maryland Police Agencies 28
- Composition and Conduct of Hearing Boards 28
- Prevalence of Hearing Boards 30
- Hearing Board Outcomes 32
- Punishment Imposed by Chief 34

Summary 40

Appendices

Appendix A. State Statutes that Address Police Disciplinary Procedures A-1
Appendix B. Survey of Police Disciplinary Practices in Maryland B-1
Appendix C. Responses to Survey Questions 1 and 2 . . . . . C-1
Appendix D. Responses to Survey Questions 3 through 6 . . . . . D-1
Appendix E. Cases in Which Chief Imposed Different Punishment than Recommended E-1
Appendix F. Responses to Survey Addendum F-1

136

Executive Summary

At the request of the Maryland Association of Counties and the Maryland Municipal League, the Institute for Governmental Service at the University of Maryland documented and compared the provisions of statutes in other states to Maryland's Law Enforcement Officers' Bill of Rights (LEOBR) and determined how the provisions of Maryland law regarding disciplinary procedures have actually been implemented. The research was undertaken in anticipation of the reintroduction of amendments to Maryland's LEOBR statute that would reduce the authority of police chiefs.

The study methodology involved a review of the statutes in all 50 states and the District of Columbia and a mail survey of the 117 police agencies in Maryland that were subject to LEOBR. One hundred and six police agencies responded to the survey.

Current Maryland Law

Maryland law concerning police disciplinary procedures appears under the subtitle "Law Enforcement Officers' Bill of Rights" in Article 27, Sections 727 through 734D of the Annotated Code of Maryland. It extends uniform protections to officers in a broad list of local and state police agencies. The LEOBR statute covers two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer, and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined.

Maryland's LEOBR statute offers a fairly extensive set of protections to officers during internal investigations, such as limitations on the time, place and duration of an interrogation. The statute also protects the officer's right to obtain certain information and to have an attorney present. When a complaint against a police officer is sustained by the internal investigation, Maryland's LEOBR statute entitles the officer to a hearing before a board of sworn officers selected by the chief. (For minor offenses, the board may be a single officer.) Police agencies and officers may enter into collective bargaining agreements that permit an alternate method of forming the hearing board. The statute also contains requirements for the conduct of the hearing.

Once a hearing board has rendered a decision regarding an officer's guilt or innocence, that decision is binding. For cases in which the finding is guilt, the hearing board makes a punishment recommendation, which the chief may accept or reject, unless the agency and officers have a collective bargaining agreement that makes the hearing board's punishment recommendation binding on the chief. If the chief decides to impose a more severe punishment than the hearing board recommended, the chief must document the reasons for that decision.

Laws in Other States

The provisions of other state laws regarding police discipline vary widely from the Maryland law and from each other in the set of police agencies subject to the provisions, whether both internal investigations and disciplinary actions are addressed, the protections afforded during internal investigations, the types of disciplinary actions covered, and the specific processes and

procedures required for disciplinary matters. In many states, different provisions apply to different police agencies and some categories of police agencies (e.g., sheriffs departments) are not covered by the law at all. In some states, although the provisions are a part of state law, they do not apply to a given local police agency unless adopted by the local government.

Only 15 states besides Maryland have statutes that cover the conduct of internal investigations. Most of these statutes provide fewer protections for officers than are contained in the Maryland law.

State laws that require hearings in police disciplinary cases are split about evenly between those that require a hearing prior to imposition of discipline (a trial board) and those that require a hearing at the request of the officer once a disciplinary action has been taken (an appeal board).

The composition of hearing boards specified in state law also varies from state to state and within some states by category of police agency. The most common type of hearing board is a civilian civil service commission or merit board, generally composed of residents of the community appointed for fixed terms. Under some statutes, these boards are general civil service commissions that establish personnel policies and handle discipline for other public employees as well as police officers. Under other statutes, the boards are specifically constituted to handle police personnel issues, including disciplinary actions.

Like hearing boards in Maryland, the boards specified by statute for all covered agencies in Delaware, Florida, Rhode Island and Virginia are composed entirely of sworn officers. In seven other states (Kentucky, Michigan, Missouri, Pennsylvania, Vermont, Washington and West Virginia), hearing boards for the state police and certain other police agencies are composed entirely of sworn officers.

Other variations of hearing board composition are police oversight boards composed of public officials including those in law enforcement, the local governing body, the agency with appointing and removal authority, grievance committees, arbitrators and judges. Some state laws permit the composition of the hearing board to be determined locally, while others do not even address the composition of the hearing board.

The variety in hearing board composition corresponds to the variety of methods by which hearing board members are selected. In states that specify that civilian merit boards conduct the disciplinary hearing, a common method for appointing the board is for the local governing body or executive to select the members. In some states that provide for civilian merit boards or police oversight boards to hear police disciplinary cases, the governor is involved in the selection of members. Regarding police agencies for which the local governing body serves as the hearing board, the electorate is responsible for its selection.

Among the 12 states that specify hearing boards composed of sworn officers, the accused officer has a role in the selection of the hearing board members in four states (Florida, Rhode Island, Vermont and Virginia). Delaware's statute does not address how hearing board members are selected. In the other seven states, including Maryland, statutes provide for the agency head to select all members of the hearing board.

Unlike Maryland's law, most statutes provide that hearing board decisions regarding both guilt and punishment are binding on the police agency. In seven states in addition to Maryland, statutes applying to certain agencies provide that hearing board decisions are not

binding. Several state statutes are silent as to whether the hearing board's decision is binding, often because the hearing process itself has been left to the discretion of local jurisdictions. In general, an aggrieved officer is entitled to appeal the decision of a hearing board or higher administrative authority to the court system.

Maryland Law Compared to Other States

Maryland law contains many provisions that are more favorable to officers than provisions in other states. However, the Maryland law has two drawbacks from the officers' perspective. The chief selects all members of the hearing board (unless a collective bargaining agreement provides otherwise). Plus, the hearing board's punishment recommendation is not binding on the chief, unless a collective bargaining agreement provides otherwise. Despite these drawbacks, the Maryland law appears to accommodate officers more than any other state law, except possibly that of Rhode Island.

Actual Practice in Maryland

The survey of disciplinary practices in Maryland police agencies solicited detailed information on how police agencies have implemented the provisions of Maryland's LEOBR statute. One hundred and six police agencies, including all of the large police agencies, responded. Ten agencies reported having collective bargaining agreements which address disciplinary procedures. Two of these agreements contain provisions for an alternate method of forming hearing boards. Other agreements provide officers with peremptory challenges of hearing board members.

In addition to the provisions of collective bargaining agreements, agencies have implemented internal policies that enhance the neutrality of hearing boards. Two common mechanisms are random selection of hearing board members and obtaining hearing board members from other police agencies.

The vast majority of disciplinary cases in Maryland police agencies are resolved without a hearing. For the three-year period from January 1995 to early December 1997, responding agencies reported over 10,000 complaints against police officers that required investigation. One-third of all complaints were sustained by internal investigations.

Based on data from 96 agencies, more than 80 percent of the time the officer accepted the discipline that was recommended by the internal investigators. The remaining cases were resolved through a variety of means, including the officer negotiating a lesser punishment, the officer resigning or retiring and the convening of a hearing board.

A total of 381 hearings occurred in the responding agencies during the period. More than half of Maryland police agencies did not convene any hearing boards during 1995, 1996 or 1997. Forty-two agencies conducted at least one hearing during the period; four agencies (Baltimore City, Baltimore County, Maryland State, and Prince George's County) convened 202 hearing boards, or more than half of the total of 381 hearing boards reported.

For the cases reported for the 1995 to 1997 period, about three-quarters of the hearing board decisions were findings of guilt. Suspension was most frequently the most severe penalty recommended by the hearing board.

As discussed above, under Maryland law, the hearing board's decision regarding guilt is binding, whereas the agency chief can decide whether to accept the hearing board's recommendation regarding punishment (unless a collective bargaining agreement provides otherwise). Of the 278 cases for which the hearing board made a punishment recommendation during the three-year period, agency chiefs made their penalty decisions in 274 cases. The chiefs imposed the penalty recommended by the hearing board in more than nine out of 10 cases. During the three-year period, an agency chief imposed a more severe penalty than recommended by the hearing board in 14 cases. In six cases, an agency chief imposed a less severe penalty than the hearing board recommended.

Conclusions

Overall, Maryland's LEOBR statute compares well to the laws of other states in providing protections to police officers facing the possibility of disciplinary action. Maryland's statute extends uniform protections to officers in a broad list of local and state police agencies, addresses both investigations and resulting disciplinary actions, contains extensive protections during internal investigations, covers all types of disciplinary actions, and specifies a hearing board composed of sworn officers. Only a few other state statutes contain all these features, and only one statute--Rhode Island's--appears to be more favorable to officers than Maryland's.

The fact that police agencies must investigate numerous complaints against police officers underscores the importance of having extensive provisions concerning internal investigations in Maryland's LEOBR statute. Under current law, the internal investigation process resolves the vast majority of disciplinary cases without proceeding to the hearing stage.

The provisions of Maryland's LEOBR law that may be viewed as accommodating police officers are offset by provisions that may be viewed as accommodating management: the chief's selection of all hearing board members and the chief's authority to overrule the hearing board's recommendation regarding punishment. The survey of Maryland agencies reveals that the chief's selection power is often mitigated by collective bargaining agreements or by the policies and procedures of individual agencies, and that the chief's authority to overrule hearing board recommendations is invoked in only a small percentage of cases.

MONTGOMERY COUNTY

POLICE-COMMUNITY RELATIONS

Surveys conducted for the

Montgomery County Office of Legislative Oversight

by
Peter D. Hart Research Associates

Peter D. Hart Research Associates, Inc.

On behalf of the Montgomery County Office of Legislative Oversight, Peter D. Hart Research Associates has conducted an opinion research study, consisting of three separate telephone surveys, that explores the issue of police-community relations in Montgomery County. The principal survey examines perceptions and attitudes among the general public, and includes interviews conducted among 805 adult County residents from June 3 through 12, 1999 (margin of error: ±3.5%). The public sample includes 302 non-Hispanic whites, 199 blacks, 139 Hispanics, and 132 Asian Americans, weighted to their actual proportions of the County population to produce a representative overall public sample. A second survey was conducted June 3 through 11 among 212 sworn officers of the County police Department (margin of error: ±6.7%). The third survey consisted of 386 interviews (including an oversample of blacks) conducted June 7 through 29 among residents who had committed a motor vehicle moving violation in the County during the previous year (margin of error: ±5.0%).

This report contains the main findings of the study. The report is organized as follows:

I. Main findings of the study (Executive Summary).
II. Detailed findings from survey of the general public.
III. Detailed findings from survey of police officers.
IV. Detailed findings from survey of traffic violators.
V. Appendices.

I. MAIN FINDINGS OF THE STUDY

The first part of this section covers the general public's assessment of the County police—in terms of the confidence people have in the police, their view of police performance, and their satisfaction with any personal interaction they have had with the police—as well as police officers' perspective on these questions. The second portion explores the responses of different racial and ethnic groups within the general public in these same subject areas. It also examines the perceptions of both the public and the police regarding the extent to which the police treat different racial and ethnic groups fairly.

A. PUBLIC PERCEPTIONS OF THE MONTGOMERY COUNTY POLICE

OVERVIEW. Montgomery County residents generally express high levels of confidence in, and respect for, their police force. They give the Department good performance ratings in a wide range of areas, and on measures for which comparable national survey results are available, the County police receive public ratings as high as or higher than the national average. Residents who have had direct personal interaction with the police, such as making a 911 call, report high levels of satisfaction. Even recent traffic violators offer a generally positive view of the police and of their experience receiving the citation. The officers themselves give the Department high performance marks and also express satisfaction with their own work situation.

▶ Confidence and Trust

An important goal for any police Department is to enjoy the confidence of the people it serves. Today, 73% of County residents have either a great deal (29%) or quite a lot (44%) of confidence in the Montgomery County police, and another 21% say that they have "some" confidence. Just 3% express very little or no confidence. These scores represent a significantly higher level of confidence than is recorded in national surveys. The Gallup Organization's most recent finding on this question (June 1998) recorded 58% of the public saying they have a great deal or quite a lot of confidence in the police—15 percentage points lower than in Montgomery County—with 11% of Americans affirming very little or no confidence.

Nearly all adults in Montgomery County feel either a great deal (60%) or some (35%) respect for the County police. These results are comparable to findings of a national Gallup survey in March 1999, in which 93% of American adults voiced respect for the police in their area. Interestingly, County police officers appear to underestimate the level of respect that they enjoy from the public, as most officers (52%) think that the public feels "some" respect for them; just 38% say a great deal of respect, which is in fact the majority public viewpoint.

▶ Police Performance

The public also generally gives the police high marks when it comes to performance. Overall, 82% say that the police Department is doing an excellent (21%) or pretty good (61%) job, while just 14% give lower ratings of only fair (13%) or poor (1%). On most specific measures, about two-thirds or more rate the police as excellent or pretty good, while less than 20% say that the police do only a fair or a poor job.

QUALITY	EXCELLENT/PRETTY GOOD
Being helpful and friendly ▶	80%
Performing duties in professional manner ▶	80%
Responding quickly to emergency calls ▶	73%
Being a positive influence on young people ▶	69%
Being honest and ethical ▶	68%
Preventing crime ▶	67%

On items for which national data are available—being helpful and friendly (68% excellent/good), and preventing crime (65% excellent/good)—the County police again rate as high as or higher than the national average (Lou Harris, March 1999).

In two areas, however, only half of adults give the Department good marks: using only the appropriate level of force (53%) and treating citizens of all races and ethnic groups in an equal and fair way (51%). In both cases, the positive ratings are lower in part because many residents do not feel that they know enough to give a rating (25% for level of force, 21% for equal treatment of racial and ethnic groups). These findings, including the responses of different racial and ethnic groups, are discussed further in part two.

The large majority of County residents believe that their own neighborhood is served by the police about the same as (60%) or better than (23%) other neighborhoods, while just 7% feel that their neighborhood is served less well. Given the propensity of people to worry or suspect that other people somewhere are receiving better treatment than they are, this should be viewed as a strongly favorable response.

▶ Knowledge and Contact

The public reports a limited level of knowledge about the County police, with 44% saying that they know a great deal or a fair amount about the Department, and 55% stating that they know just some or very little. The most common source of information about the police is the media (52%), far ahead of personal experience (26%) or other people (18%). It is a positive finding for the Department that those people who feel that they know more about the police generally give higher ratings than do those who say they know less.

Most County residents (70%) report having had some type of personal contact with the County police during the past three years. The most common interaction measured was calling 911 for assistance (30%), followed by participating in a school or youth program (20%), being in a motor vehicle accident (17%), receiving a moving violation (16%), and being a crime victim (15%).

Overwhelmingly, County residents say that they are satisfied (86%) rather than dissatisfied (9%) with their own interaction with the County police. Those who have called 911 for assistance also register a high level of satisfaction, as 85% are satisfied with the way police

handled their situation (including 50% very satisfied). In addition, more than 80% of 911 callers were satisfied in terms of the responding officers' politeness (87%), professionalism (87%), response time (84%), and expression of serious concern (82%).

▶ Unfair Treatment and the Complaint Process

A total of 13% of County residents report that they have felt unfairly treated by the Montgomery County police at some point (this question was not limited to the past three years). Two concerns dominate the volunteered complaints: 1) treatment that is perceived as rude or disrespectful, and 2) charges or citations that are viewed as unjustified. Only a small proportion of the 13% who feel they were treated unfairly by the police say they proceeded to file a complaint (13%). For some (21%), they didn't file because they felt the problem was not serious enough to merit a complaint. More than one-third (36%), however, say that they didn't think that the police would take their complaint seriously, another 6% did not know how to file a complaint, and 4% felt afraid to file a complaint.

More generally, more than four in 10 County residents (42%) are unaware that the police Department has a process for citizens to file a complaint if they feel that they have been treated unfairly or inappropriately by the police. Moreover, while 61% are very or fairly confident that the Department would investigate properly complaints of unfair treatment or improper conduct, a considerable minority of 28% are just somewhat or not too confident of this. Blacks (47%) and Hispanics (54%) have less confidence than do whites (69%) that the police would investigate complaints properly. Taken together, these results suggest that there is room for improvement in terms of developing public awareness of, and confidence in, the complaint process.

▶ Officers' Perspective

Sworn officers overwhelmingly feel that the Department is doing an excellent (48%) or pretty good (48%) job overall. They give the Department especially high marks when it comes to responding quickly to emergency calls (77% excellent), using only the appropriate level of force (72%), being honest and ethical (71%), and being professional (62%).

Department morale appears to be reasonably high today. The large majority of officers agree with such statements as "I enjoy doing my work" (97%), "I have a good working

relationship with my supervisor" (95%), and "the Police Department is a good organization to work for" (89%). Opinion is more divided when it comes to the promotion process being fair and open, with 55% agreeing and 37% disagreeing (22% strongly disagree).

One concern of officers is a lack of public awareness of what their job entails. Just 11% of officers feel that County residents understand the job and responsibilities of police officers very or fairly well. This perception appears to be validated by the surveys in at least one area, which is the potential for danger to officers in "routine" traffic stops. Eight in 10 officers say that this is a very or fairly dangerous activity, but just 36% of the public sees it that way.

Police officers offer a decidedly mixed assessment of the complaint process. A narrow majority of 52% rate the system as excellent or pretty good, but nearly as many rate it as just fair (19%) or poor (26%). Officers' most commonly voiced criticisms of the system are that the investigations are unfair or biased and that it takes too long to resolve complaints. Some also suggest that better training of the investigators is necessary.

▶ Traffic Violators

The survey of traffic violators—residents who have received a citation for a moving violation within the past year—reveals that the large majority (75%) were either very or mainly satisfied with the officer's behavior under the circumstances; 24% were dissatisfied. Considering the inherently negative character of this encounter—the violator is stopped, accused of wrongdoing, and fined—this would seem to be a high level of satisfaction. About eight in 10 violators also express satisfaction when rating the officer in such specific areas as acting in a professional manner (83%), identifying the reasons one was stopped (81%), and being polite and respectful (79%). The one area in which dissatisfaction rises to a noticeably higher level (58% satisfied, 36% dissatisfied) is the officers' willingness to listen to the motorists' explanation.

In general, motorists' portrayal of the details of the traffic stop are consistent with approved police procedures. Nine in 10 say that the officer explained the reason for the stop, 81% received an explanation of what it meant to sign the ticket, and just 5% report that the officer used offensive language. One exception is that only 37% of violators report that the officer introduced him- or herself by name, while 42% say this did not happen and 21% do not recall.

Interestingly, 63% of violators acknowledge that they deserved to receive the citation, while 34% feel that they did not. As we might expect, those who admit guilt have few complaints about the citation experience (91% satisfied). Surprisingly, however, even among those who feel that the citation was undeserved, an impressive 48% are satisfied with the officer's behavior.

B. RACE AND ETHNICITY

OVERVIEW. A critically important question for this study is whether, and to what extent, the experiences and perceptions of minority residents of the County are different from those of white residents. The survey results do reveal important differences, with blacks and Hispanics generally registering less positive assessments of the police than do whites and Asians. More specifically, many blacks and Hispanics perceive the County police as treating members of their respective minority groups unfairly. In addition, blacks and Hispanics are more likely than are whites or Asians to feel that they personally have been treated unfairly by the police (although the large majority of all groups do not feel that way).

Two very important factors must be taken into account in interpreting these findings. First, there is a national and historic context to racial differences in attitudes toward the police: national surveys consistently find that blacks have much less confidence in the police than do whites. It is significant that this racial gap appears to be significantly smaller in Montgomery County than in the country as a whole. Second, these survey results only tell us about the *perceptions* that people have—either of the police in general or in relation to their own personal interactions. For example, the surveys tell us that some people felt dissatisfied with an encounter with the police, or believe that they were treated unfairly, but it cannot tell us whether in fact they were treated in a way that violates accepted standards of police conduct. So while this study does show that significant numbers of black and Hispanic residents perceive racial bias in police behavior, it can neither confirm nor refute that judgment.

▶ Performance and Confidence

When it comes to rating the overall performance of the police, the results generally reveal relatively small differences in the perceptions of white and minority residents. Whites give the Department the highest overall rating (85% excellent or pretty good), but more than three-fourths of blacks (77%), Hispanics (78%), and Asians (76%) offer the same judgment. Very few people in any group give the Department a poor rating (3% for Hispanics, 2% for blacks).

On specific performance measures that deal narrowly with how the Department deals with crime and requests for assistance—responding quickly to calls for help, solving crime, preventing crime—racial differences also are small or nonexistent. All four groups also agree

that the police serve their own neighborhood as well as or better than other neighborhoods in the County (whites 84%, blacks 84%, Hispanics 82%, Asians 80%). It appears then that all major racial and ethnic groups have similarly positive assessments of the job that the police are doing in fighting crime and responding to residents' needs.

Nevertheless, the level of confidence that people have in the police is not consistent across racial and ethnic lines. While 79% of whites have a great deal or quite a lot of confidence in the Montgomery County police, the corresponding figure is lower for blacks (61%), Hispanics (64%), and Asians (62%). Clearly, the positive assessment that minority residents have of the police's job performance does not fully carry over to inspiring confidence.

At the same time, it is important to put this racial gap in context. When the Gallup Organization asked Americans this question last year (June 1998), 61% of whites and 33% of blacks expressed confidence in the police. So the white/black gap in Montgomery County (18 percentage points) is smaller than in the country as a whole (28 points), and Montgomery County blacks have considerably more confidence in the police than do blacks nationally (61% vs. 33%).

▶ Police Behavior and the Issue of Fairness

What lies behind this lower level of confidence in minority communities? For Asians, it appears to reflect only a low level of knowledge about the County police. That is, Asians do not feel that they know enough about the police to feel great confidence, but neither have they reached any significant negative conclusions about the police. Blacks and Hispanics, by contrast, offer criticisms of the Department and police behavior, with many perceiving that the police do not treat people of all races and ethnic groups fairly. Because of this fundamental difference, the remainder of this discussion of minority perceptions of police fairness will focus on the perspective of blacks and Hispanics, but not Asians. (NOTE: The analysis also focuses somewhat more on the responses of blacks than on those of Hispanics. That is because there is more national data available on blacks to provide a context for interpreting results, and because the larger sample size allows for more analysis of subgroups within the black population.)

The racial difference in perspective centers on the question of police officer behavior, and more specifically on how officers treat people of different racial and ethnic groups. Whites tend to have a very positive view of police officers, blacks feel considerably less positive and trusting,

and Hispanics tend to have a view somewhere in between. For example, 85% of whites rate the County police as excellent or good in terms of "being helpful and friendly," compared with 64% of blacks and 73% of Hispanics. A similar pattern emerges on the question of being a positive influence on young people (whites 74%, blacks 56%, Hispanics 63%).

The biggest differences appear when we focus more specifically on the issue of *fairness,* as the following table shows. On all these dimensions, blacks and Hispanics give much lower ratings than do whites.

RATINGS OF MONTGOMERY COUNTY POLICE BY WHITE, BLACK, AND HISPANIC RESIDENTS

	Whites %	Blacks %	Hispanics %
Treating people fairly			
Excellent/good	72	50	56
Fair/poor	16	42	38
Using only the appropriate level of force			
Excellent/good	59	42	53
Fair/poor	16	42	30
Treating people of all races and ethnic groups in an equal and fair way			
Excellent/good	54	38	45
Fair/poor	22	49	47

Here again it is important to consider Montgomery County in a comparative context. Nationally, 73% of whites and just 41% of blacks feel that their police do an excellent or good job of treating people fairly (Harris, March 1999). That means that blacks in Montgomery County give a rating well above the national average in this regard (9 points higher). Moreover, it is likely that the ratings given to County police by blacks (and Hispanics) reflect to some extent their feelings about police officers in general, independent of any knowledge or experience they may have with the County police force. Indeed, at the beginning of the survey residents were asked to agree or disagree with the statement, "I trust police officers to treat me fairly," thinking about "police officers in general, not just those where you live." While 87% of whites agree with the statement (48% agree strongly), this sentiment is considerably weaker

among blacks (71%, including 31% strongly) and Hispanics (80%, including 42% strongly). National surveys generally record similar, or even greater, racial gaps on such questions.

Blacks (54%) and Hispanics (44%) also are more likely than are whites (23%) to believe that the County police treat one or more groups unfairly, rather than treating people of all races and ethnic groups fairly. More specifically, 53% of blacks believe that the police treat blacks unfairly (22% of whites and 41% of Hispanics agree), and 41% of Hispanics believe that the police treat Hispanics unfairly (16% of whites, 45% of blacks). By contrast, just 17% of Asians feel that the police treat Asians unfairly.

Knowledge of recent public complaints made by some groups and individuals that the police department routinely mistreats minorities proves to be somewhat limited, as 34% of County residents report having heard some or quite a bit about this issue (33% of whites, 48% of blacks, 35% of Hispanics). Three in 10 whites and 45% of Asians are inclined to think that these charges may be true, compared with majorities of blacks (65%) and Hispanics (58%). Only a small proportion of each group, however, believes that this complaint is definitely true—whites 4%, blacks 13%, Hispanics 14%, Asians 4%. Furthermore, all groups agree by large margins that even if these complaints have merit, the problem is not a common practice but rather is limited to only a few officers.

▶ Officers' Perspective

Montgomery County police officers overwhelmingly feel that the Department treats all County residents fairly regardless of race or ethnicity. Almost all officers say that the Department is doing an excellent or good job when it comes to treating people fairly (95%), performing duties in a professional manner (96%), and treating citizens of all races and ethnic groups fairly (93%). More specifically, 96% say that police treat blacks fairly and 94% say that police treat Hispanics fairly.

Officers also reject the complaints of routine mistreatment of minorities, with 68% saying that they are definitely not true and another 25% feeling that they are probably not true (6% believe that the complaints are probably or definitely true). Officers do believe that these allegations are a "major problem" for the Department (71%), however. Significant proportions of officers report that the allegations have made them personally reluctant to stop or question

(41%) or issue a citation to (27%) a member of a minority group when that otherwise would be appropriate.

▶ Personal Experience

When we talk to residents about their own experience with the County police, we again find some differences along racial and ethnic lines. Among people who have interacted with the police in the past three years, 90% of whites are satisfied with the interaction (45% very satisfied), compared with 78% of blacks (24% very) and 85% of Hispanics (31% very). While this is a high level of satisfaction for *all* groups, there is a gap.

As mentioned in part A, 13% of residents feel that they have been treated unfairly by the County police at some point in their life. This figure is about twice as high for blacks (22%) and Hispanics (21%) as it is for whites (10%) and Asians (11%). A relatively small percentage of those blacks and Hispanics who feel unfairly treated go on to volunteer that they believe the unfair treatment constituted racial or ethnic discrimination—10% of the blacks (or 2% of all County blacks) and 13% of the Hispanics (or 2% of all County Hispanics). Yet, when we directly pose the possibility that their race or ethnicity was a reason for the unfair treatment, 85% of blacks and 62% of Hispanics—or 19% of all blacks and 13% of all Hispanics in the County—say that they feel they received unfair treatment because of their race or ethnicity.

It is useful to compare the attitudes of blacks who have direct personal experience with the County police within the past three years and those without such experience. In general, the survey finds no significant differences in terms of confidence in the police, or more specific questions about fair treatment of minorities, between these two groups. This indicates that personal contact with the police does not seem to exacerbate distrust of the police (at the same time, neither does it appear to narrow the racial gap).

▶ Black and White Traffic Violators

The sample of traffic violators allows us to compare the experiences and perceptions of black and white motorists who have received a moving violation in the past year (it is not large enough to provide meaningful data for Hispanic or Asian traffic violators). As was mentioned previously, motorists generally report a surprisingly high level of satisfaction with the process of being

stopped and cited (75% satisfied). Yet, while the large majority of both black (67%) and white (81%) violators are satisfied, black motorists (31%) are significantly more likely than are whites (18%) to report dissatisfaction. The areas in which blacks are particularly likely to express dissatisfaction, compared with whites, are being treated fairly (35% dissatisfied, vs. 16% for whites), having the reasons for being stopped identified (30% vs. 14%), and the officer's being polite and respectful (29% vs. 17%).

The difference in satisfaction stems mainly from black violators' being much less likely than whites to believe that they deserved to receive the citation (53% of blacks, 69% of whites). Whites and blacks who feel that they did deserve the citation are both generally satisfied with the traffic stop experience, but many of those who do not feel that they deserved the fine, regardless of race, are dissatisfied (48% whites, 51% blacks). In addition, 28% of black violators feel that their race caused them to be treated worse by the officer in this situation.

When we ask questions that involve less subjective judgment from residents, such as whether certain things did or did not happen, the racial gap is generally much smaller. Black and white violators generally describe the traffic stop similarly with regard to whether the officer explained the reason for the stop (whites 91%, blacks 87%), explained what it meant to sign the ticket (82%, 84%), asked the violator to step out of the car (14%, 15%), or used offensive language (3%, 6%). There are two exceptions worth noting, however: blacks are more likely to report that the officer put a hand on his or her gun (whites 10%, blacks 20%) and also are more likely to say that the officer did not introduce him- or herself by name (whites 37%, blacks 53%).

An officer's failure to introduce him- or herself appears to be an important contributing factor to violators' dissatisfaction with the traffic-stop experience, and this is especially true for blacks. Blacks and whites who report that the officer provided an introduction (or cannot recall) are equally satisfied overall (whites 86%, blacks 85%), and with regard to being treated professionally, politely, and fairly. Blacks who report that the officer did not provide an introduction, however, are much less satisfied with the traffic stop overall (52% satisfied, vs. 72% for whites who report no officer introduction) and register lower levels of satisfaction with regard to the officer's acting professionally (61%), being polite (52%), and treating the violator fairly (45%).

CONCLUSION

The County police enjoy a high level of confidence today among County residents as a whole, significantly above the national average. The public gives the Department a very positive job performance rating, including particularly high marks for such qualities as being helpful and friendly, performing duties in a professional manner, and responding quickly to emergency calls. The vast majority of residents feel that their neighborhood is served by the police as well as or better than other neighborhoods.

These overall ratings are validated by the generally high levels of satisfaction recorded among residents with recent direct personal experience with the County police. The vast majority of these residents are satisfied with the treatment they received, and very few are dissatisfied. Officers' responses to 911 callers receive particularly positive assessments, and even among traffic violators—whose interaction with police necessarily has a negative character—the large majority express satisfaction with the citing officer's behavior.

We cannot know for sure, based on this survey data, whether (or how much) the County police engage in discriminatory behavior toward minorities. The survey results show unmistakably, however, that a perception of discrimination exists among many Montgomery County blacks and Hispanics. In addition, the fact that blacks and Hispanics are twice as likely as are whites to feel that they personally have faced unfair police treatment, and are generally less satisfied with their own direct experience with the police, raises the distinct possibility of some real discrimination. At a minimum, there clearly are many County residents who *feel* that they have faced racial discrimination, and that alone should be a source of concern for the Department and the County's elected leaders.

On the other hand, there is quite a bit of encouraging news in these surveys regarding the racial and ethnic dimensions of police-community relations in Montgomery County. We would highlight the following:

- ⇒ The perception gaps between black and white County residents on such questions as confidence in the police and whether the police treat people fairly are considerably smaller than for the country as a whole.
- ⇒ Montgomery County blacks have more confidence in their police than do blacks nationwide.

- ⇒ Blacks and Hispanics generally voice high levels of satisfaction regarding their own personal experience with the police, and this even extends to the traffic violators.
- ⇒ Recent direct contact with the police does not appear to make black or Hispanic residents feel less positive toward the police.
- ⇒ The concerns that blacks and Hispanics have about fairness do not prevent them from giving high marks to the police in terms of core responsibilities such as fighting crime and responding to calls for assistance, and they believe that the police serve their neighborhood as well as others.

More generally, it would appear that despite the important differences in perspective that emerge in these surveys on some issues, there also is a great deal of common ground among white, black, Hispanic, and Asian residents of Montgomery County. It should be possible to build on that commonality and achieve further improvements—both in terms of perception and reality—in police-community relations in Montgomery County.

II. DETAILED FINDINGS FROM SURVEY OF THE GENERAL PUBLIC

The survey among the general public includes interviews conducted by telephone among 805 adult County residents from June 3 through 12, 1999. The sample includes 302 non-Hispanic whites, 199 blacks, 139 Hispanics, and 132 Asian Americans, weighted to their actual proportions of the County population to produce a representative overall public sample.

▶ Confidence in and Respect for the Department

Montgomery County residents express a high level of confidence in their own police department, with nearly three in four having a great deal (29%) or quite a lot (44%) of confidence, another 21% having some confidence, and just 3% expressing little or no confidence. This represents a significantly higher level of confidence than is recorded in national surveys. The Gallup Organization's most recent finding on this question (June 1998) recorded 58% of the public saying they have a great deal or quite a lot of confidence in the police—15 percentage points lower than in Montgomery County—with 11% of Americans affirming very little or no confidence.

Adults age 65 and over have the highest level of confidence in the Department (83% great deal/quite a lot), while younger residents age 18 to 34 are less enthusiastic (65%). Significantly, residents who have had contact with the police in the past three years (72%) register the same level of confidence as do adults overall.

The level of confidence in the County police also varies by race and ethnicity, with whites giving the most positive assessment. Fully 79% of whites in the County have a great deal or quite a lot of confidence in the Department, compared with 61% of blacks, 64% of Hispanics, and 62% of Asians. Among whites, men (83% great deal/quite a lot of confidence) and those age 35 and over (84%) are the most confident in the Department. Similarly, older Hispanics express higher levels of confidence in the Department than do 18- to 34-year-old Hispanics. There is no notable difference among blacks by age, however, and young Asians (68%) actually express more confidence in the department than do older Asians (58%). Among blacks, women (68%) are more confident than are men (54%).

Despite these differences in perceptions by race, the data reveal that Montgomery County blacks register a notably higher level of confidence in their police department than found in

national surveys (no national data for Hispanics or Asians is available for this question). Indeed, a Gallup survey conducted in June 1998 reveals that 61% of whites and 33% of blacks nationally say that they have a great deal or quite a lot of confidence in the police, a larger racial gap than is found in Montgomery County. Whereas the gap between whites and blacks in Montgomery County is 18 points, it is 28 points nationally.

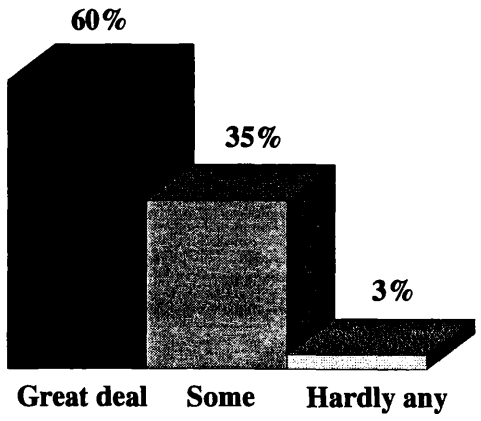
LEVEL OF CONFIDENCE IN THE POLICE

	Montgomery County (June 1999)			*National Gallup Survey (June 1998)*		
	All %	**Whites %**	**Blacks %**	**All %**	**Whites %**	**Blacks %**
A great deal/quite a lot of confidence	73	79	61	58	61	33
Some/very little/no confidence	24	19	34	41	38	64

A national survey conducted by CBS in 1995 reveals similar differences by race on a slightly different question. When adults were asked how much confidence they personally had in the police *in their community*, 60% had a great deal or quite a lot of confidence and 39% had some, very little, or none. And whereas 65% of whites said they had a great deal or quite a lot of confidence in their local police, only 37% of blacks felt this way.

The public expresses a high level of respect for the Department, with fully six in 10 adults who say that they have a great deal of respect for the Montgomery County Police, 35% who have some respect, and just 3% who admit to hardly any respect. These ratings closely parallel findings from a nationwide Gallup survey conducted in March 1999, in which 64% of Americans

Public's Respect for MCPD

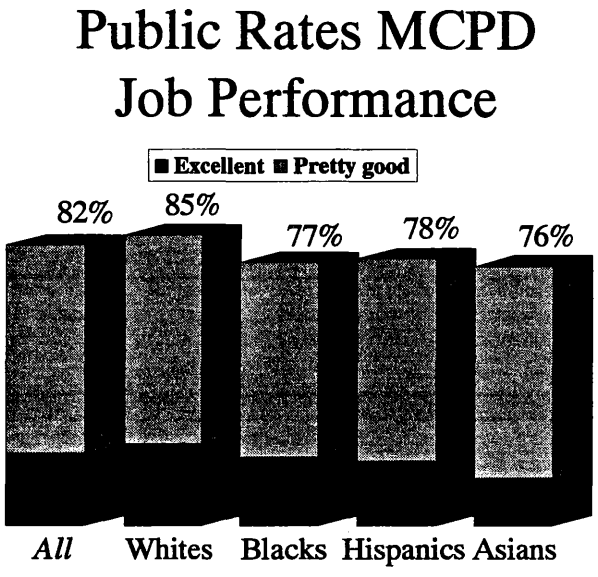


said they had a great deal of respect for the police in their area, 29% had some, and 7% had hardly any respect.

Blacks (47% a great deal, 42% some, 10% hardly any) and Asians (49%, 41%, 2%) reveal lower levels of respect for the County police than do whites (65%, 31%, 2%) and Hispanics (64%, 31%, 4%), but none of these groups has "hardly any" respect for the police. These ratings for the Department are comparable to ratings that Americans throughout the country gave to the police in their areas in a recent national survey (Gallup, March 1999). The national data among whites (66% a great deal) and blacks (50%) also parallel the findings among County residents.

▶ Police Performance

The Department receives high marks for the job that it is doing, with more than eight in 10 residents giving ratings of excellent (21%) or pretty good (61%), and only 14% offering ratings of only fair (13%) or poor (1%). Ratings are high across all demographic groups, with the highest scores coming from residents age 65 and over (92%), college graduates (86%), and those with a household income of more than $75,000 a year. Ratings drop off slightly among 18- to 34-year-olds—76% think the Department is doing an excellent or pretty good job—but they are high nonetheless. Similarly, while ratings are higher among whites (85%) than among other racial groups, more than three in four blacks (77%), Hispanics (78%), and Asians (76%) give high marks. The difference in perceptions by age overall is reflected the most among whites, with those under age 35 (75%) being less positive in their assessment than older whites (88%). There are no notable difference by age among blacks, Hispanics, or Asians.

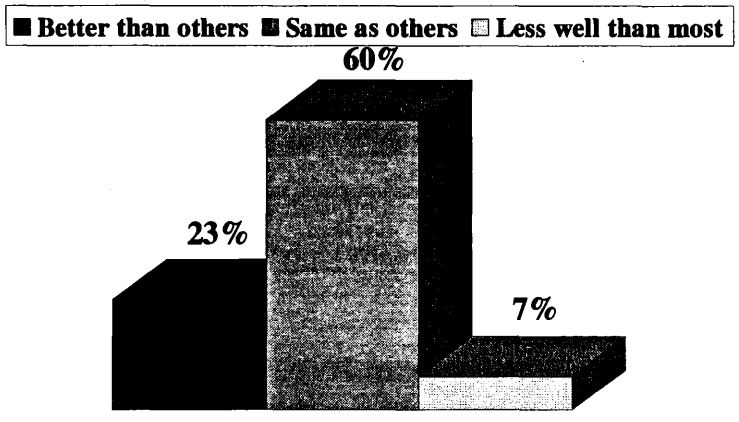


Furthermore, when residents are asked to volunteer their impressions of the County police, 73% offer positive responses and just 23% mention negative impressions. The public's positive comments relate most often to the Department's competence, its quick response time, and the low level of crime in the community, as well as other areas. The most often cited negative comments deal with concerns about poor or unfair treatment of citizens, including racial discrimination, which is mentioned by only 6% of residents.

Large majorities of all racial groups volunteer positive comments about the Department (72% of whites, 68% of blacks, 75% of Hispanics, and 75% of Asians). Blacks are the most likely to volunteer negative comments (31%), and they are the group that most often mentions unfair treatment and racism (11%).

A good indicator of residents' favorable impressions of the County police is the fact that more than eight in 10 residents feel that their neighborhood is served by the police about the same as (60%) or better (23%) than other neighborhoods in the County. A mere 7% think that their neighborhood is served less well than others. This sentiment is constant across the racial subgroups, as large majorities believe that the Department serves their neighborhood about the same as or better than others (84% among whites, 84% among blacks, 82% among Hispanics, and 80% among Asians).

Neighborhood Being Served . . .



The County police also receives strong marks for its performance in more specific areas of job performance. The following table shows the proportion of adults giving the Department ratings of excellent or pretty good in selected areas, and for eight of the 10 items, 64% of residents or more give the Department positive marks. The police earn the highest scores for being helpful and friendly, performing their duties in a professional manner, and responding quickly to emergency calls.

PROPORTION OF RESIDENTS GIVING THE DEPARTMENT RATINGS OF EXCELLENT OR PRETTY GOOD IN SELECTED JOB PERFORMANCE AREAS

	All Adults %	Whites %	Blacks %	Hispanics %	Asians %
Being helpful and friendly	80	85	64	73	73
Performing duties in a professional manner	80	84	67	81	73
Responding quickly to emergency calls	73	75	74	71	64
Being a positive influence on young people	69	74	56	63	59
Being honest and ethical	68	72	53	69	55
Preventing crime	67	67	64	68	68
Treating people fairly	67	72	50	56	64
Solving crime	64	67	59	61	56
Using only the appropriate level of force	53	59	42	53	46
Treating citizens of all races and ethnic groups in an equal and fair way	51	54	38	45	51

A comparison of some of these findings with national data from a Harris poll conducted in March 1999 reveals that the County police earn ratings that are even better than the national average. The largest gap between the County and the nation is for being helpful and friendly (68% nationally), but the Department also fares slightly better than police nationally when it comes to treating people fairly (65% nationally), preventing crime (64% nationally), and solving crime (60% nationally).

In areas related to its performance in preventing crime, solving crime, and responding quickly to emergency calls for assistance, the Department earns strong marks that are mainly constant across different racial groups. On measurements of the Department's treatment of the

public, however, there is a notable divergence of sentiments between whites, on the one hand, and blacks on the other, with Hispanics and Asians falling somewhere in between. These differences by race are apparent in ratings of the police's performance on being helpful and friendly for which 85% of whites give ratings of excellent or good, compared with 64% of blacks, and 73% of both Hispanics and Asians. Similarly, whites give the Department higher ratings than do the three other racial groups for being a positive influence on young people and being honest and ethical.

The two areas in which the Department receives the lowest scores are for using only the appropriate level of force (53% excellent/pretty good) and treating citizens of all races and ethnic groups in an equal and fair way (51%), with only half of residents giving high marks. However, one reason the County police earn lower ratings is because many residents do not feel that they know enough to give an opinion in these areas (25% for using the appropriate level of force and 21% for treating citizens of all races and ethnic groups in and equal and fair way).

The other reason is the large discrepancy in ratings by race. In fact, the most substantial differences in perception by race emerge when residents give ratings for the Department's performance on issues relating to fairness. When it comes to using only the appropriate level of force, treating people fairly, and equal treatment of all racial and ethnic groups, blacks are the least likely to give the department high marks. On the important question of equal treatment of racial and ethnic groups, whites give the highest marks to the Department, although a large proportion don't feel that they know enough to give a rating (54% excellent/pretty good, 22% only fair/poor, 24% not sure). Blacks give the lowest ratings, with the plurality giving ratings of only fair or poor (38%, 49%, 13%). A plurality of Hispanics also give low marks (45%, 47%, 8%), while many Asians fall in the middle (51%, 30%, 19%).

While Asians' ratings of the County police are not as positive as are whites, their impressions are also not negative. On each of the 10 measurements listed, Asians are the racial group most likely to give neither a positive nor a negative response. In fact, for six of the 10 areas tested, at least one in five Asians do not give any rating to the Department, but rather say that they are "not sure." This indecision about how to rate the Department is in large part due to the fact that nearly three in four Asians report a low level of knowledge about the County police.

Age plays a factor in perceptions about treatment by the County police, but correlation with age varies between whites and blacks. Young whites under age 35 (60%) are less likely than are older whites (76%) to give the Department ratings of excellent or pretty good for treating people fairly, but younger blacks (54%) tend to give higher marks than do those age 35 and over (48%). When it comes the specific issue of equal treatment of all racial and ethnic groups, however, there is no difference in perceptions between whites under age 35 (54%) and those older (55%), but blacks under age 35 (43%) still give higher ratings than do older blacks (35%).

A comparison of some of the data among Montgomery County whites and blacks with findings from a national survey (Harris, March 1999) reveals that blacks in the County have more positive feeling toward their local police than do blacks nationally. On the important question of treating people fairly, 50% give a positive grade to the County police, compared with 41% of blacks nationally who give the same ratings for police.

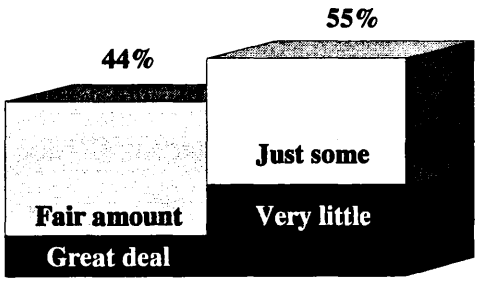
COMPARISON OF RATINGS FOR THE DEPARTMENT AND POLICE NATIONALLY IN SELECTED AREAS

	Montgomery County (June 1999)			*National Harris Poll (March 1999)*		
	All Adults %	Whites %	Blacks %	All Adults %	Whites %	Blacks %
Being helpful and friendly	80	85	64	68	74	53
Preventing crime	67	67	64	64	71	50
Treating people fairly	67	72	50	65	73	41
Solving crime	64	67	59	60	67	43

▶ Knowledge of the Police Department

The public reports a relatively modest level of knowledge about the County police, with 44% who say that they know a great deal (10%) or a fair amount (34%) about it and 55% who say that they know just some (32%) or very little (23%). Asians rate themselves as the least knowledgeable about the Department, with just 23% affirming that they know a great deal or a fair amount and fully 73% who admit to knowing just some or very little. Residents age 18 to 34

Public's Knowledge Of MCPD



also are largely unfamiliar with the police (39% know a great deal/fair amount, 61% know just some/very little), especially women in that age group (29%, 71%).

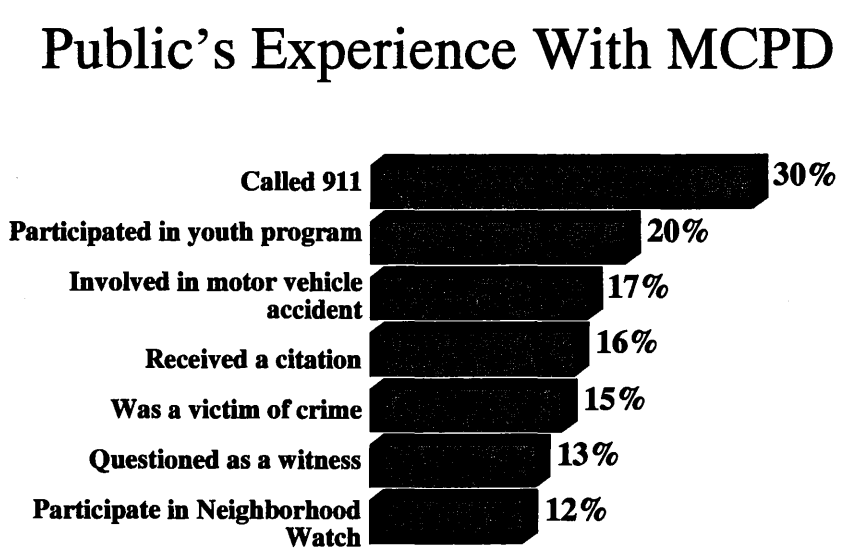
It is good news for the Department that residents who feel more knowledgeable about the County police tend to have more favorable impressions of the Department on some key measures. Indeed, residents who report a higher level of familiarity with the police tend to have more favorable impressions than do those who are less familiar with it when it comes to areas including confidence in and respect for the Department and ratings of job performance. For instance, residents who are more familiar with the County police are 14 points more likely to have confidence in the police than are residents who are not so familiar with the Department (81% vs. 67%).

Residents' most common source of information about the police is the media, including newspapers and television (52%), while only one in four (26%) get most of their information about the Department from their own personal experience and the main source for 18% of residents are people they know. Residents age 65 and over are the most reliant on the media for their information about the County police (60%), while men under age 34 (34%) and blacks (33%)—especially black men (36%) and young blacks (38%)—are among those most likely to say that their source of news about the Department is their own experience.

When it comes specifically to media sources about the Department, people rely on television (30%), The Washington Post (25%), and local newspapers (29%) nearly equally. While whites tend to rely on each of these three sources equally, blacks and Hispanics tend to get most of their information on the County police from the TV and local papers, and Asians rely predominantly on TV. Radio (9%) is the one media source from which residents don't get much information about the police.

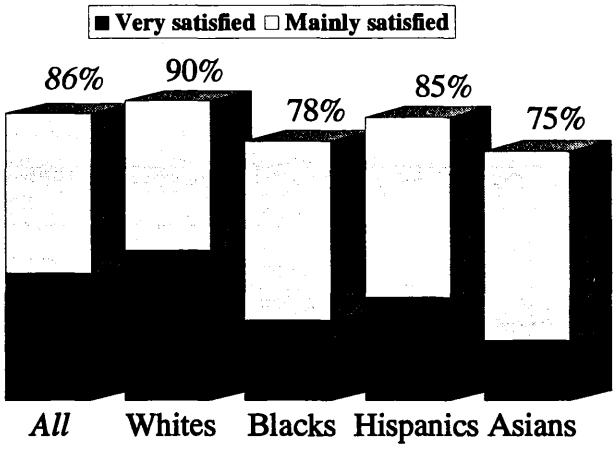
▶ Personal Contact with the Department

Fully seven in 10 residents in the County report having had some form of contact with a County police officer within the past three years, and 24% have had contact with the police at least three times. The most common type of interaction was in calling 911 for police assistance—a request made by 30% of residents. This contact is followed in frequency by residents' participation in a school or youth program (20%), involvement in a motor vehicle accident (17%), receipt of a citation for a moving violation (16%), and being a victim of a crime (15%).



Senior citizens are the least likely to have had contact with the Department in the past three years (52%), while residents under age 50 (75%), especially men age 18 to 34 (80%), have had more contact. There are no major differences in the proportions among each racial group who say that they have had some form of contact with the County police, but Hispanics are the most likely to have interacted (71% of whites, 67% of blacks, 76% of Hispanics, and 65% of Asians).

Public's Satisfaction With MCPD Interaction



Residents' satisfaction with their dealings with the police are overwhelmingly positive, with fully 86% who say that they are very (38%) or mainly (48%) satisfied and just 9% who are mainly or very dissatisfied. Whites (90%) and Hispanics (85%) who have had interaction with the police are overwhelmingly satisfied, while their black (78%) and Asian (75%) counterparts are somewhat less satisfied. The most notable differences in opinion by race are in the intensity of respondents' satisfaction—while 45% of whites are very satisfied, 31% of Hispanics, 24% of blacks, and 18% of Asians register the same level of intense satisfaction. (Asians are not more dissatisfied, but rather, 16% don't know enough to give an opinion.)

It is notable that there generally are not significant differences in feelings toward the police between blacks who have had direct personal experience with the County police and those blacks who have not. Indeed, blacks' contact with police appears to have little effect—either positively or negatively—on their level of confidence in the police (direct contact: 61%, no contact: 63%) or their impressions of the Department's fairness in treatment (contact: 49%, no contact: 55%).

When 911 callers are asked in more detail about this specific experience with the police, their satisfaction also is high at 85% very or mainly satisfied. Furthermore, they give the County police officers who responded to their calls high marks in several areas, including being polite and respectful (87% satisfied), acting in a professional manner (87%), being treated fairly (85%), the time it took to respond (84%), and taking concerns seriously (82%). (There are too few 911 callers in the survey to provide accurate racial breakdowns on these questions.)

▶ Fair Treatment of Groups

Although County residents have largely positive feelings about police in general, and give the police strong ratings in several areas, there clearly is some public doubt about the department's treatment of people of different races. It is notable that less than half (46%) of residents overall think that the police treat people of all races and ethnic groups fairly, while 30% believe that they tend to treat one or more groups unfairly and 24% are not confident enough to give an opinion on this sensitive subject at all.

⇒ Blacks are the most critical of the Department's treatment of some groups over others (32% all equally, 54% one or more groups unfairly, 14% unsure)

⇒ Many Hispanics also feel that the police treat some groups unfairly (41% all equally, 44% one or more unfairly, 15% unsure).

⇒ Asians (48%, 25%, 27%) and whites (50%, 23%, 27%) are less critical of the police, but still large proportions seem unsure.

⇒ The groups most likely to give the County police the benefit of the doubt are whites, men, seniors, and members of upper-income households. However, there is no demographic group among whom 60% or more believe that the County police treat all races fairly.

Residents of all races agree that the group most likely to be treated unfairly is blacks, while whites are the most likely to get fair treatment.

⇒ Overall, less than half (47%) of residents think blacks are treated fairly, 29% say they are treated unfairly, and 24% don't know. Not surprisingly, blacks are the most likely to feel that they are treated unfairly—31% fairly, 53% unfairly—but a substantial proportion of Hispanics also feel that blacks face unfair treatment (41%).

⇒ Hispanics are divided on the question of their own treatment, with 46% saying they are treated fairly by police and 41% saying unfairly. Interestingly, blacks are even more likely than are Hispanics to believe that Hispanics are treated unfairly (45%).

⇒ Residents see little difference in the treatment of men and women, although blacks are more likely than are other groups to believe that men are treated unfairly.

⇒ The other group that some people feel the police are treating less fairly than others is young people. Overall, only 57% of residents think that young people are treated fairly, and this number decreases to 40% among blacks and 49% among Hispanics. Men 18-34, particularly black men in this age category, are the most sensitive about the treatment of young people.

Overall, 13% of County residents feel that they have personally been treated unfairly by the County police at some point. This number is higher among blacks (22%) and Hispanics (21%) than among whites (10%) or Asians (11%). Among blacks, it is men (29%), 18- to 34-year-olds (26%), and those with less than a four-year college degree (26%) who are the most likely to feel this way. Among Hispanics, men (26%) and those over age 34 (24%) are the most likely to feel treated unfairly. These residents most often describe this unfair treatment as officers being nasty or rude (40%) or feeling that they were unjustly given a ticket (22%). In addition, a relatively small percentage of those blacks and Hispanics who feel unfairly treated volunteer that they believe the unfair treatment constituted racial or ethnic discrimination—10% of the blacks (or 2% of all County blacks) and 13% of the Hispanics (or 2% of all County Hispanics). Yet, when we directly pose the possibility that their race or ethnicity was a reason for the unfair treatment, 85% of blacks and 62% of Hispanics—or 19% of all blacks and 13% of all Hispanics in the County—say that they feel they were treated unfairly because of their race or ethnicity.

▶ The Complaint Process

A 58% majority of residents in the County are aware that the Police Department has a complaint process for citizens who feel that they have been treated unfairly or inappropriately. However, 8% mistakenly believe that there is no process and 34% are simply not sure. Awareness varies across different racial groups, with Asians (36%) being the least familiar and Hispanics (43%) and blacks (50%) also having limited familiarity. Whites are the most likely to know about it (63%).

Six in 10 (61%) residents have confidence that the police would properly investigate citizen complaints, while 28% are less confident of this. Both Asians (46% very/fairly confident, 30% just somewhat/not too confident, 24% not sure) and blacks (47%, 41%, 12%) have the least confidence in the Department's proper investigation of complaints.

The combined effect of low public awareness and limited confidence can be seen in the response of residents who feel they were personally treated unfairly. Just 13% of these people filed a complaint with the Department, although 87% did not. Some did not take action because they felt the unfair treatment was not that serious (21%). Nearly half, however, say that they did not file a complaint because they did not think it would be taken seriously (36%), they did not know how to file a complaint (6%), or they were afraid (4%) to file a complaint.

III. DETAILED FINDINGS FROM SURVEY OF POLICE OFFICERS

For the survey of officers, 212 Montgomery County police officers were interviewed by phone from June 3 to 11, 1999. All sworn officers in the Department were sent a letter requesting their participation and giving them an 800 number that they could call to be interviewed (the Fraternal Order of Police also sent a letter encouraging officers to participate in the survey). Each of the five district stations made arrangements so that officers could respond to the survey with privacy.

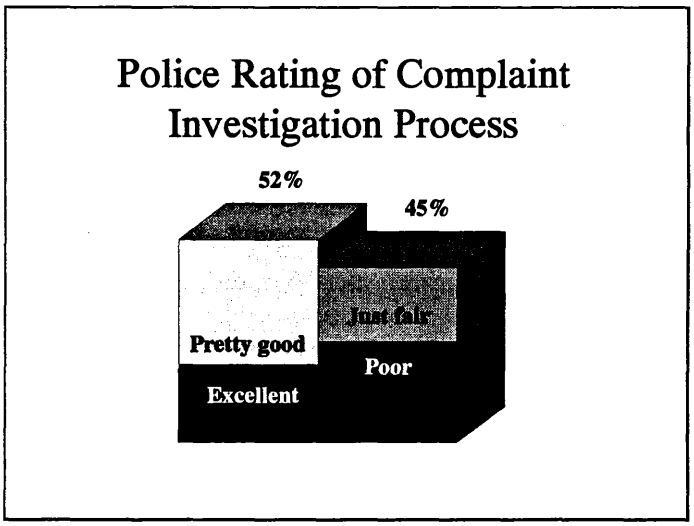
According to data provided by the Department, the demographic profile of the officers surveyed closely matches the overall demographics of sworn officers. Eighty percent of the officers surveyed are men, 74% are patrol officers, 42% have less than 10 years on the force, another 37% have between 10 and 20 years on the force. Seventy one percent of the officers surveyed are assigned to one of the five district stations and nearly half of those surveyed are patrol or traffic squad officers (49%). Twenty percent of the officers surveyed are women and 14% are minorities.

▶ Attitudes Toward Work

Most Montgomery County police officers enjoy their job and have a good working relationship with their colleagues. Nearly all officers agree with the statements, "I have a good working relationship with my co-workers" (99% agree, 88% strongly agree), "I enjoy doing my work" (97%, 75% strongly), and "I have a good working relationship with my supervisor" (95%, 75% strongly). Officers over age 35 (80%) and officers not assigned to patrol duties (79%) are particularly likely to agree strongly that they enjoy doing their work.

Officers also feel that "the Police Department is a good organization to work for": 89% agree with this statement, although strong agreement is somewhat lower at 48%. Patrol officers agree much less strongly with this statement than do other officers—only 40% strongly agree that the department is a good organization to work for. Similarly, although 83% of officers agree that "the Police Department treats me fairly," only 37% strongly agree; again, patrol officers agree less strongly (only 32% strongly agree). The lowest level of satisfaction recorded is with regard to the promotion process—whereas 55% agree that the process is fair and open, fully 37% disagree with this.

POLICE OFFICERS' ATTITUDES TOWARD SELECTED ASPECTS OF THEIR JOB	Strongly Agree %	Somewhat Agree %	Somewhat Disagree %	Strongly Disagree %
I have a good working relationship with my co-workers	88	11	-	1
I enjoy doing my work	75	22	2	1
I have a good working relationship with my supervisor	75	20	2	3
The Police Department is a good organization to work for	48	41	9	2
The Police Department treats me fairly	37	46	9	8
The promotion process is fair and open	20	35	15	22



Officers are evenly divided over the way in which the Department handles citizen complaints. Just over half (52%) say that the system is excellent (20%) or pretty good (32%). On the other hand, 45% find the system either just fair (19%) or poor (26%). Patrol officers are more negative about the process, which 32% rate as poor, while the main criticism from senior officers (corporal and above) is that the system takes too long to process complaints. Among less senior officers, however, the main concern is perceived unfairness.

▶ Officer Training

Montgomery County police officers rate the training that they have received fairly high. Eighty-four percent rate the training they have received in handling interactions with the public as excellent (37%) or good (47%). Among patrol officers, who have the most interaction with the public, 41% give it an excellent rating and 45% rate it as good.

Montgomery County police give their training on traffic stops much higher marks. Sixty-three percent rate their training on traffic stops as excellent and another 28% affirm that it is good. Among patrol officers, this type of training receives even higher marks of 70% excellent and 21% good.

The Department's diversity training fares less well, as only 31% rate it as excellent and 40% rate it as good. Among those with less than 10 years service in the department, and consequently those who have had the training most recently, 37% rate the training as excellent and 34% feel that it is good.

POLICE OFFICERS' ATTITUDES TOWARD SELECTED TYPES OF TRAINING

	Excellent %	Good %	Just Fair %	Poor %
Training in handling interactions with the public	37	47	13	2
Training for handling traffic stops	63	28	7	1
Diversity training	31	40	17	11

Looking to other sources of training, Montgomery County police officers pick out veteran officers and personal experience as their most helpful sources of information outside of their training at the academy. Sixty-four percent of officers below the level of corporal (PO1, PO2, PO3) look to veteran officers as a source of information; newer officers with less than 10 years of service are more likely to mention field training officers (33%, vs. 24% overall); and officers with the rank of corporal or above tend to cite supervising officers (31%, vs. 21% overall).

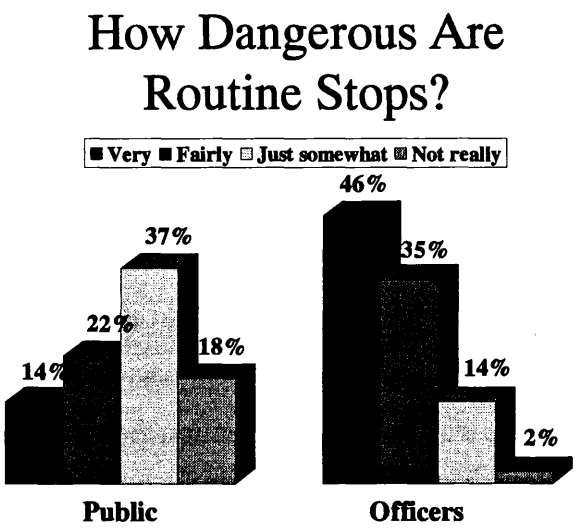
▶ Department Job Performance and Public Confidence

Four in 10 Montgomery County police officers say that they think Montgomery Country residents have a great deal of confidence in the police department, and another 43% say that County residents have quite a bit of confidence in the police. That is fairly similar to the findings among County residents overall (29% great deal of confidence in the police, 44% quite a lot). Interestingly, patrol officers offer a fairly accurate assessment of public opinion (31% public has great deal of confidence), but non-district officers offer a more inflated view of public confidence (51% public has great deal of confidence).

If some officers overestimate public confidence, most underestimate the public's respect for the Department. Among the general public, 60% say they have a great deal of respect for the Montgomery County police. Only 38% of officers, however, believe that the public has a great deal of respect for the police. Younger officers (23%) and patrol officers (27%) hold an even more pessimistic view.

Officers also feel that the general public does not understand their job. Nearly half (47%) of all police officers say that the public does not understand the job and responsibilities of the Montgomery County police well at all, and another 42% think that the public understands their job only somewhat well. Again, patrol officers are more likely to say that the public doesn't understand their job well at all (57%). The general public agrees with this assessment to some extent, with more than half saying they know just some (32%) or very little (23%) about the Montgomery County police.

This perception appears to be validated by the surveys in one particular area, which is the potential for danger to officers in "routine" traffic stops. Eight in 10 officers say that this is a very or fairly dangerous activity (20), but just 36% of the public sees it that way. It is possible that County residents would take a more positive view of the approach and methods used by officers in traffic stop situations if they understood the degree of danger perceived by police officers.



On the topic of crime in Montgomery County, 27% of officers consider Montgomery County to be very safe, and another 59% feel that the County is fairly safe. This attitude is comparable to the public response on this question (28% very safe, 54% fairly safe). Patrol officers are somewhat less likely to say that the County is very safe (only 19%), but most (66%) say that the County is fairly safe.

Officers give the Department uniformly high performance ratings. For example, 48% of officers say that the Department is doing an excellent job overall, and another 48% say the Department is doing a pretty good job; just 4% believe that it is doing a fair job. As we would expect, officers often give themselves higher marks than does the general public (the comparable performance figures among Montgomery County residents are 21% excellent and 61% pretty good).

Officers also give themselves fairly high marks on each individual performance item. They assign particularly high marks for responding quickly to calls for assistance (77% excellent), using the appropriate level of force (72%), and being honest and ethical (71%). There is less consensus on excellent performance—though still very positive assessments—when it comes to treating people fairly (62%), treating citizens of all races and ethnic groups in an equal and fair way (55%), and being a positive influence on young people (43%). Interestingly, they give themselves lower ratings on preventing crime (only 26% excellent) than on solving crime (41% excellent).

POLICE OFFICERS' RATINGS OF THE DEPARTMENT ON SELECTED ASPECTS

	Excellent %	Pretty Good %	Only Fair %	Poor %
Responding quickly to emergency calls for help and assistance	77	20	3	-
Using only the appropriate level of force	72	25	3	-
Being honest and ethical	71	25	4	-
Performing their duties in a professional manner	62	34	4	-
Treating people fairly	62	33	4	1
Treating citizens of all races and ethnic groups in an equal and fair way	55	38	5	2
Being helpful and friendly	49	43	7	1
Being a positive influence on young people	43	47	8	1
Solving crime	41	51	7	1
Preventing crime	26	60	13	1

▶ Fair Treatment of Groups.

Montgomery County police officers overwhelmingly feel that the Department treats all County residents fairly regardless of race or ethnicity. Almost all officers say that the Department is doing an excellent or pretty good job when it comes to treating people fairly (95%), performing duties in a professional manner (96%), and treating citizens of all races and ethnic groups fairly (93%). In a separate question, 92% say that the Department treats people of all races and ethnic groups fairly rather than treating one or more groups unfairly (compared with 46% of the public), and there is a near consensus that it treats blacks (96%), Hispanics (94%), and Asians (98%) fairly.

Only 6% of officers believe that recent complaints that the Department routinely mistreats minorities are definitely or probably true. In fact, a large majority (68%) state that the complaints are definitely not true, and another 25% say that they are probably not true. Yet, 17% of officers report that they know of an instance of an officer treating someone unfairly because of his or her race or ethnicity.

Fully 71% of officers acknowledge that the public complaints are a major problem for the Department. Many patrol officers report that these allegations have made them reluctant to stop or question minority suspects when that would otherwise be appropriate (51%), and about one in three (31%) confirm that these complaints have made them reluctant to issue a citation to someone who is a member of a minority group. While officers express satisfaction with the job that their district or unit commanders have done in responding to these allegations (64% satisfied), they are critical of how others have handled the problem. A majority of Montgomery County police officers are dissatisfied with the response of police headquarters (68% dissatisfied), the County Council (79%), and the County Executive (86%).

▶ Traffic Stops

Seventy-six percent of the officers we surveyed say they make at least one traffic stop per week. The following results are among those officers who make at least one stop per week.

In terms of safety policies, nearly all officers tell us that they approach the car on the driver's side rather than the passenger side—60% say they almost always approach on the driver's side, and another 26% do so most of the time. Also, only 34% of officers confirm that they almost always call their location in to the dispatcher. Among patrol officers, only 22% almost always call in their location and only another 26% say they do so most of the time.

In terms of motorist interaction, nearly all officers tell us that they almost always explain the reason why the motorist was stopped (98%) and explain what it means for the motorist to sign the citation (95%). However, only 49% say that they almost always introduce themselves by giving their name—45% of officers do this sometimes (17%), rarely (11%), or never (17%). Among patrol officers, who conduct most traffic stops, even fewer introduce themselves by name on a regular basis (40% almost always), with nearly as many (36%) saying they do this rarely or never. This is particularly important because, as discussed in the violators results in the next section, individuals who say that the officer did not introduce him- or herself are much more likely to have a negative view of their traffic stop experience.

It also is noteworthy that one in five officers (21%) say that they put a hand on their gun almost always or most of the time. This figure rises to 25% among younger officers and 29% among officers who make a lot of traffic stops. While such a gesture is surely a necessary precaution in some situations, it may be that some officers are taking this action—which can of course be intimidating to motorists—more frequently than safety requires.

▶ Officers' Reported Actions During Traffic Stops

	Almost Always %	Most Of The Time %	Some-times %	Rarely %	Never %	Depends (VOL) %
Explain the reason why you stopped the motorist	98	1	-	-	1	-
Explain what it means for the motorist to sign the citation	95	3	2	-	-	-
Approach the car on the driver's side	60	26	10	4	-	-
Introduce yourself to the motorist by giving your name	49	6	17	11	17	-
Give a motorist a break by reducing the speed on the ticket to lower the fine or points	35	22	21	6	15	1
Call in your location to the dispatcher	34	23	27	14	1	1
Put your hand on your gun	14	7	30	37	8	4
Search the car	3	2	30	54	4	7
Have the motorist put their hands on the dash board	3	1	24	48	18	6
Tell the motorist to step out of the car	2	3	33	50	6	6
Call for backup	1	2	43	43	5	6

The survey results clearly show that officers exercise a great deal of discretion in deciding who shall receive a traffic citation and the severity of the penalty. Fully 43% of officers report that in half or more of their traffic stops they give a warning or an equipment repair order ("ERO") instead of a citation. Just 31% state that they decide whether to give a citation when first pulling the motorist over, while a majority make this judgment after talking to the motorist. And when a speeding citation is given, a majority of officers admit that they frequently understate the speed in order to lower the points or the fine. While such discretion need not lead to abuse, it may help give credence to the suspicions of some violators that they were singled out unfairly (for racial or other reasons).

Among officers who make at least one traffic stop a week, 58% say that the people they pull over show them a reasonable level of courtesy and respect almost always (11%) or most of the time (47%). However, a considerable 42% report that they only receive such courtesy and

respect sometimes, occasionally, or hardly ever. There is a big gap between older and younger officers on this question—72% of older officers say that they receive an appropriate level of respect at least most of the time, but only 43% of officers under age 35 agree.

Older officers generally perceive little difference in the respect they receive from motorists of different races or genders. Younger officers, however, believe that they get respect less frequently from men (42% almost always or most of the time) than from women (57%), and from blacks (33%) less than from whites (47%), Hispanics (51%) or Asians (73%). Older and younger officers both report receiving lower levels of respect from young motorists than older motorists, though here again the younger officers are more likely to see disrespect.

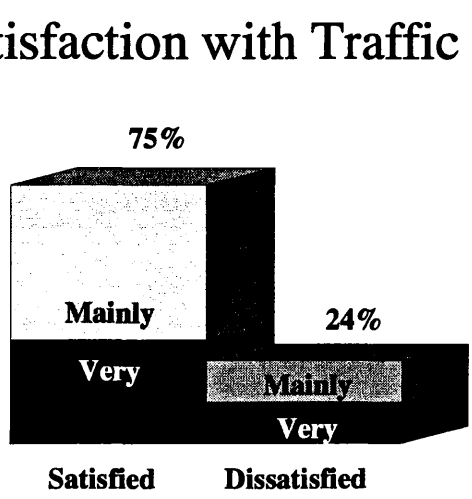
The survey cannot determine to what extent younger officers' perception of disrespect by motorists in fact reflects their being treated differently, as opposed to being more sensitive than older officers to certain types of conduct by motorists. It does suggest, however, that if the Department wanted to improve officer-citizen contacts in the traffic stop context, special attention should be paid to the experience and behavior of younger officers.

IV. DETAILED FINDINGS FROM TRAFFIC VIOLATORS SURVEY

For the traffic violators survey, telephone interviews were conducted among a sample of 386 County residents who had—according to County records—committed a motor vehicle moving violation during the previous year. This includes an oversampling of blacks, to allow for analysis of their responses, with the overall sample weighted to reflect the correct racial makeup of the violator population (as provided by the County). The sample size is not large enough to provide meaningful data for Hispanic or Asian traffic violators.

▶ The Traffic Stop

A large majority (75%) of the traffic violators surveyed were either very (30%) or mainly (45%) satisfied with the officer's behavior under the circumstances, while 24% were mainly (12%) or very (12%) dissatisfied. Considering the inherently negative character of this encounter—the violator is stopped, accused of wrongdoing, and fined—this would seem to be a high level of satisfaction. When asked what made the experience satisfactory, motorists most often say that the officer was courteous and polite, and professional. Negative comments focus on the officer's having a poor attitude (10% of all violators, 14% of black violators), or on the violators' perception that the ticket was undeserved (5%) and that the officer did not listen to the violator's story (4%). Bias or prejudice is volunteered by just 2% of black violators as a reason for having an unsatisfactory experience.



The large majority of both black (67%) and white (81%) traffic violators are satisfied with the experience. Black motorists (31%), however, are significantly more likely to report dissatisfaction than are whites (18%) and are less likely to register a high level of satisfaction (22% very satisfied, compared with 37% for whites). The specific aspects on which blacks are particularly likely to express dissatisfaction, compared with whites, are being treated fairly by the officer (35% dissatisfied, vs. 16% for whites), the officer's identifying the reasons for being stopped (30% vs. 14%), and the officer's being polite and respectful (29% vs. 17%).

There also is a gender gap within both groups, with men reporting less satisfaction than women. Among black men, 34% report dissatisfaction with the experience, compared with 27% of black women. White men (78% satisfied, 21% dissatisfied) are less satisfied than are white women (85%, 13%)—in fact, 52% of white women say they were *very* satisfied with the traffic stop. The youngest group of violators (age 18 to 24) are only somewhat less satisfied than are older violators (age 35 and over)—71% of young violators say they are very or mainly satisfied, compared with 76% of violators age 35 or older.

Turning to more specific assessments of the traffic stop experience, we again find high levels of satisfaction in most areas. About eight in 10 violators express satisfaction when rating the officer in such specific areas as acting in a professional manner (83% very or mainly satisfied), identifying the reasons one was stopped (81%), and being polite and respectful (79%). The one area in which dissatisfaction rises to a noticeably higher level (58% satisfied, 36% dissatisfied) is in the officer's willingness to listen to the motorist's explanation.

Satisfaction with Specific Aspects of Traffic Stop



- **Being polite and respectful.** Whites are much more satisfied than are blacks in this area—83% of whites are very or mainly satisfied, compared with only 69% of blacks. Women are more likely to be very satisfied with this aspect than are men (44% vs. 32%). Older motorists (35 and older) are 10 points more satisfied (84%) than the youngest group of motorists (74%).

- **Acting in a professional manner.** There are only small differences between subgroups on this item. Whites are a little more satisfied than are blacks in this area—86% of whites are very or mainly satisfied, but fully 76% of blacks also are very or mainly satisfied. Women are only slightly more satisfied than are men, 87% to 80%.

- **Treating you fairly.** Whites are much more satisfied than are blacks in this area—81% of whites are very or mainly satisfied, compared with only 63% of blacks—with black men (39% dissatisfied) and younger black motorists (39%) being particularly likely to register dissatisfaction. Women (80%) are more satisfied than are men (71%), with 39% of women being very satisfied, compared with only 28% of men. Older motorists (35 and older) are 12 points more satisfied (80%) than the youngest group of motorists (68%).

- **Identifying the reasons why you were stopped.** Here again whites are much more satisfied than are blacks (85% vs. 69%). Blacks' relative dissatisfaction appears to reflect their belief, in many cases, that they did not deserve the citation, rather than a failure of the officer to provide an explanation (see discussion below). Gender and age differences are small.

- **Looking out for your safety.** Satisfaction on this dimension is fairly broad. Whites are just somewhat more satisfied than are blacks in this area (76% vs. 68%). Women are somewhat more satisfied than are men (77% to 73%), with 42% of women being very satisfied, compared with only 26% of men. Older motorists are just somewhat more satisfied (76%) than the youngest group of motorists (70%).

- **Being willing to listen to you.** Whites and blacks are equally satisfied in this area—59% of whites are very or mainly satisfied, as are 58% of blacks. Women are much more satisfied than men by 64% to 55%, with 37% of women being very satisfied, compared with only 19% of men. Older motorists (35 and older) are just somewhat more satisfied (59%) than the youngest group of motorists (55%).

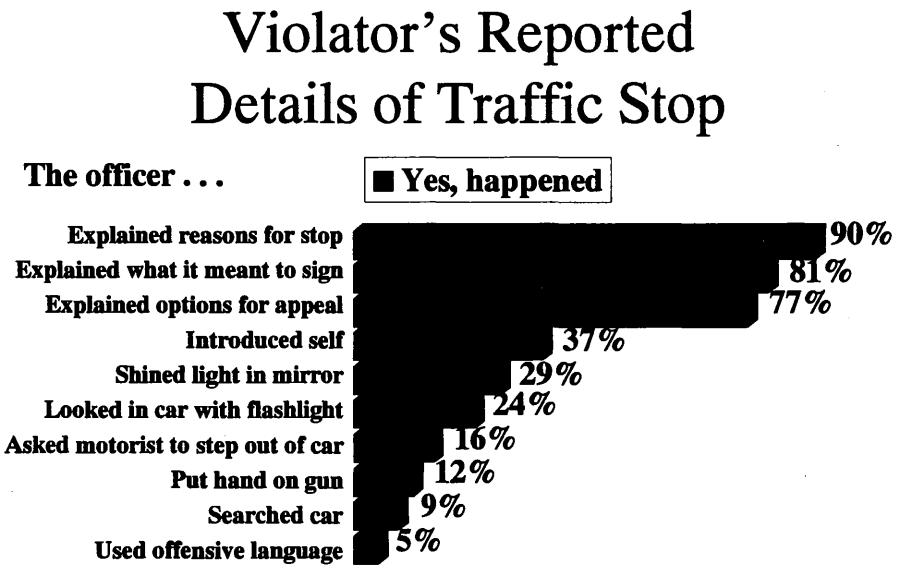
Each of these individual aspects of the officer's performance is highly correlated with the motorist's overall satisfaction with the traffic stop. The areas of performance most highly correlated with overall satisfaction are being polite and respectful (.684), the officer's willingness to listen to the motorist's explanation (.667), treating the motorist fairly (.664), and acting in a professional manner (.655).

The racial difference in satisfaction stems in large measure from black violators' being much less likely than white violators to believe that they deserved to receive the citation. Overall, 63% of violators acknowledge that they deserved to receive the citation, while 34% feel that they did not. However, nearly seven in 10 white motorists (69%), but only 53% of black motorists, say that they deserved to receive the citation.

As we might expect, those who admit guilt—whether white or black—have few complaints about the citation experience (91% satisfied—41% very satisfied and 50% mainly satisfied). Many of those who do not feel that they deserved the fine, however, regardless of race, are dissatisfied (48% whites, 51% blacks). In fact, the motorist's feeling that he or she did or did not deserve the citation is much more highly correlated with overall satisfaction (.507) than is race (.119). Moreover, regression analysis shows that once we take into account the different perceptions regarding whether the citation was deserved, there is no statistically significant difference in satisfaction between blacks and whites.

The survey asked motorists whether certain things did or did not take place during their traffic stop. In general, motorists' portrayal of the details of the traffic stop appear to be consistent with approved police procedures: nine in 10 (90%) say that the officer explained the

reason for the stop, 81% received an explanation of what it meant to sign the ticket, 77% recall that the officer explained options for appealing the ticket, and just 5% report that the officer used offensive language. The practice of officers' introducing themselves to motorists by name appears to be sporadic, as only 37% of violators report that the officer introduced himself or herself by name, while 42% say this did not happen and 21% do not recall.



When we ask these factual questions that require less subjective judgment from motorists (as opposed to perceived politeness or fairness), the racial gap is generally much smaller. This suggests that officers generally are taking the same approach, and behaving similarly, when dealing with violators of different races. For example, black and white violators generally describe the traffic stop similarly with regard to whether the officer explained the reason for the stop (whites 91%, blacks 87%), explained what it meant to sign the ticket (82%, 84%), asked the violator to step out of the car (14%, 15%), or used offensive language (3%, 6%).

There are two exceptions worth noting, however: blacks are more likely to report that the officer put a hand on his or her gun (whites 10%, blacks 20%) and also are more likely to say that the officer did not introduce himself or herself by name (whites 37%, blacks 53%). In terms of the officer putting a hand on his or her gun, the main difference occurs among black men, 27% of whom report that the officer did this. Also, 23% of black motorists age 18 to 34 report that

the officer put a hand on his or her gun, compared with only 17% of older black motorists and 16% of white motorists age 18 to 34.

An officer's failure to introduce himself or herself appears to be an especially important contributing factor to violators' dissatisfaction with the traffic-stop experience, and this is especially true for blacks. More than half of black violators (53%) say that the officer did not introduce him- or herself by name, compared with 37% of whites. Fully 60% of black men report that the officer did not do this.

Blacks and whites who report that the officer provided an introduction (or cannot recall) are equally satisfied overall (whites 86%, blacks 85%), and with regard to being treated professionally, politely, and fairly. Blacks who report that the officer did not provide an introduction, however, are much less satisfied with the traffic stop overall (52% satisfied, vs. 72% for whites who report no officer introduction) and register lower levels of satisfaction with regard to the officer's acting professionally (61%), being polite (52%), and treating the motorist fairly (45%). It is possible that the absence of an introduction is particularly off-putting to black motorists, or that providing an introduction effectively reassures black motorists that they can expect fair and professional treatment (or both). For now, the combined effect of blacks' strongly negative reaction to the absence of an introduction, together with blacks' being much more likely to say the officer did not offer an introduction, appears quite significant.

APPENDIX: SURVEY METHODOLOGY AND SAMPLES

▶ Montgomery County General Public

This study is based on a statistical sample that provides a representative cross section of adults in Montgomery County, Maryland, and includes oversamples of blacks, Hispanics, and Asians to bring the number of interviews among each minority group up to a statistically significant size. The sample is a random proportionate cluster design based on data from the 1990 U.S. Census. To represent the population accurately, the cluster size (number of interviews at each cluster or sample point) was limited to a maximum of four. In all, 105 sample points were selected for the base sample, resulting in a total of 406 completed interviews with respondents age 18 or older. The oversamples of minorities consisted of 77 clusters to complete 156 additional interviews among blacks, 51 clusters to complete 119 additional interviews among Hispanics, and 51 clusters to complete 124 additional interviews among Asians. All respondents were Montgomery County residents.

The base sample was drawn as follows:

Within Montgomery County, cities, towns, and other census subdivisions first were ranked by population size and the 105 sample points assigned to the county were then apportioned to the communities in a systematic random fashion proportionate to the size of the community to the total county population.

Once each sample point had been randomly assigned to a specific locality, residential telephone numbers for each sample point were selected from appropriate telephone directories. The telephone numbers thus selected were used as "seed" numbers for a random-digit-dial system where a numerical constant is added repeatedly to the last two digits of the "seed" telephone number to generate additional phone numbers in the sampled communities. This random-digit-dial system gives every telephone-equipped household, both listed and unlisted, an equal chance of falling into the sample.

Each minority oversample used an identical methodology as the base sample, but the files on which it was drawn used the appropriate minority group population distribution within the communities of Montgomery County. In the data processing, each oversample was combined

with interviews in the main sample to provide enough interviews for statistically reliable results in the subgroup analysis. The oversamples were weighted back to their proper proportion of the sample for reporting the overall results for the county.

Telephone interviews were conducted by Hart Research's interviewing staff with randomly designated respondents throughout Montgomery County between June 3 and 12, 1999. At each household, the respondent was chosen by means of a random selection pattern geared to the number of adults of each sex living in the household. Strict quality control measures were followed during the interviewing process and after the interviews had been completed, a subsample of respondents was recontacted to verify that the interviews were legitimate and the data had been recorded accurately. The questionnaires were coded and tabulated on standard computer equipment, using Hart Research's in-house facilities.

In reading the data, keep in mind that the results are subject to sampling error—i.e., the difference between the results obtained from the sample and those that would be obtained by surveying all Montgomery County residents. The size of a possible sampling error varies with the sample size and to some extent with the percentage of respondents giving a particular answer. Overall, this study has a margin of error of ±3.5%. The margin of error among some of the subsamples are as follows: ±5.6% among whites, ±6.9% among blacks, ±8.3% among Hispanics, and ±8.5% among Asians. The table at the end of the appendix sets forth the range of error in samples and subsamples of different sizes and at different percentages of response.

▶ Violators

This study is based on a statistical sample that provides a representative cross section of Montgomery County residents who were issued a ticket or tickets for moving violations by the Montgomery County Police between September 1998 and March 1999. The sample is based on lists provided by the County for residents with moving violations that did not involve a serious accident or an arrest.

The computerized file was sorted first by race and by ZIP code to order the file geographically and it then was split between black and non-blacks. Quota samples were then produced to interview blacks and non-blacks. Each computerized file then was segmented into equal clusters of names, and from each cluster, one interview was to be conducted. Respondents

thus were selected on a random basis and each person on the list had an equal chance of being interviewed.

A total of 139 interviews were conducted among blacks and 247 interviews among non-blacks for a total of 386 interviews. This had the effect of overrepresenting blacks, and in the data processing stage, the results were statistically weighted to bring blacks down to their proper share of all moving violators, while having a large enough sample of blacks for subgroup data analysis.

The interviews were conducted by telephone by Hart Research's interviewing staff between June 7 and 29, 1999. After the interviews were completed, a subsample of the respondents was recontacted to verify that the data had been recorded accurately. The questionnaires were coded and tabulated on standard computer equipment, using Hart Research's in-house facilities.

In reading the data, keep in mind that the results are subject to sampling error—i.e., the difference between the results obtained from the sample and those that would have been obtained by surveying every resident who was issued a ticket for a moving violation by the Montgomery County Police. The overall results of this poll have a margin of error of ±5%, however the size of sampling error varies with the sample size and to some extent with the proportion of respondents giving a particular answer. The margin of error among non-Hispanic whites is ±7.5% and among blacks it is ±8.3%. The table at the end of the appendix sets forth the range of error in samples and subgroups of different sizes and at different percentages of response.

▶ Montgomery County Police Officers

This study is based on a sample of sworn police officers in the Montgomery County Police Department. In order to provide complete confidentiality to all the respondents, all sworn police officers were given a letter from Hart Research asking for their participation in the survey. The letter stressed the strict confidentiality of the responses, the research-only purposes of the survey, and asked them to call a 1-800 telephone number to reach a Hart Research interviewer who would conduct the survey.

A total of 212 telephone interviews were conducted by Hart Research's interviewing staff with respondents between June 3 and 11, 1999. The questionnaires were coded, keypunched, and tabulated on standard computer equipment, using Hart Research's in-house facilities.

In reading the data, keep in mind that the sample was self-selecting and not random. In the absence of any possible way to conduct a truly representative survey, however, this was deemed an acceptable compromise.

In reading the data, keep in mind that the results are subject to sampling error—i.e., the difference between the results obtained from the sample and those that would be obtained by surveying all Montgomery County Police Officers. The size of a possible sampling error varies with the sample size and to some extent with the percentage of respondents giving a particular answer. Overall the study has a margin of error of ±6.7%. The following table sets forth the range of error in samples and subsamples of different sizes and at different percentages of response:

RECOMMENDED ALLOWANCE FOR SAMPLING ERROR

	(At 95 in 100 confidence level) * - - - - Sample Size - - - -			
	400 %	300 %	200 %	100 %
Percentages near 10	3	4	4	6
Percentages near 20	4	5	5	8
Percentages near 30	5	6	6	9
Percentages near 40	5	6	7	10
Percentages near 50	5	6	7	10
Percentages near 60	5	6	7	10
Percentages near 70	5	6	6	9
Percentages near 80	4	5	5	8
Percentages near 90	3	4	4	6

* The chances are 95 in 100 that the actual sampling error is not larger than the figures shown. All ranges are plus or minus. Thus, were a sample of 400 voters to split 50/50 on a question, the odds would be 95 in 100 that the true split in total population would not be greater than 55/45. Were a sample of 200 voters to spilt 50/50 on a question, the odds would be 95 in 100 that the true split in total population would not be greater than 57/43.

Montgomery County
Office of Legislative Oversight
Resource Committee
September 13, 1999

Report on the Montgomery County Police Department's Response to Complaints of Police Misconduct

Executive Summary
Conclusions
Recommendations
The Committee's Process

Executive Summary

The Montgomery County Council established the Resource Committee in October 1998 in response to citizen concerns about the police complaint process. The Committee was charged by the Council president with assisting the Office of Legislative Oversight (OLO) as they examined issues related to how the police department responds to complaints generated by citizens. This report is designed to assist OLO and the County Council in the development of sound public policy as they consider improvements to the process by which police handle citizen complaints of police conduct.

The Committee concluded that there is good cause for citizen concern because the existing complaint process is ambiguous, poorly written, out-of-date, and misunderstood by police and citizens alike. While no evidence was presented to this Committee to support allegations that the complaint system is racially prejudiced, we did indeed reach consensus that the complaint system in practice by the MCPD today is equally unfair to citizens and police, regardless of race, age, ethnicity, or gender.

This report contains 11 conclusions and 12 recommendations for improvement, all reached by majority consensus. We recommend, for example, the implementation of a transparent complaint system that is understood by all parties; a better organized Office of Internal Affairs (OIA) to serve as the focal point for all complaints; a new complaint tracking system; an upgrading of the skills and the performance level of OIA personnel; an improved system of communicating with citizens who complain; a citizen advisory board to work with the new chief on revising and improving the complaint process; a continual evaluation of existing training; mediation and conciliation training for OIA personnel; and, strong leadership from the new chief and his director of the Office of Internal Affairs.

The Resource Committee wishes to express appreciation to Ms. Karen Orlansky, Ms. Tedi Osias, Ms. Justina Ferber, Ms. Linda McMillian, and Ms. Teri Busch for their excellent guidance and support throughout the life of the Committee. We would also like to thank Mr. Cornell T. Lewis, our initial chairman, for his important contributions during the early stages of the Committee's work. The cooperation of the police was equally notable, and we would like to sincerely thank each and every officer of the MCPD for enduring still another outside assessment of their performance. Finally, we wish to thank the citizens of the community who participated in our meetings, and helped us better understand the issues. We sincerely hope that this report reflects accurately the sentiments of all who participated in this exercise.

Conclusions

The Resource Committee reached a majority consensus on the following points:

- The complaint process currently in effect is ambiguous, poorly written, out of date, and misunderstood by police and citizens alike. No two police representatives were able to describe identically the process by which citizen complaints are processed, and virtually no citizen who came before the committee could accurately describe how it works. A new, transparent, easy-to-understand and documented policy must be developed for Montgomery County.

- There is no office or individual within the MCPD held accountable for responding to complaints. Resolution of a complaint may fall to investigators, the Office of Internal Affairs, a district station, or be ignored. Concurrently, there is no existing formal requirement within the MCPD that compels the department to resolve citizen or internal complaints.

- The establishment of a citizen oversight commission independent of the police is not justified at this time. A citizen advisory board to help the new police chief organize a credible complaint process would be more useful. The majority of the committee members favored giving the new police chief six months to make substantial improvements in the complaint process, rather than introduce an independent element into the equation.

- The Office of Internal Affairs as currently organized is of marginal value to the complaint process. OIA represents a paucity of investigative experience; OIA takes too long to investigate complaints; and OIA does not communicate effectively with the public or the police leadership for whom they work. Additionally, there are indications that OIA is unfocused, poor time managers, and with little pride in closing cases. The OIA unit as a whole does not appear to be respected by the rank and file or the leadership of the MCPD.

- While there is only anecdotal evidence of police personnel dissuading citizens from complaining about police behavior, and thus protecting each other, it is clear to this committee that police leaders have failed to create internally an effective Office of Internal Affairs. Whether deliberate or not, this gives credible argument to allegations that the MCPD does not want an effective fact-finding unit to look into citizen (or internal) complaints of police misconduct.

- The leadership of MCPD must dispel the perception of many in the rank and file that citizen complaints are intrusive, uninvited, and career damaging. The leadership should promote a policy of better communication with the public as a way to reduce complaints. They should also establish a policy of forgiveness if and when an officer periodically performs below standards.

- MCPD entry level and in-service training may not have kept pace with demographic developments in the county, and this has resulted in an increase in misunderstandings and complaints by resident immigrants. With substantial numbers of immigrants moving to Montgomery County, according to *Diversity in Montgomery County*, a Maryland Park and Planning Commission report, the police need to give more thought and training to communicating with diverse ethnic groups.

- The MCPD does not have an adequate electronic tracking system for complaints, nor does OIA have adequate support staff to maintain such a system, nor is suitable data being collected to support or deny allegations of discrimination.

- The MCPD should teach that citizen perceptions can be changed with persistence and hard work. There currently exists in the MCPD a feeling that citizen perceptions cannot be changed, so why try. A more effective policy would be for the police leadership to identify and isolate citizen perceptions, especially ones alleging "cover-up" of complaints, and take pro-active steps to correct misperceptions. We believe the complaint process is an excellent tool to improve community relations.

- A policy of mediation and conciliation should be designed and implemented to reconcile complaints. Such a policy should be used to bring all parties to a complaint to the table to discuss the complaint, and offer apologies where appropriate.

- This committee has not been presented evidence of widespread police misconduct in Montgomery County. There is nearly universal support and respect for the MCPD throughout the county, especially with regard to crime suppression and prevention. There is, however, a definite feeling in sectors of the black community that black citizens are treated differently by the police than non-black citizens. While we were unable to uncover any evidence that the complaint system is racially prejudiced, we are sanguine that the complaint process as construed at present is equally unfair to citizens and police alike, regardless of race, age, ethnicity or gender. We also confirmed the perception, in sectors of the black community, that the County Council and County Executive are insensitive to the issue; and that change has been slow in coming and unreasonably delayed by the County government.

Recommendations

1) The new police chief should be given six months to correct problems associated with the citizen complaint process. Failing this, the County may wish to evaluate the need for an independent civilian oversight commission.

2) A citizen advisory board consisting of five individuals should be organized to help the chief of police implement a transparent complaint system. The board members should be selected by the Chief of Police, appointed by the County Executive and confirmed by the County Council.

3) The Office of Internal Affairs should be the focal point for adjudicating all allegations of police misconduct. Regardless of whether the complaint comes from within the MCPD, or from a citizen, OIA should be accountable for resolving the complaint and overseeing the complaint process. OIA should file a monthly report to the Chief of Police stating, at a minimum, the number of cases under investigation, the number of complaints received, the nature of the complaints, the length of time estimated to complete the investigation of each case, the last contact OIA had with the complaining party, and the number of cases resolved.

4) The MCPD should take immediate steps to revise Section 301, wherein it assigns only "administrative investigations" to OIA. OIA should be charged by the chief of police to oversee investigations of **all** instances of police misconduct, regardless of whether the allegations are related to criminal or administrative misconduct. As stated previously, there is presently no formal requirement to compel the MCPD to investigate and adjudicate complaints. New policy should be written to ensure the proper processing of all complaints is mandatory. The existing (published) complaint process is dated 1994. This five-year old document needs to be updated, with clear lines of authority and accountability listed.

5) Complaints should be acknowledged by phone from the Office of Internal Affairs within seven days after the complaint is received. OIA should have 14 workdays to provide in writing a formal receipt of the complaint to the complaining party. In this written response, the allegation should be repeated, the name of the OIA focal point for the case should be given, and a letter explaining the process should be included. Minor complaints should be thoroughly investigated within 30 days; Serious complaints investigated within 90 days, unless there are clearly extenuating circumstances.

6) Investigators assigned to OIA should be experienced investigators, not individuals who rotate directly from patrol or traffic into this investigative unit. A performance plan for all OIA investigators, including the director of OIA, should be public information. While individual performance reports on OIA personnel should remain confidential, the public should be privy to the formal instructions given to the director and investigators in the OIA.

7) OIA should have personnel professionally trained in mediation and conciliation in preparation to help citizens and officers resolve complaints. We also recommend additional training for all OIA investigators in ethnic considerations, crisis intervention, and human relations. We would like to see OIA responsible for all complaint related internal training at the academy, for outreach and lectures on the complaint process to the community and for daily liaison with the community facilitator. At least two outside consultants specializing in mediation and conciliation should be identified, contingency contracts written and signed, and their use by OIA activated whenever deemed appropriate by the director of OIA.

8) OIA should be given additional support staff to enable them to maintain a non-disciplinary tracking system and communicate better with the public. Investigators must be free to focus on fact-finding and resolving complaints and right now their attention is diverted to less important tasks that could be handled by non-investigative personnel. We would like to see the blank form that a complainant is given have an *optional section* that asks for ethnic and racial data on the individual completing the form. If an officer has a pattern of the same complaints logged against him in the OIA tracking system, a confidential memo should be sent to the chief of police, and the officer, highlighting the trend.

9) Potential complaints against police officers should be resolved at the lowest level possible and officers who diffuse citizen complaints, and prevent them from escalating to formal complaints, should be encouraged. Every attempt should be made by field officers and field supervisors to communicate openly and honestly with citizens who make known that they have been mistreated.

10) The growing immigrant community in the county must be continually evaluated with regard to the complaint process. Some immigrants fear repercussions to themselves or their families if they complain. Sensitivity training in ethnic diversity and nondiscriminatory behavior should continue to be required at regular intervals for veteran MCPD officers, and for police candidates in the academy. Likewise, each district should consider the ethnic community in their jurisdiction, and attempt to better understand their concerns, whether they are satisfied or dissatisfied with police service, and why.

11) The MCPD should design and implement a two-year plan to transform the Office of Internal Affairs into a well respected, highly trained, and effective investigative unit. This transformation should not delay the short-term recommendations contained elsewhere in this report, but serve as a remedy to upgrade a potentially good unit. A strong director of OIA, with the rank of Captain or higher, should be appointed by the chief. OIA Investigators should be selected by the director of OIA based on successful investigative experience, their ability to interact with the public, and their earned respect from fellow officers. Training tailored to internal affairs investigations should be mandatory in OIA, and assignment to OIA should serve as a positive career development step.

12) The new police chief should engage the Fraternal Order of Police in a dedicated series of discussions on police conduct and work with them to refine the complaint process. Neither side appears satisfied with the current system.

Background of Findings

The Resource Committee's Work:

The Resource Committee met biweekly between November 1998, and June 1999, to examine issues related to how the Montgomery County Police Department responds to formal and informal complaints generated by citizens. The Committee accepted as its mandate the collection and analysis of information related to the complaint process, and the writing of a report to the County's Office of Legislative Oversight (OLO). It is this committee's understanding that our recommendations, coupled with independent resources used by OLO, will be used by the County Council in the development of public policy to improve the process by which citizens and others complain of police conduct.

In a series of meetings, Committee members listened to police personnel of varying ranks and positions, citizen leaders, journalists, lawyers, community activists, and concerned citizens in an attempt to learn how the complaint handling process functions now, and how it might be improved. The Committee discussed and debated the following issues:

- The manner in which the Montgomery County Police Department responds to citizen complaints at present, including the requirements of State and County laws, collective bargaining agreements, and police department directives.
- Citizen perceptions of the complaint process; from initial contact through investigation to final disposition;
- The technique by which complaints are tracked and recorded in the Office of Internal Affairs;
- The formal training each police officer is given in the handling of complaints, and the ethnic diversity awareness training that is necessary at regular intervals in a police officer's career
- The ways in which other jurisdictions manage and involve citizens in the process of responding to complaints.
- The expectations and perceptions held by citizens and police officers about citizen-police interactions;
- The role the Office of Internal Affairs and other MCPD components play in responding to and resolving citizen complaints.

- The policy, procedure, and demeanor of police leaders as they address issues associated with the complaint process.

- The role of County government, including the process by which the County Council and County Executive work together to identify problems and implement change.

- The role of the Fraternal Order of Police in the complaint process.

The Committee's Process:

The following sections of the report elaborate on the Committee's findings, give a glimpse of some of the discussion points, and provide background on the main issues, grouping them as follows:

I. The Complaint Process at Present

II. The Responsibility for Investigating and Processing Complaints

III. The Emerging Model

Part I – The Citizen Complaint Process:

By the second Committee meeting it was clear to Committee members that the existing complaint system is neither transparent, understandable, nor effective. No two explanations of how the present system works were identical and most guest speakers acknowledged that ambiguity exists in the current policy and procedures. The MCPD defines a complaint as any allegation of misconduct against a police department employee. Once a complaint is received, it is divided into the category of "formal or informal," usually by the district station, without the knowledge of the complainant, and without seeking the advice of OIA. A determination is then made on the potential action that could be taken against the officer if the allegations are true. If the remedy could be punitive, a series of procedures and regulations must be followed to ensure compliance with collective bargaining agreements and the officer's Bill of Rights. These initial determinations define the course of a case's resolution. We believe a complaint is a complaint and that the initial handling of a complaint of misconduct should be uniform, predictable, and fair to all parties. Complaints are typically received either over the telephone, in writing, or in-person by the complaining party. The most senior person in a district station handles in-person complaints. There are incidents of police supervisors having to be summoned from the field to take a complaint, much to the inconvenience and anxiety of citizens who must sit and wait, sometimes for an

inordinate period of time, until a supervisor is free to deal with their complaint issue. Written or telephonic complaints can be handled in a variety of different ways, each unpredictable and based on the decision of a supervisor. Not all are bad. It is the unpredictable nature of the process that is causing many of the problems.

A citizen calling the County's general information number stating that they would like to complain about an officer is connected to the Office of Internal Affairs in less than 30 seconds, according to citizens whom the Committee asked to test this process. We found this commendable, but what happens after the caller voices their complaint? Simply getting through on the telephone, or being able to speak with a supervisor in a district station is insufficient. We thought this should be the start of a uniform process to determine the merits of the complaint. We learned that a complaint form is available in English and Spanish, and a brochure, "How Do I File a Complaint Against a Montgomery County Police Department Employee" at district police stations, in County libraries, and at other locations throughout the County. Again, we found ample evidence that complaint forms exist, but what happens after a complaint is received is where we found the ambiguity. We determined that the MCPD should not actively *market* the police complaint process. We felt the marketing of citizen feedback—good or bad—should be an active part of each police station's portfolio but the MCPD should not serve as a *complaint seeking body* for its own people. In fact, we think the brochure should have a more neutral title, since its goal is to solicit feedback on performance, both good and bad.

Part II - Responsibility for Resolving Complaints:

There is a majority consensus among members of the Committee that the police, not citizens, must have the burden of investigating allegations of police misconduct. We agree with police suggestions that many allegations of misconduct may be difficult to prove or disprove, but we found it disingenuous of the police, if it is indeed happening as some citizens reported, to insist that a citizen provide "evidence" of misconduct before any police investigative action can be taken. We see the burden on the police to resolve complaint matters to the best of their ability. If a satisfactory resolution is not possible, then a fair and balanced, properly documented investigation that can pass, if required, a non-partial audit must be undertaken. We heard during deliberations comparisons of the police with other County institutions, with the suggestion that performance complaints are simple personnel matters to adjudicate. But the majority of the Committee disagreed, believing that while government is normally not much more than an abstraction in the United States, the police are different. Our belief is that police officers are visible and powerful beyond any other government institution, that most citizens are willing to preserve and defend the right of the police to do their job, but the community must also protect itself from abusive officers.

This Committee believes it imperative that we allow citizens to register complaints about police conduct and process their complaints in a timely, just, and transparent way. Given the number of police-public contacts per year, we believe it is inevitable that some officers will perform below MCPD standards on occasion, that police and citizens recognize this and the police develop programs to identify and remedy such behavior, and avoid the establishment of a "blue-wall" that defends all police, all of the time.

We realize the Chief of Police has ultimate responsibility to resolve complaints of misconduct by their personnel but we had difficulty identifying precisely which component of the MCPD has functional responsibility for the overall complaint process. What emerged over the months is an ill-defined process by which *everyone yet no one is accountable.* Complaint forms are currently available, but who has responsibility to modify and update these forms? Why are current policy statements on the complaint process dated 1994, some five years ago. Who designs and teaches the complaint process to candidates in the police academy, and who is responsible for advising the academy of changes to the policy? How frequently does OIA provide a written report to the Chief on complaint trends? Who is counseled if a citizen does not receive written feedback on a complaint? Who selects personnel to be assigned to OIA? Who calls a meeting with the FOP to discuss the complaint process? Who writes internal police regulations, and why are internal investigations so poorly defined? Are there defined punishments for abusive language, failure to take a crime report, or other infractions that often stimulate citizen complaints? What assurance does an officer have that punishment or remedial action is uniform and consistent? Precisely who is in charge of the complaint process?

Why is it the police crime laboratory is never called to support the complaint process? Why is it necessary for some officers to wait up to two years to have allegations of misconduct resolved? When is the last time an OIA investigator was written a commendation for excellence? Who selects the director of OIA, and what is the basis for the selection? Who is responsible for liaison with the Community Facilitator? Where are accurate statistics on complaints received and adjudicated?

The above questions were asked and answered numerous times over the course of this Committee's deliberation, but rarely if ever were the answers identical. We resolved that no one was intentionally lying to the Committee, that the unavoidable truth is that the MCPD just does not have a good complaint process in effect.

Part III – The Emerging Model

The Chief should form a five person **Citizen Advisory Board** to help him design and improve the complaint process, along the lines outlined in this report. We believe this is necessary to keep attention to this issue focused within the MCPD, and to ensure that change is implemented. This is a compromise between an independent civilian oversight commission, and the need for more citizen involvement in the process. The Committee believes that volunteers for an advisory committee should be solicited, interviews conducted, and candidates selected by the Chief, appointed by the County Executive and confirmed by the County Council.

The advisory board should not be involved in the adjudication of complaints, the hearing process, or individual cases. It should work with the Chief on revising and improving the complaint process only, and not become diverted by other issues. This Board would serve as a resource to the Chief, a bridge to the community he serves, and helps him get a transparent system in place quickly and efficiently.

The majority in this body of reason did not hear convincing evidence that the police are unwilling or unable to address issues of complaints in a timely and accurate manner and, therefore, the majority did not support recommending an independent civilian oversight commission, as advocated by three Committee members and several community members who addressed the Committee. The majority believes that the current problem with the complaint system is in the process, not a deliberate attempt by the MCPD to avoid public review. Senior officials of MCPD acknowledged that the MCPD may have neglected the complaint system in favor of crime fighting, and we believe them. Concurrently, the new Chief deserves a reasonable period of time to correct the problems outlined in this report. Additional reasons for our conclusion that independent civilian oversight is not required at this time are:

A civilian oversight commission is expensive. It would require administrative support, formal training, an office, and travel funds, on a recurring basis. Inadequate financing for the commission or the County's inability to keep pace with the commission's workload would be devastating to the citizen complaint process.

A civilian oversight commission will add time to the processing of citizen complaints, and we want to reduce the time necessary to resolve complaints.

The establishment of such an independent commission could be viewed by many as political in nature and for the sake of appearance only. The majority on the Committee believed that such a commission, encouraged strongly by a limited but vocal sector of our diverse County, would perform an expensive disservice to the majority in the County, most of whom appear to be satisfied with the performance of the police.

Time and again the Committee agreed that police leadership, good management, and a transparent complaint system are the keys to an effective and legitimate complaint and review process in Montgomery County.

We would like to promote mediation and conciliation in the complaint process to discourage frivolous complaints and encourage a more responsive and consistent system to address citizen complaints. We believe a formal mediation process should be designed and implemented immediately. Mediation will be the first consideration taken by OIA following the receipt of a complaint. While field supervisors would remain free to try to reconcile citizen complaints at the scene, the task of mediation after a complaint has been received would fall under the OIA, and would take place within 48 hours of receipt of a complaint. The goal of mediation would be to get both parties to the complaint to explain their side of the incident in private, with a mediator in attendance and to exchange apologies if necessary. No reprisal would be taken against any officer or citizen who apologized, and no negative notation would be made in an officer's personnel file if they courageously helped reconcile a complaint by acknowledging through an apology that their performance may not have been the best under the circumstances. In other words, an apology by either side could not be considered an admission of guilt, but an honest and skilled effort to reconcile differences. The MCPD should provide training to all OIA investigators in mediation skills, and it should have on a retainer basis outside, fully trained mediators, to be called upon when needed.

The Committee heard no evidence that police misconduct is widespread, that the police leadership tolerates misconduct or that it intentionally "covers up" when citizens complain. The MCPD agrees that the complaint system must be objective and fair for complainant and accused officer(s), and that the community and all parties perceive it that way.

The Committee did find a perception among a substantial number of black citizens is that the complaint process is unresponsive to black people, and that they are treated differently when they try to complain about police misconduct. However, this Committee found sufficient cause to document in this report that the entire complaint process is broken, and that virtually all races, ethnic groups, age groups, and genders are unfavorably affected by the ambiguity of the existing complaint system.

It does appear that there are a disproportionate number of complaints against the police from the black community. There is indeed a perception in the black community that police are tougher, less tolerant, and more short-tempered with black citizens than they are with other citizens. Based on what we heard, there appears to be a strong feeling within the black community that there are some officers within the MCPD who are racially prejudiced and systematically abusive to black citizens. A disturbing trend in some sectors of the black community is a concern by parents that their son might be stopped by the police, physically abused, or shot. If widespread, this belief would be a serious departure from police intentions to invoke trust and cooperation among its citizens, and should be addressed immediately.

Incidental to the Committee's fact-finding on the complaint process, we heard allegations against the police regarding racial profiling or the excessive use of deadly force but the linkage to the complaint process was unclear, so we have deliberately avoided addressing these two issues, believing that the issues were outside of our mandate. With regard to the issue before us, the Committee was not presented evidence of widespread lack of public confidence in the police complaint process. If the limited attendance by citizens at Committee meetings is any indication, most citizens in the country seem to know nothing about the police complaint process, and do not seem to care one way or the other. Some segments of our county, especially in sectors of the Black, Hispanic, and Asian communities do seem to feel the complaint system is unfair and lacking in credibility. But, even within the Black community we found no consensus that the complaint system, per se, is deliberately against them. To the contrary, several committee members received calls from respected members of the Black community making sure we knew that they did not share negative views of the complaint process, but were more concerned about nationwide concerns of racial profiling or excessive force.

By our estimation, the complaint process now takes at minimum five to six months from the filing of a complaint to resolution. Some cases have been pending for two years, leaving all parties at a loss for justice. Therefore, the Committee recommends the following additional ways in which to make the complaint process more transparent and efficient:

- A database that tracks the complaints should be incorporated into the Office of Internal Affairs. This system should be confidential and for the exclusive use of OIA. It should allow at-a-glance the status of complaint investigations; the names of officers accused of misconduct (and the allegations); the resolution of the cases; and a record of all statistics and communication with citizens. Each investigator should receive training in use of this database and be required to keep their cases up to date in the computer.

- A representative from OIA should phone a complainant within seven days of the filing of the complaint to report to them on the process, and what they can expect from OIA. The complainant should be given the name and telephone number of the OIA point-of-contact for future reference.

- Citizen complaints should be resolved at the lowest level possible, and officers should be encouraged to resolve citizen complaints before they reach the formal complaint stage. Poor communication seems to be leading to misunderstanding in many cases, and better communication will increase community confidence in the process. From what we heard, many complaints could have been eliminated if the police officer had just taken a few minutes more to explain to the citizen why they were stopped, searched, or questioned. Although the Committee was impressed with the quality and quantity of training currently given to police candidates in the academy, we believe that officer's consideration should be given to improving ethnic sensitivity, given the County's changing ethnic diversity.

- If a complaint is filed it must be investigated. The OIA must overcome complacency and begin to have pride in resolving cases fairly and efficiently. OIA, not district stations, should make the decision on who investigates allegations of misconduct. Even if the OIA assigns a district to investigate, OIA should stay engaged, and remain accountable for the resolution of the case. OIA should facilitate all communications with the citizen filing the complaint to ensure consistent and uniform treatment. The MCPD should cease the practice of sending meaningless letters to complainants, and instead make clear in all correspondence what is happening in a particular case, the final resolution; including the reasons for its decision, and what, if any, action was taken to remedy the situation or prevent its reoccurrence. In all cases, OIA performance must conform to the collective bargaining agreement, internal regulations, and laws governing employee confidentiality.

- The MCPD should consider the design and implementation of an appeal process for citizens who are dissatisfied with the resolution of a complaint by OIA. Such as process would allow a one-time appeal directly to the chief, who would have 30-days to respond to the appeal. This may not work, or it may become too cumbersome and generate ill will among the officers and citizens. But, we heard from several citizens that an appeal process should be tested to see if it helps bring citizens and police together, and we support the idea on a trial basis.

- In keeping careful records, the Office of Internal Affairs may know more clearly than other police jurisdictions which sectors of the community have more citizen complaints than others, and why; which officers receive the most complaints and why; and the racial, ethnic, age and gender of citizen complainants. An OIA control number should be assigned to all complaints, regardless of whether they are formal or informal, and data presented to the chief, or public upon demand, as a mechanism to monitor the complaint process.

- Police supervisors should be given the opportunity to identify and correct patterns of misconduct among their personnel with little fanfare. Citizens must understand that some police officers, especially in the first five years on the job, may overreact or perform below standards on occasion. This is common in any highly regulated industry, and police work is exceptional in this regard. The MCPD and FOP must find a way to counsel or provide tailored training to good police officers if and when they fall below expectations once in awhile. There is no reason a finding of misconduct has to be career damaging if both officer and department are willing to work on the problem, quietly, and with a behavioral change in mind. A punitive-only system can only promote deceit and a blue line of defense.

- The County Facilitator should work directly for OIA. He should thoroughly understand the system, take part in improving the system, teach in the police academy, and speak to civic groups.

- There is majority consensus among Committee members that all written complaints should contain a statement sworn before a notary or requiring a "declaration under pain of perjury," attesting to the veracity of the allegation(s). We believe this is

justified both to hold citizens accountable for their claims against police officers, and to discourage frivolous complaints. We learned time and again that many citizens complain in the heat of the moment, and are willing to retract the complaint after the matter has calmed down. We believe the process should allow citizens the opportunity to evaluate what happened, and retract their complaint if they so desire, without penalty.

- The Office of Internal Affairs (OIA) at present is not considered a desirable assignment within the ranks of the Montgomery County Police Department. The Committee debated extensively how OIA might become a unit that every member of the police force would respect, and all seemed to agree that this should be an important issue for the new chief to address.

- The Committee focused on the current rank of the director of the Office of Internal Affairs and the authority given this position. There is majority consensus that at least a Captain should be assigned to direct OIA, to ensure equal rank with district station commanders with whom the OIA director will have frequent contact. All Committee members agreed that the OIA should remain an adjunct of the Office of the Chief of Police and that the OIA director should have direct and routine access to the Chief.

Resource Committee Members:

Michael R. Spak, Chair
Cecilia Castellanos Schagren, Vice-Chair
Walter E. Bader
Stephen M. Block
Iris R. Brown
Armando "Joe" Camacho
Shanti P. Gulati
Alzada R. Hill
Anthony L. Hill
Thomas John
William Mooney
William O'Toole

MEMORANDUM

September 14, 1999

TO: Councilmembers

FROM: Justina Ferber, Legislative Analyst

SUBJECT: Minority Views of Resource Committee Member

Stephen Block, a member of OLO's Resource Committee, transmitted the attached memorandum on September 14, 1999.

Attachment

aclu
American Civil Liberties Union of the National Capital Area
1400-20th Street, N.W. ☐ Washington, D.C. 20036 ☐ 202-457-0800

Memo

To: Ms. Karen Orlansky, Director, Office of Legislative Oversight

From: Stephen M. Block

Subject: Report of the Resource Committee

Date: September 12, 1999

Attached please find my memorandum to be appended to the Report of the Resource Committee and forwarded as part of OLO's Report to the Council.

Please do not hesitate to contact me if I can be of any assistance in this matter.

I have very much enjoyed my experience on the Resource Committee and working with you and your able colleagues.

Thank you.

Attachment

cc: Michael R. Spak, Chair, Resource Committee

Chairperson, Cynthia Harrison; *Vice Chairperson,* Bert Foer; *Secretary,* Paul Siegel; *Treasurer,* Charles Cerf
EXECUTIVE BOARD: Geoffrey F. Aronow, Shelley Broderick, Mary Cheh, Jeff Coudriet, H. Stewart Dunn, Jr., Cheryl Epps, Bruce Gilchrist, Merna Guttentag, Lisa Jones, Michael Mage, Leslie McAdoo, Jim Nathanson, Lowell Owens, Daniel Rapoport, Thomas Schneider, Nancy Jane Shestack, Paul Siegel, Christopher Sipes, Jonathan Smith, Nkechi Taifa, Matthew S. Watson, Dr. John Wimberly, Andrea Young, Lih Young
STAFF: *Executive Director,* Mary Jane DeFrank; *Legal Director,* Arthur B. Spitzer; *Staff Attorneys,* Charles H. Wilson, Stephen Block; *Finance Director,* Leland Y. Larsen; *Executive Assistant,* Carolyn Martin; *Development Director,* Liz Fanning

Memorandum

To: The Office of Legislative Oversight, Montgomery County Council

From: Stephen M. Block, American Civil Liberties Union of the National Capital Area, Member, OLO Resource Committee[1]

Subject: Citizen Review of Complaints of Police Misconduct: A Proposal

Date: September 11, 1999

Introduction

Last October, the Council appointed a Resource Committee to assist the Office of Legislative Oversight in its review of the system whereby citizens lodge complaints of police misconduct. The Resource Committee has now completed its work and concluded that the problems can be solved by reforming the Police Department's Office of Affairs Division (OIA), and that in any case, the new Chief of Police should be given an opportunity to deal with the matter. While we completely agree that OIA needs a major overhaul, we do not believe that this will resolve the fundamental problem, the lack of public confidence in a complaint system entirely within the police department. This memorandum provides the reasons for this conclusion and a proposal to create a mechanism outside of the police department to review complaints.

The Problem with Internal Police Review

An Office of Internal Affairs is essential to the management of a police department, as it provides critical information to the Chief for supervising and maintaining the discipline of the department. It does not, by itself, provide a sufficient mechanism for the handling of complaints of police misconduct. Where there is dissatisfaction with the conduct of a police officer, i.e., where trust is already impaired, a complainant cannot be expected to have confidence in the adjudication of the complaint within the police department. In other professions such as law and medicine, there are mechanisms independent of the practitioners to enforce codes of conduct.

Whether there is in fact a blue line preventing police officers from testifying against fellow officers is beside the point. The perception of a solid blue line

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[1] Two other members of the Resource Committee join in the recommendation that there should be a mechanism for the consideration of citizen complaints that is independent of the police department.

undermines the ability of a police department to adjudicate complaints against its members. Lack of confidence that police officers testify truthfully is acute among African Americans and Hispanics. "[O]ver half of blacks and Hispanics disbelieve officers on the stand."[2] Ms. Barbara Flack-Darko, Editor and Publisher of The Montgomery Times, told the Resource Committee[3] that the reality for the black community is that police will do things to black people that they would never do to white people.

An OIA determination that there has been no wrongdoing on the part of an officer is subject to the response: "Consider the source." This lack of confidence does not depend on how well OIA does its work. Mr. Luis Costas, President of Consejo Latino, Inc., told the Resource Committee that having police officers interrogate their peers was perceived as a problem.[4] The problem of credibility is structural because OIA is inescapably an instrument of the police department.

We proceed from the understanding that by-and-large, the Montgomery County Police Department is highly professional and well intentioned. However, even if the instances of actual misconduct are few, that does not diminish the need for a review mechanism external to the police department. The problem of credibility exists whether there are 10 or 100 cases of misconduct.

The Montgomery County Police Department is wisely committed to a policy of community policing. The bedrock foundation of that approach is public trust in the police. If the department is perceived as protective of its own, that trust is undermined. As Mr. Daryl Davis told the Resource Committee, when some officers lie, it creates distrust and lack of confidence in all police.[5] Citizens will not come forward to volunteer information or otherwise cooperate with the police.

In opposition to a system of independent review, it is argued that our community has not suffered the kinds of police abuse experienced in cities such as New York, Washington, D.C., or Philadelphia, and therefore an independent complaint system is not necessary. The premise of this statement is true, the conclusion is not. While there have been incidents in Montgomery County that have inflamed citizens, they do not rise to the horror stories of other jurisdictions. But we should not wait for a

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[2] Poll conducted by the National Law Journal and Decision Quest, a nationwide trial consulting firm, reported by 1998 Calibre Press Street Survival Newsline, www.calibrepress.com.

[3] February 16, 1999, meeting.

[4] February 16, 1999, meeting.

[5] February 16, 1999, meeting.

disaster to happen. Rather, we should have in place an independent review mechanism, which may help to assure that such an event will not occur.

It is also argued that we should not institute an independent system just as a new chief has been appointed. To the contrary, this is the best time to institute independent review. Nothing the new chief can do will change the inherent lack of credibility of a system that vests sole responsibility for the complaint process within the police department. The institution of independent review would not be a reflection on the new chief.

The Task Force for Police-Community Relations, appointed by the Chief of Police, in its August 12, 1998 report: "strongly recommend[ed] a civilian oversight commission." Appearing before the Resource Committee, public witnesses Judge Chung Pak, Mr. James Sobers[6] of the NAACP, and Ms. Dorothy Copp Elliott[7] strongly endorsed the creation of an independent review mechanism . The Council should not disregard the views of the Task Force and these public witnesses.

For all these reasons, we urge the Council to enact a system of reviewing complaints of police misconduct that is independent of the police department. The following is a suggested approach.

PROPOSAL FOR A CITIZEN REVIEW SYSTEM

Models of Citizen Review

Citizen review systems vary considerably, from an agency that has principal responsibility for the investigation and adjudication of complaints to one whose authority is limited to reviewing and auditing the investigations and adjudications of the police department. No one model fits all situations. Our recommendation is for an independent system weighted in favor of the audit/review model, but which also includes authority to investigate and make recommendations. The reasons for this choice are provided below where we specify the features of the suggested model. Our objective is the creation of a mechanism that will enjoy the confidence of Montgomery County citizens and Montgomery County police officers alike.

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[6] Judge Pak and Mr. Sobers spoke at the February 24, 1999, meeting.

[7] Ms. Elliott spoke to some members of the Resource Committee after the conclusion of its February 24, 1999, meeting.

The Jurisdiction of the Citizen Review System (CRS)

CRS jurisdiction should extend to complaints of excessive use of force, harassment, abusive language, and retaliation.

The Citizen Review System Board

The CRS would be governed by a Board of five persons, one of whom should be from the Police Department. The CRS would be an independent agency situated within the executive branch. Members would serve for three year terms, subject to renewal. The County Executive would nominate the members, who would be confirmed by the Council. Members would be subject to removal by the Council for cause.

While members of the Board would be appointed and confirmed by the County's political leadership, they should be chosen for their integrity and abilities without reference to political or popular support. The Board should have the status of a blue-ribbon commission. The success of the system will depend on the excellence of the persons who serve on the Board.

The Board would be responsible for developing CRS policies, promulgating regulations, and overseeing the administration of the system. The Board would issue an annual public report, which would include statistics concerning the types of cases and outcomes and an assessment of the system, including recommendations for its improvement. [*cf.* P.G. § 18-186.08(h) and Baltimore § 16-50 (semi-annual report)][8] In addition, the annual report would include recommendations concerning the recruitment, training, supervision, and discipline of police officers. The Board would nominate the CRS Administrator, who would be appointed by the County Executive. The Administrator would serve at the pleasure of the Board.

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[8] Any proposal for citizen review must operate within the parameters of the Maryland Law Enforcement Officers Bill of Rights and the Public Information Act (limiting disclosure of information). The bracketed references are to statutes in Prince George's County and Baltimore City, where similar provisions have been enacted and found to be in compliance with those state-wide statutes. In her Memorandum of December 17, 1998 to Senior Legislative Attorney Michael Faden, Assistant County Attorney Sharon B. Benzil concluded: "The models of Citizen Review Boards established in Prince George's County and Baltimore city overcome the obstacles presented by the NAACP proposal and could be used as a model to create a complaint-review commission that would be compatible with State and local law." Memorandum, p. 8.

The primary function of the system is the review of OIA's findings of fact and recommendations.[9] The CRS would be charged with the responsibility of determining that the OIA had conducted its investigation thoroughly and impartially. If that is the case, the CRS will affirm the OIA's determinations. [P.G. § 18-186.01(c)]

CRS Administrator

The Administrator should be an attorney admitted in Maryland. [P.G. § 18-186.03(g).] The Administrator's job is to carry out the provisions of the CRS Act subject to the supervision/removal of the Board. The Administrator would hire staff and/or utilize contract employees to carry out the system.[10]

Process

The process we suggest would operate along the following lines:

- The OIA would send the Administrator copies of all complaints received by OIA. The CRS may receive complaints directly, in which case, the Administrator would forward them to OIA.

- To avoid frivolous complaints or complaints intended to harass, complaints must be reduced to writing (with the assistance of CRS staff, as may be necessary) and signed by the complainant in the form of an affidavit or legal declaration. [Baltimore § 16-42(b)] If a complainant believes that he/she has been wronged by a police officer, the complainant should be willing to affirm that the complaint is truthful, according to his/her information and belief. The consideration of frivolous complaints would waste valuable CRS staff resources, and delay the consideration of non-frivolous complaints, thus subjecting the system to delays that would discredit the entire process.

- The Administrator may recommend dismissal of a complaint as frivolous. Notwithstanding such a recommendation, OIA may decide to proceed with its investigation.

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[9] Disclosure of OIA findings and recommendations to the CRS would not be in violation of Maryland statutes, e.g., the Public Information Act, § 10-616(i), since the CRS would be an executive department office. *See* December 17, 1998, Memorandum from Assistant County Attorney Sharon B. Benzil to Senior Legislative Attorney Michael Faden, p. 7.

[10] References to "Administrator" herein include CRS staff.

- The system should provide for mediation and conciliation between the complainant and the responding officer whenever the Administrator deems that appropriate, including prior to the commencement of an investigation by OIA. A complaint may reflect a failure of communication. There may be a need for apologies, mutual or unilateral. Mediation and conciliation can settle many disputes to the benefit of both the complainant and the police officer.

- The Administrator should interview each complainant independently of the OIA's interview. This would enable the CRS better to assess the OIA's findings of fact and recommendations.

- If the CRS finds deficiencies in OIA's work, it can remand the matter to OIA to conduct further investigations. [P.G. § 18-186.08(b)(5) and Baltimore 16-43(a)(4)]

- Alternatively, the Administrator could decide that the CRS will conduct its own investigations and produce findings and recommendations, concurrent with that of OIA. Absent this authority, the CRS is reduced to reviewing the OIA's written work product, which may not provide an adequate basis for assessing its impartiality and comprehensiveness. In short, this authority is critical to the credibility of the CRS process.[11] To investigate, the Administrator must be authorized to issue subpoenas to compel testimony. In any CRS conducted investigation, police officers would enjoy all rights provided by the LEOBR. CRS findings and recommendations are forwarded to the Chief of Police. The Chief would be required to explain why he/she did not accept any or all of the CRS's work product. [*Cf.* P.G. 18-186.06(e)(f)]

- If the CRS conducts its own investigation, the OIA should carry out its own investigation and develop its findings of facts and recommendations for the Chief. Independent of the CRS process, the Police Department has its own interest in understanding the causes of citizen complaints and seeing that they are appropriately resolved. OIA's findings and recommendations will also enable the Chief better to evaluate CRS' findings and recommendations.

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[11] The experience of the Prince George's County Citizen Complaint Oversight Panel is instructive. The absence of a "committed and competent independent investigative body" has hobbled the work of that agency, as the resources of the investigative staff of the county's Human Relations Commission have been inadequate. Panel Report, May 1996, p. 1-2.

- At the discretion of the Administrator, an evidentiary hearing may be conducted by a single hearing officer.
- If the CRS disagrees with OIA's determinations, the Administrator would notify the Chief of Police of the specific points of disagreement. The Chief would be required to explain why he or she did not accept any or all of the CRS's work product. [*Cf.* P.G. 18-186.06(e)(f) and Baltimore § 16-42(f).] Subject to the provisions of the Law Enforcement Officers Bill of Rights (LEOBR) and the collective bargaining agreement with the F.O.P., the Chief of Police would continue to determine the discipline, if any, to be awarded in each case.
- The Administrator should provide complainants and responding police officers a reasoned explanation for CRS findings and recommendations. Neither party can be expected to accept unsubstantiated conclusions.[12] [P.G. § 18-186.08(e) and Baltimore § 16-42(f).]
- Critical to the success of the complaint system is the processing of complaints in a timely manner, with accurate estimates of a time of completion provided to the complainant and the responding officer. The Board should develop and monitor guidelines for the processing of complaints by OIA and the Administrator.

CONCLUSION

We have proposed a system of independent citizen review based on the audit-review model, coupled with authority to investigate and make findings and recommendations, as one tailored to meet the needs of Montgomery County. The critical deficiency in the current OIA system is its inherent lack of credibility. We rejected a pure audit-review model, because a system that relied entirely on the investigations and findings of an agency of the police department would not overcome the credibility problem. In evaluating our proposal, we would urge the County Council, the members of the Police Department, and the citizens of Montgomery County to focus on the critical role that public trust and confidence in the police play in the success of the County's policy of community policing. We believe that independent citizen review can make an important contribution to that policy.

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[12] Asked why OIA did not provide the parties reasons for its conclusions, OIA chief Lt. Kathi Rhodes said that it was "not productive." Briefing by Lt. Rhodes at OLO Resource Committee meeting of December 16, 1998.

Office of Legislative Oversight Report 99-2
Appendices

Appendix		Circle Number
	Background Information and Data	
A	Montgomery County Demographic Data	1
B	Montgomery County Police Department: General Information	2
C	Selected Chronology of Events Related to Police-Community Relations in Montgomery County: January 1996 – June 1999	12
D	Recommendations Contained in Reports Related to Police-Community Relations: • Police-Community Liaison's Final Report Recommendations (3/10/98), • Montgomery County Task Force on Community-Police Relations (8/12/98)	 17 18
	Governing Documents	
E	Annotated Code of Maryland Article 27, Section 727-734D - Law Enforcement Officers' Bill of Rights	20
F	Montgomery County Code, Chapter 33, Article V, Police Labor Relations	31
G	Collective Bargaining Agreement between Fraternal Order of Police, Montgomery County Lodge 35, Inc. and Montgomery County, Maryland, for the years July 1, 1998 to June 30, 2001: • Table of Contents; • Article 43, Discipline; • Article 51, Personnel Files; and • Article 61, Directives and Administrative Procedures.	 47 49 55 60
	MCPD Forms and Documents	
H	Function Code 210, Department Mission and Organizational Values, effective 10-25-92	61
I	Function Code 301, Disciplinary Process, effective 11-15-94 • 301.B, Memorandum of Notification, MCP 242, effective 5-23-97 • 301.C, Administrative and Suspension Hearing Boards, effective 3-17-97 • 301.D, Expungement of Internal Affairs Records, effective 10-9-95 • 301.F, Disciplinary Process for Civilians, effective 11-15-94	63 77 79 95 97
J	"How Do I File a Complaint Against a Police Department Employee?" MCPD	107
K	MCPD Complaint Form, MCP 580, revised 1998	110
L	Office of Internal Affairs Intake Form, MCP 302, revised 10/98	113
	Other Documents	
M	Models of Citizen Involvement in Complaint Handling: Examples	114
N	Council Resolution 13-1389, Establishment of an Office of Legislative Oversight Resource Committee, adopted August 4, 1998	126
O	Bibliography, OLO Report No. 99-2	129
P	Table of Contents and Executive Summary, "Review of Police Disciplinary Procedures in Maryland and Other States," IGS, Univ. of Maryland, 1999	135

Appendix A: Montgomery County Demographic Data

Montgomery County spans approximately 497 square miles. According to the Maryland-National Capital Park and Planning Commission's 1997 census update survey, the County's total household population is 823,500. This represents a household population increase of approximately 66,500 people (9%) since 1990. The table below shows the age, gender, race and Hispanic origin of the County population in 1990 and 1997.

Table : Montgomery County Demographic Data – 1990 and 1997

	1990	1997[1]
Household Population[2]	757,027	823,500
Age Distribution		
Under 5	7.5%	7.1%
5 to 19	18.1%	20.3%
20 to 29	16.5%	11.3%
30 to 39	19.3%	18.1%
40 to 49	15.1%	16.4%
50 to 59	9.3%	11.6%
60 to 64	4.0%	3.7%
65 to 74	6.1%	6.5%
75 and Older	4.1%	5.1%
Total	100%	100%
Distribution by Race and Hispanic Origin		
White	76.7%	73.0%
Black	12.1%	13.4%
Asian/Pacific Islander	8.3%	10.9%
Other	2.7%	2.8%
Total	100%	100%
Hispanic (all races)	7.4%	8.6%
Gender Distribution		
Female	51.8%	53.2%
Male	48.2%	46.8%
Total		100%

Source: Montgomery County Department of Park and Planning, Research and Technology Center

[1] 1997 Census Update Survey

[2] Population living in households does not include persons living in group quarters such as jails, dormitories, nursing homes, orphanages, etc

Appendix B: Montgomery County Police Department: General Information

This Appendix provides general background information about the Montgomery County Police Department. Specifically, it presents:

- The mission statement and organizational values;
- An organization chart and description of the Department's three bureaus;
- Statistical information on the number, gender, race/ethnicity, age, and years of service of the sworn officers; and
- A description of recruitment and training activities.

A. Mission Statement and Organizational Values

The MCPD has high standards of conduct for its officers. The Department rewrote its mission statement and organizational values in 1992 to reflect the Department's transition to a community policing philosophy. The MCPD's mission statement reads as follows:

> We, the Montgomery County Department of Police, are committed to providing the highest quality of police services by empowering our members and the community to work in partnership with the goal of improving the quality of life in Montgomery County, while at the same time, maintaining respect for individual rights and human dignity.

The Department's organizational values together spell PRIDE:

> **P**artnership: We are committed to working in partnership with the community and each other to identify and resolve issues which impact public safety.
>
> **R**espect: We are committed to respecting individual rights, human dignity and the value of all members of the community and the Department.
>
> **I**ntegrity: We are committed to nurturing the public trust by holding ourselves accountable to the highest standards of professionalism and ethics.
>
> **D**edication: We are committed to providing the highest quality of professional law enforcement service to the community and the goal of enhancing the quality of life within Montgomery County.
>
> **E**mpowerment: We are committed to empowering our members and the community to resolve problems by creating an environment that encourages solutions that address the needs of the community.

B. Organization of the Police Department

According to County Code Chapter 1A, the County Executive appoints the Chief of Police, subject to County Council confirmation. The law (Chapter 35) states that the Chief of Police is subject to the orders, rules and regulations issued by the County Executive, and is responsible to the Executive for the conduct, control and discipline of the Police Department.

The chart on © 4 depicts the basic organizational structure of the Police Department[1]. The Department is made up of three bureaus, Field Services, Investigative Services, and Management Services, which operate under the Office of the Chief of Police.

Office of the Chief of Police: The Chief of Police, at the rank of Colonel, directs the Department. The Lieutenant Colonel serves as the deputy director of the Department and supervises the following offices/sections:

- The Office of Professional Compliance;
- Office of Internal Affairs;
- Office of Legal and Labor Relations;
- Office of the Legal Advisor;
- Office of Stress Management; and
- Office of Media Services.

In total, the FY 2000 approved budget allocates 30.5 workyears to the Office of the Chief. The remaining 1,412.4 workyears allocated to the Department are organized under one of the three bureaus.

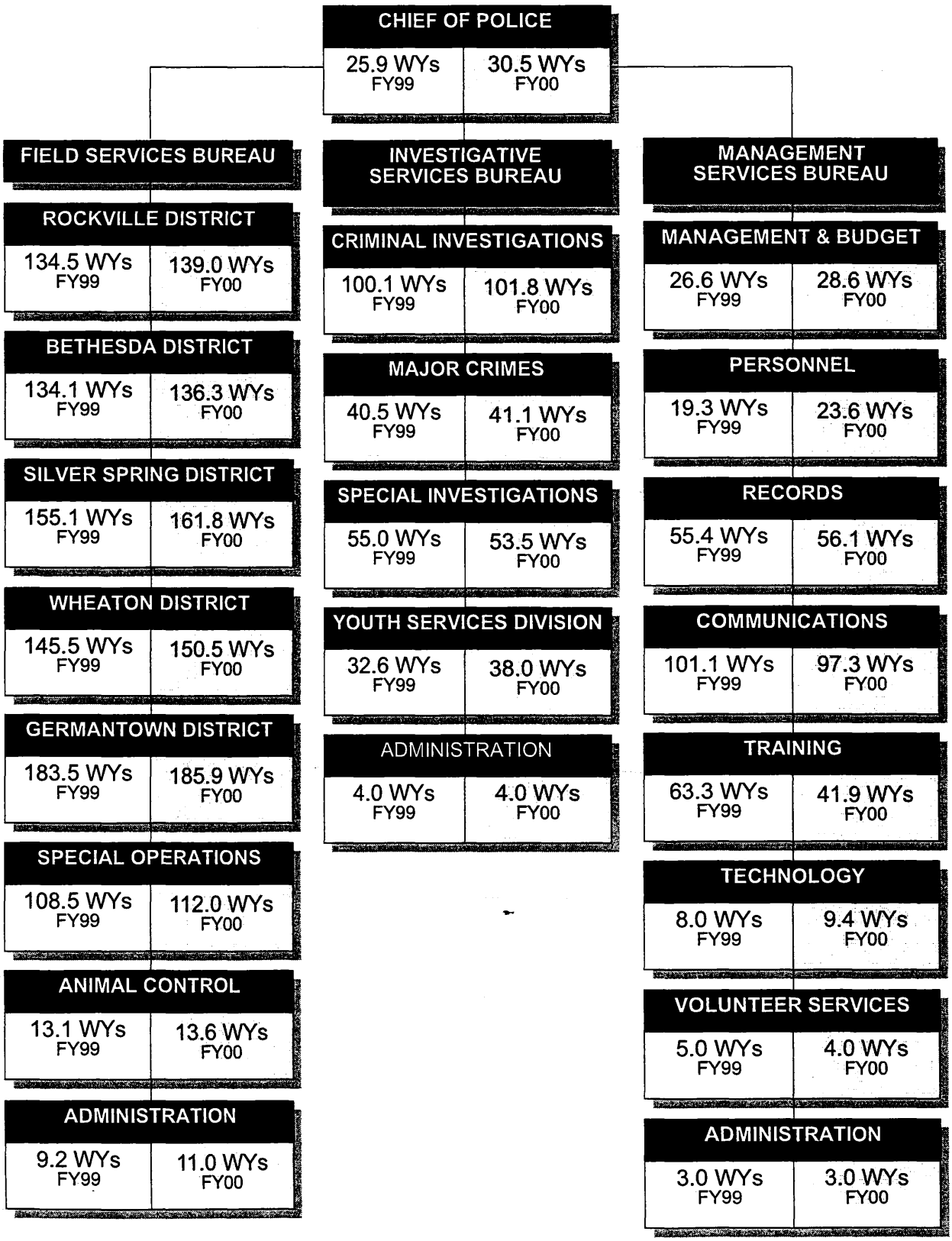
Field Services Bureau: With 910.1 workyears approved in FY 2000, Field Services is by far the largest of the three bureaus. Patrol operations at the five District Stations account for 773.5 workyears, or 85%, of the Field Services staff. Another 112 workyears are assigned to the Special Operations Division, which includes the Canine Section, Tactical Section (SWAT), Alcohol Initiative Unit, School Safety Section (crossing guards), and the Community Services Section. The Field Services Bureau also includes the Division of Animal Control (13.6 WY) and an Administration section (11 WY).

Investigative Services Bureau: The Investigative Services Bureau investigates reported crimes. This fiscal year, the Bureau consists of 238.4 workyears in four major sections: Major Crimes, Special Investigations, Youth Services Investigations, Criminal Investigations and Administration. Forty-three percent of the workyears are assigned to the Criminal Investigations section. The Bureau also houses a number of specialty units, e.g., Pawn Unit, Auto Theft Unit, Fraud Section, and Circuit Court Liaison.

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[1] Source: Approved FY 2000 Personnel Complement, July 1999, Office of Management and Budget.

Department of Police



Department Summary	FY99	1423.3 WYs	FY00	1442.9 WYs

Management Services Bureau: Management Services includes a range of functions to support the patrol and investigative functions of the Department. The FY 2000 budget allocates 263.9 workyears to Management Services, which consists of the following divisions:

- The Management and Budget Division includes budget preparation, supply, fleet management, abandoned vehicle control, the False Alarm Reduction Unit, and planning and policy management.
- The Personnel Division is responsible for recruitment, examination and investigation of police-specific job classes.
- The Communication Division operates the Emergency Communication Center, which receives 911 calls and dispatches patrol officers.
- The Records/Technology Division manages the Department's records related to police reports, criminal history information, and photographs. It also houses the Fugitive Unit and Warrant Control Section.
- The Training Section is responsible for developing and implementing training for all members of the Department, including entry level training and in-service training provided to all officers.
- The Volunteer Services Division recruits, screens, and assigns volunteers, and administers the Americorps program and the Victim Witness Assistance Section.
- The Administration Division provides management oversight to the bureau, serves an advisory function to the Chief, and develops strategic plans.

C. Statistical Data on Sworn MCPD Officers

The tables on ©6-8 present summary data on the complement of sworn Montgomery County Police Department officers with respect to:

- Bureau,
- Rank,
- Gender,
- Race/ethnicity,
- Age, and
- Years of service. [2]

As of February 1999, the Department employed 1,308 individuals. Of the total, 985 (75%) were sworn police officers, 37 (3%) were Police Officer Candidates, and 286 (22%) were civilian employees. The data presented here describe the characteristics of the 985 sworn officers.

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[2] The source of the data in Tables through is the Montgomery County Office of Human Resources (OHR). The information is based on OHR's payroll data as of February 25, 1999. While Police Department employment data fluctuates, the overall patterns represented in the tables remain relatively constant.

Three Bureaus: Table A shows the number of sworn officers in each of the three MCPD bureaus and the Office of the Chief of Police. The data indicate that of the 985 sworn officers, 76% (749) worked in the Field Services Bureau; 17% (170) worked in Investigative Services; 5% (46) worked in Management Services; and 2% (20) worked in the Office of the Chief.

Table A: Distribution of Sworn Officers by Bureau

	Number of Officers	Percent of Total
Office of the Chief	20	2.0%
Field Services Bureau	749	76.0%
Investigative Services Bureau	170	17.3%
Management Survey Bureau	46	4.7%
Total	**985**	**100.0%**

Rank: Table B presents data on the rank of sworn police officers. In addition to the Chief (the Colonel), there are nine ranks ranging from Police Officer I to Lieutenant Colonel. In February 1999, 15% of the officers were ranked Sergeant or above. The remaining 85% of the MCPD officers were ranked Police Officer I, II, or III, or a Master Police Officer. More than half of all sworn officers (55%) was ranked as Police Officer III.

Table B: Distribution of Sworn Officers by Rank

Rank	Number	Percent of Total
Lt. Colonel	1	0.1%
Major	3	0.3%
Captain	12	1.2%
Lieutenant	29	2.9%
Sergeant	104	10.6%
Master Police Officer	100	10.2%
Police Officer lll	543	55.1%
Police Officer ll	80	8.1%
Police Officer l	113	11.5%
Total	**985**	**100.0%**

Gender: OHR reports that in February 1999, 806 (82%) of the sworn MCPD officers were male and 179 (18%) were female. Table C shows the distribution of males and females by rank. All of the officers ranked Lt. Colonel, Major and Captain were male. Of the remaining ranks, females represented between 7% and 22% of the officers in each rank. The data indicates that the rank with the highest proportion of females was Police Officer III.

Table C: Distribution of Police Officers by Gender and Rank

	Male		Female		
Rank	**Number**	**Percent**	**Number**	**Percent**	**Total Officers**
Lt. Colonel	1	100%	0	0%	1
Major	3	100%	0	0%	3
Captain	12	100%	0	0%	12
Lieutenant	23	79%	6	21%	29
Sergeant	97	93%	7	7%	104
Master Police Officer	86	86%	14	14%	100
Police Officer lll	424	78%	119	22%	543
Police Officer ll	66	83%	14	18%	80
Police Officer l	94	83%	19	17%	113
Total	**806**		**179**		**985**

Race/Ethnicity: Table D identifies the race/ethnicity of the 985 sworn officers. The "Total Officers" row of the table shows the number and percent of total sworn officers in each race/ethnicity category. The data indicate that 81% of the sworn officers were white, 15% were African Americans, 2% were Hispanic, and 2% were Asian.

The table also shows race/ethnicity by officer rank. As of February 1999, all of the officers ranked Captain or above were white. African American, Hispanic, Asian and Native American officers appeared in the ranks of Police Officer I through Lieutenant. For example, there were 113 officers ranked PO I, of which 87% were white, 6% were African-American, 4% were Hispanic, 2% were Asian, and 1% were Native American. African Americans also represent:

- 13% of the Police Officer IIs;
- 19% of the Police Officer IIIs;
- 13% of the Master Police Officers;
- 11% of the Sergeants; and
- 7% of the Lieutenants.

Table D: Distribution of Officers by Race/Ethnicity and Rank

	White		African-American		Hispanic		Asian		Native American		Total
	#	%	#	%	#	%	#	%	#	%	#
Total Officers	**793**	**81%**	**148**	**15%**	**23**	**2%**	**15**	**2%**	**6**	**1%**	**985**
Lt. Colonial	1	100%	0	0%	0	0%	0	0%	0	0%	1
Major	3	100%	0	0%	0	0%	0	0%	0	0%	3
Captain	12	100%	0	0%	0	0%	0	0%	0	0%	12
Lieutenant	27	93%	2	7%	0	0%	0	0%	0	0%	29
Sergeant	91	88%	11	11%	0	0%	1	1%	1	1%	104
Master PO	85	85%	13	13%	2	2%	0	0%	0	0%	100
PO III	413	76%	105	19%	13	2%	9	2%	3	1%	543
PO II	63	79%	10	13%	3	4%	3	4%	1	1%	80
PO I	98	87%	7	6%	5	4%	2	2%	1	1%	113

Age and Years of Service: As expected, the average age and average years of service in MCPD increases with rank. For example, the average age for Police Officer I was 27 years old with 1.8 years of service. In contrast, the average age for Captain was 47, with 24.6 years of services. The largest cohort of sworn officers, the Police Officer IIIs, had an average age of 37 with an average of 12.5 years of service. Table E lists the average age and years of service for each of the nine officer ranks.

Table E: Average Age and Years of Service by Rank

	Number of Officers	Average Age	Average Years of Service
Lt. Colonel	1	45	24
Major	3	46	24.1
Captain	12	47	24.6
Lieutenant	29	45	22.2
Sergeant	104	42	18.3
Master Police Officer	100	41	17.2
Police Officer lll	543	37	12.5
Police Officer ll	80	30	4
Police Officer l	113	27	1.8
Total	**985**		

D. Recruitment Activities

The Recruitment Section of the Montgomery County Police Department's Personnel Division uses various activities to recruit qualified police officer candidates. According to the Recruitment Activity Reports and the MCPD Annual Report, the Department primarily recruits potential employees via:

- Job fairs, career/community days, and other special events;
- Radio, TV, and print advertisements and announcements; and
- Internet sites that advertise public safety positions.

Job Fairs and Career/Community Days: During 1998, MCPD recruitment officers participated in approximately 75 employment related job/career fairs, community presentations and other activities. Representatives of MCPD attend many job fairs at colleges and university in the Baltimore–Washington metropolitan area, as well as other locations along the East Coast. They conduct presentations to local high school career classes and University of Maryland criminal justice classes. Recruiters also attend local community events to increase awareness of the MCPD careers, such as the Bethesda Family Day at the Strathmore Center and the Latino Community Unity Festival.

Radio, TV, and Print Advertisements: MCPD runs recruitment videos on local television stations and advertises positions on local radio stations and newspapers. For example, in 1998 and 1999, the Department advertised on the Cable TV News Channel 21 Community Calendar, WPGC Radio, and in the Washington Post, Montgomery Gazette, and the University of Maryland Diamondback newspapers. The Department regularly advertises in the University Reporter Newspaper, which is distributed to colleges and universities in the metro area.

MCPD also recruits individuals through advertisements in public safety journals and newspapers distributed outside the Baltimore-Washington region, including the United States Law Enforcement Services Career Digest, the American Police Beat newspaper, and the New Jersey "COPS" Law Enforcement Journal.

Internet Recruitment: The County Government's web site includes information about positions available in the Police Department. The Police Department also posts positions on other public safety and employment related web sites.

Targeted Recruitment: According to the Department of Police Field Operations Manual, "Through the Department's recruitment program, the Department is committed to a goal of having a culturally diverse work force that is reflective of the community served."

The Recruitment Activity Reports list activities that target minority groups. For example, in 1998 and 1999 the Police Department attended job fairs sponsored by the National Association for Equal Opportunity in Higher Education, the Republican NAACP Committee, and El Pregonaro. The Police Department also participated in Latino festivals, an Ethnic Heritage Festival, the University of Maryland Multicultural Fair, and the Chinese American National Convention and Job Fair.

Some print advertisements also target minorities. For example, the Police Department advertised in Black Equal Opportunity Employment Journal, the El Pregonera Newspaper, and the National Minority Update.

E. Training Activities

The Training Division is located within the Police Department's Management Services Bureau. The Division plans and conducts training for all sworn and non-sworn MCPD personnel and maintains training records. The Training Division also provides training for other law enforcement personnel in the County.

The Division's training responsibilities include:

- Initial training of all new police officer candidates in MCPD and other law enforcement agencies;
- Annual in-service training for sworn officers;
- In-service training for civilian or non-sworn personnel; and
- Elective training courses for sworn and non-sworn personnel.

Initial Training: All new MCPD police officer candidates must complete the Entrance Level Training program. The 26-week course provides basic law enforcement knowledge and skill development. Recruits must pass numerous examinations and assignments to graduate from the program. According to the Police Department's annual report, the Entrance Level Training program surpasses the minimum training mandates of the Maryland Police Training Commission.

Broad topics covered during Entrance Level Training include:

- Ethics,
- Problem solving,
- Use of firearms,
- Emergency driving,
- Traffic laws,
- Defense tactics, and
- Use of force guidelines.

According to the Program of Instruction, the majority of the course hours are spent on patrol operations and law enforcement skills, in particular officer safety and survival/patrol procedures; physical training/defensive tactics, firearm proficiency, and field report writing.

Candidates who successfully complete the Entry Level Training Program become probationary officers and participate in the 14 week Field Training and Evaluation Program (FTEP). This program helps probationary officers apply classroom principles to actual field situations by placing them with a highly trained veteran officer, or field training officer (FTO), for supervised fieldwork. Probationary officers are evaluated daily by their FTO and meet weekly with the training sergeant, corporal, and FTO to assess progress and identify problems.

In-Service Training: The Maryland Police Training Commission requires that every sworn officer receive at least 18 hours of in-service training annually. In-service training supplements officers' knowledge, skills and abilities in general police responsibilities and specialty areas. According to MCPD, during 1998, sworn officers received in-service instruction in a number of topics, such as firearm use, cultural diversity, response to nuclear, biological, and chemical weapon threats, and safety and survival tactical scenarios. Sworn officers assigned to a new specialty area may receive training through the On the Job Training Program and new supervisors receive Supervisory and Management Training.

Civilian and Elective Training: The Police Training Academy also provides specialized training and in-service instruction for non-sworn or civilian personnel. In 1998, for example, employees received training in cultural diversity and how to handle critical incidents. The Academy also publishes a catalog of elective courses offered at the academy for any employees that want to increase their knowledge and skills.

Other Training Issues: Recognizing the increasing diversity of the County and the potential for misunderstandings and conflict, the Montgomery County Police Department provides training in cultural awareness and public interactions. Entrance Level Training for new recruits includes instruction in cultural diversity and dealing with people/conflict management, as well as use of force and police ethics.

The Training Division recently developed a new mandatory in-service course for sworn officers on contemporary issues in policing. Some of the issues discussed include "racial profiling", police integrity, and public confidence. In addition, the Department is considering establishing a Citizen Advisory Committee for Training Curriculum to increase community involvement in the Department's training program.

Appendix C: Selected Chronology of Events Related to Police-Community Relations in Montgomery County: January 1996 – June 1999

A series of events preceded the County Council's decision last summer to request the Office of Legislative Oversight (OLO) to examine the Montgomery County Police Department's complaint handling system. Based on a review of the Council's records, the following list summarizes the major requests, meetings, decisions, and reports from January 1996 through June 1999 that led up to and followed the Council's assignment to OLO in August 1998.

Jan.–Feb. 1996
The County Council President requests information from the Montgomery County Chief of Police about specific complaints sent to Councilmembers from citizens concerning dissatisfaction with police officer conduct. The Chief of Police responds in writing about the specific instances. The Chief assures the Council that all charges are being fully investigated and that appropriate disciplinary action would be taken.

March 1996
The Montgomery County Chapter of the National Association for the Advancement of Colored People (NAACP) requests a meeting with the County Executive and Chair of the Council's Public Safety Committee to discuss police conduct issues.

March 1996
The Council's Public Safety Committee requests that the Police Department review its testing and recruitment procedures to determine if they adversely affect minorities.

Summer-Fall 1996
The County Executive, the Chief of Police and representatives of the NAACP hold meetings about incidents of alleged police misconduct. The Council President is invited and attends.

Fall 1996
Chief Mehrling announces recruitment of community members to serve on the Montgomery County Task Force for Police-Community Relations.

November 21, 1996
Chief Mehrling sends a letter to U.S. Attorney requesting that the Department of Justice conduct an independent assessment of the Montgomery County Police Department's strengths and weaknesses with respect to ensuring that officers and citizens are treated with the utmost respect and consideration. The Chief pledges the County's full cooperation and assistance if such a review is undertaken.

December 12, 1996
The U.S. Department of Justice (DOJ) informs Montgomery County that DOJ's Civil Rights Division is initiating an administrative investigation of complaints alleging discrimination on the basis of race by Montgomery County police officers. DOJ's letter references complaints from the Montgomery County Chapter of the NAACP, and acknowledges receiving a copy of the Chief's November 21, 1996 letter to the Attorney General.

January 3, 1997
The Chief Administrative Officer enters into a contract with Mr. Greg Wims to provide police-community relations consultant services. The purpose of the contract was "to address concerns raised regarding police relations with the minority communities and to determine what can be done to heighten the Department of Police's effectiveness in positive relations with the minority communities in Montgomery County." Mr. Wims' working title is Police-Community Relations Liaison Officer.

January 28, 1997
Chief Mehrling appoints 12 community members to the Department's Task Force on Police-Community Relations. The Chief appoints Mr. John Q. Porter as Chair of the Task Force. The Chief asks the Task Force to understand and examine police operations and how they affect members of the minority communities in Montgomery County.

August 4, 1997
Mr. Wims issues his six-month (interim) report to the Chief of Police.

October 16, 1997
The Task Force on Police-Community Relations issues an interim report.

November 12, 1997
The Montgomery County Chapter of the NAACP submits a draft proposal to the County Council for a Community Police Review Commission. The proposed Commission would be authorized to review all complaints and subsequent investigations related to police conduct, to collect and review summary data of complaints received, and to report any patterns of questionable behavior which merit further examination.

November 20, 1997
The Council's Public Safety Committee receives a briefing from the Chief Administrative Officer and Mr. Wims on Mr. Wims' interim report.

December 31, 1997
At the request of the Council President, the Council's Senior Legislative Attorney formally requests advice from the County Attorney on whether the NAACP's proposed Community Police Review Commission would comply with the Maryland's Law Enforcement Officer's Bill of Rights, whether the Council has authority under State law to establish such a commission, and whether establishing or operating such a commission would be subject to the collective bargaining process.

February 5, 1998
Mr. John Q. Porter, Chair of the Task Force on Police-Community Relations, and other task force members brief the Public Safety Committee on their interim report.

March 10, 1998
Mr. Wims issues his final report to the Chief Administrative Officer. (Appendix D contains a summary of Mr. Wims' final report recommendations.)

March 10, 1998
The County Council holds a public hearing on Police-Community relations. The Council's stated intent is: to afford community members an opportunity to tell the Council directly about their experiences and concerns about the Montgomery County police; and to afford the Police Department an opportunity to share its perspective, results of its own internal investigations, and any changes in procedure and or practice the Department is implementing to address these concerns.

March 16, 1998
Council President Leggett presents his proposal for a Community Policing Ombudsman to the County Executive. Mr. Leggett recommends appropriating FY 99 funds for the Ombudsman, who would serve as a facilitator, mediator, and troubleshooter for citizens in their interactions with the Police Department.

April 2, 1998
The Montgomery County Chapter of the American Civil Liberties Union (ACLU) submits a letter to the Council President. The letter asks the Council to consider an enclosed report prepared by Piper and Marbury L.L.P. in 1995 on the D.C.'s Civilian Complaint Review Board.

April 9, 1998
The County Executive sends a memorandum to the Council President that states the Executive's support for the creation of a Community Policing Ombudsman to facilitate citizen interaction with the established complaint handling procedures of the Police Department. The memorandum also outlines a number of additional strategies, including plans to: move the Office of Internal Affairs to a non-police facility, create a Community Task Force to deal with community concerns, and continue to develop additional sensitivity training.

April 9, 1998
Community members Mr. James Robinson, Mr. Mack Davis, Mr. Owen Nichols, and Mr. Roscoe Nix submit a letter to the Council that recommends the Council create a Police Community Relations Oversight Committee (PCROC). The letter recommends that the Council create PCROC for the purpose of monitoring the citizen complaint process, the number, types, and sources of complaints of police abuse, and reporting in terms of timeliness and ultimate disposition of complaints.

May 1998
The Public Safety Committee holds several worksessions to discuss the various proposals for civilian review and the creation of a police-community relations facilitator position in the Executive Branch. The Public Safety Committee also considers an expansion of OLO's work program to design a system for tracking, reporting and monitoring the performance of the Police Department's Office of Internal Affairs.

May 1998
Acting on the recommendation of the Public Safety Committee, the Council approves the Police-Community Relations Facilitator position in the FY 99 budget.

August 4, 1998
The Council adopts Resolution 13-1388 to approve OLO's FY 99 Work Program. The Work Program includes a project for OLO to examine how the Police Department responds to complaints, and to conduct surveys about expectations and perceptions of citizen/police interactions.

August 4, 1998
The Council adopts Resolution 13-1389 to establish a Resource Committee to assist OLO in its study. (Appendix N contains a copy of this Resolution.)

August 12, 1998
The Task Force on Police-Community Relations issues its final report. (Appendix D contains a summary of the recommendations in Task Force's final report.)

September 2, 1998
The County Executive sends a letter to the Attorney General asking for information about how long it will take for the Department of Justice (DOJ) to complete its investigation and when a full report might be released. The letter indicates that the Executive sees the DOJ report as a vital component in determining what further steps, if any, are necessary to ensure that all Montgomery Countians are treated fairly and with respect. The Executive explains that he has indicated to the Task Force on Police-Community Relations and to the community that he will not make any decisions until such time that he has received the full report from DOJ.

September 24, 1998
The County Government advertises to fill the position of Police-Community Relations Facilitator. The application deadline is set for October 9, 1998.

October 28, 1998
The Department of Justice sends a letter to the County Executive on the status of DOJ's investigation into various allegations of racial discrimination made by the Montgomery County Chapter of the NAACP against the County Police Department. DOJ indicates that the investigation is ongoing and that it is difficult to provide an exact date for completion.

October 27, 1998
The Council appoints members to the Office of Legislative Oversight Resource Committee.

October 29, 1998
Mr. John Q. Porter, Chair of the Task Force on Police-Community Relations, briefs the Public Safety Committee on the Task Force's final report.

December 20, 1998
The County Attorney transmits a memorandum to the Council's Senior Legislative Attorney that responds to the Council's earlier request for legal advice on the NAACP's proposal to establish a Community Police Review Commission. The County Attorney concludes that the structure proposed by the NAACP could not be lawfully established under existing laws. The County Attorney's memo points out that existing laws do not preclude all forms of citizen review, and he identifies the models of Citizen Review Boards already established in Prince George's County and Baltimore City.

February 4, 1999
The Office of Legislative Oversight presents a project status report to the Public Safety Committee.

February 22, 1999
Ronald Clarkson begins works as the County's Police Community Liaison Facilitator.

March 31, 1999
The County Executive sends a letter to the Attorney General calling on the Department of Justice to complete its investigation into allegations of racial discrimination made by the Montgomery County Chapter of the NAACP against the Montgomery County Police Department.

May 6, 1999
The Office of Legislative Oversight presents another project status report to the Public Safety Committee.

June 1999
Charles A. Moose, Phd., is appointed by the County Executive and confirmed by the County Council as the new Montgomery County Chief of Police. Chief Moose was sworn in as the Chief of the MCPD on August 2, 1999.

Appendix D: Recommendations Contained in Two Reports Related to Police-Community Relations

This Appendix summarizes the recommendations contained in the final written reports issued in 1998 by the Police-Community Relations Liaison and the Task Force on Community-Police Relations.

The Police-Community Liaison's Final Report Recommendations

Mr. Greg Wims, the Police-Community Relations Liaison, issued his final report on March 10, 1998. Mr. Wims' report contains the following recommendations:

1. The Chief should implement immediate action to eliminate the use of profanity by officers toward citizens. Specifically, excessive or unwarranted use of profanity should be a cause for disciplinary action.
2. The Chief should increase the annual in-service training requirements related to customer service and sensitivity training.
3. The Police Department should continue to participate in activities that "increase community/police relations." Examples of such activities include holding regular community forums and supporting ongoing community service and special programs involving police and public contact, e.g., the Police Athletic League (PAL), DARE, and the Junior Ambassadors Program.
4. The Department should increase its efforts to recruit more minority officers. Related to this effort, the County should increase the starting salaries for police officers, and modify the current two-year college requirement.
5. The County should provide the Office of Internal Affairs with an upgraded computer system to provide for adequate tracking and reporting of complaints and discipline.
6. The County should assign at least three more permanent investigators to the Office of Internal Affairs, including members of minority groups.
7. The County should institute a Spanish language program for all corporals and dispatchers who receive emergency calls.
8. The Office of Internal Affairs should modify its complaint form to include race.
9. The Task Force on Community Relations should investigate specific allegations of mistreatment and discrimination by supervisors toward civilian employees of the department.

The Montgomery County Task Force on Community-Police Relations

The Montgomery County Task Force for Community-Police Relations issued its final report on August 12, 1998. The Task Force report contained the following specific recommendations.

1. **Recruitment**
   - The Department should streamline the recruitment process.
   - The Department should reexamine hiring and training policies that are barriers to lateral transfers.
   - The Department should increase efforts for minority recruitment; and hire an outside minority-consulting firm to assist in these efforts.

2. **Training**
   - The Department should increase the number of hours required for in-service diversity training; the training should be conducted by an outside non-police oriented organization.
   - The Department should hold monthly meetings between rank-and-file officers and bureau chiefs.
   - The Department should consider reducing the size of future recruit classes until there are a sufficient number of officers PO III or above to serve as FTOs.
   - The Department's training should emphasize the ethical components of policing.

3. **Office of Internal Affairs (OIA)**
   - The OIA should be more proactive in looking at indicators that would identify officers who might be headed for trouble or misusing their authority.
   - Police complaint forms should be available in County libraries, service centers, and district substations.
   - The County should provide OIA with additional investigators.

4. **Citizen Concerns**
   - The Department should investigate the Germantown District to insure there is proper training, supervision, and a priority for community policing.
   - Supervisors should monitor all incidents of alleged police abuse occurring on their shifts.
   - There should be a mechanism for feedback and follow-up for complaints handled at the District station level.

5. **Community Policing**
   - The Department should intensify efforts to fully implement community policing.
   - Officers should participate in community activities as part of their work schedule.
   - All police services to the community should be more accessible and friendlier.
   - Formal police/student liaison committees should be established in each district.

6. **Community Oversight**
   - The County should establish a Civilian Oversight Commission that reports to the County Executive.
   - The Commission's functions should include policy review, use of complaints as an early warning system, and quality control.
   - The Commission should consist of five members, who are paid a stipend similar to that paid to the Planning Board.
   - A full-time Executive Director, two investigators, and clerical staff should staff the Commission.

7. **Other issues**
   - The Department should replace the current aluminum flashlight with a comparable, lightweight, rechargeable polymer flashlight.
   - The Department should audio tape all radio channels and telephone lines.
   - The Department's policies and regulations should address the issue of multiple officers showing up to handle minor calls or traffic stops; and supervisors should exercise control to stop this practice.
   - The Department should issue written regulations against routine wearing of leather gloves by patrol officers except with long-sleeved shirts or jackets in inclement weather.
   - The Department should expand the Department's staff psychologist's responsibilities to include offering stress and anger management sessions, and offering counseling to troubled officers identified through data analysis by OIA or supervisors.

Appendix E: Annotated Code of Maryland Article 27, Section 727-734D – Law Enforcement Officers' Bill of Rights

Article 27
§ 727.
(a) As used in this subtitle, the following words have the meanings indicated.

(b) "Law enforcement officer" means any person who, in an official capacity, is authorized by law to make arrests and who is a member of one of the following law enforcement agencies:

(1) The Department of State Police;

(2) The Baltimore City Police Department;

(3) The Baltimore City School Police Force;

(4) The police department, bureau, or force of any county;

(5) The police department, bureau, or force of any incorporated city or town;

(6) The office of the sheriff of any county or Baltimore City;

(7) The police department, bureau, or force of any bicounty agency, or the University of Maryland;

(8) The police forces of the Department of Transportation;

(9) The police officers of the Department of Natural Resources;

(10) The Investigative Services Unit of the Comptroller's Office;

(11) Housing Authority of Baltimore City Police Force;

(12) The Crofton Police Department;

(13) The police officers of the Department of Health and Mental Hygiene;

(14) The police officers of the Department of General Services;

(15) The police officers of the Department of Labor, Licensing, and Regulation; or

(16) The State Fire Marshal or a full-time investigative and inspection assistant of the Office of the State Fire Marshal.

(c) "Law enforcement officer" does not include an officer serving in a probationary status except when allegations of brutality in the execution of his or her duties are made involving an officer who is in a probationary status. The provisions of this subtitle do not apply to persons serving at the pleasure of the Police Commissioner of Baltimore City or the appointing authority of a charter county or to a police chief of any incorporated city or town. The term "probationary status" includes only an officer who is in that status upon initial entry into the Department.

(d) "Hearing board" means:

(1) A board which is authorized by the chief to hold a hearing on a complaint against a law enforcement officer and which consists of not less than three members, except as provided in paragraphs (2) and (3) of this subsection, all to be appointed by the chief and selected from law enforcement officers within that agency, or law enforcement officers of another agency with the approval of the chief of the other agency, and who have had no part in the investigation or interrogation of the law enforcement officer. At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint has been filed.

(2) (i) The provisions of this paragraph may not be the subject of binding arbitration.

(ii) An agency or an agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the exclusive collective bargaining representative an alternate method of forming a hearing board.

(iii) A law enforcement officer may elect the alternate method of forming a hearing board instead of the method described in paragraph (1) of this subsection if the law enforcement officer works within an agency described in subparagraph (ii) of this paragraph and the law enforcement officer is included in the collective bargaining unit.

(iv) An agency described in subparagraph (ii) of this paragraph shall notify the law enforcement officer in writing before the formation of the hearing board that the law enforcement officer may elect an alternate method of forming a hearing board if one has been negotiated under this paragraph.

(v) If the law enforcement officer elects an alternate method of forming a hearing board under this paragraph, the alternate method shall be used to form the hearing board.

(vi) An agency or an exclusive collective bargaining representative may not require a law enforcement officer to elect an alternate method of forming a hearing board under this paragraph.

(vii) If the law enforcement officer has been offered summary punishment, an alternate method of forming a hearing board may not be used.

(3) If a law enforcement officer is offered summary punishment imposed pursuant to § 734A and refuses, the chief may convene a one-member or more hearing board and the hearing board shall have only the authority to recommend the sanctions as provided in this subtitle for summary punishment. If a single member hearing board is convened, that member need not be of the same rank. However, all other provisions of this subtitle shall apply.

(e) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation, at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or adducing testimony or receiving other evidence.

(f) "Summary punishment" is punishment imposed by the highest ranking officer of a unit or member acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days suspension without pay or a fine of $150.

(g) "Chief" means the superintendent, commissioner, chief of police, or sheriff of a law enforcement agency, or the officer designated by the official.

(h) "Interrogating officer", "investigating officer", and all other forms of those terms mean:

(1) Any sworn law enforcement officer; or

(2) If requested by the Governor, the Attorney General of Maryland or the Attorney General's designee.

§ 728.

(a) A law enforcement officer has the same rights to engage in political activity as areafforded to any State employee. This right to engage in political activity shall not apply to any law enforcement officer when he is on duty or when he is acting in his official capacity.

(b) Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

(2) The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, unless otherwise waived by the law enforcement officer, or at any other reasonable and appropriate place.

(3) 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 consistent with the provisions of subsection (b)(6) of this section.

(4) A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member of the aggrieved person's immediate family, or by any person with firsthand knowledge obtained as a result of the presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality.

(5) (i) The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation.

(ii) Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness and all charges and specifications against the officer not less than 10 days prior to any hearing.

(iii) In addition, the law enforcement officer under investigation shall be furnished with a copy of the investigatory file and any exculpatory information, but excluding:

1. The identity of confidential sources;

2. Any nonexculpatory information; and

3. Recommendations as to charges, disposition, or punishment.

(iv) The law enforcement officer under investigation shall be furnished with a copy of the investigatory file and the exculpatory information described under subparagraph (iii) of this paragraph not less than 10 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.

(6) Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

(7) (i) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

(ii) This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath, or urine tests for controlled dangerous substances, polygraph examination, or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol test, blood, breath, or urine test for controlled dangerous substances, polygraph examination, or interrogation, as may be required by the law enforcement agency under this subparagraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the administrative hearing.

(8) A complete record, either written, taped, or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. Upon completion of the investigation, and upon request of the law enforcement officer 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.

(9) If the law enforcement officer under interrogation is 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.

(10) (i) 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.

(ii) Counsel or any other responsible representative of a law enforcement officer under interrogation as provided under subparagraph (i) of this paragraph, may:

1. Request a recess at any point during the interrogation for consultation with the officer;

2. Enter an objection to any question posed during the interrogation; and

3. State on the record the reason for an objection outside the presence of the officer.

(iii) The interrogation shall be suspended for a period of time not to exceed ten days until representation is obtained. However, the chief may, for good cause shown, within that ten-day period, extend that period of time.

(11) A statute may not abridge and a law enforcement agency may not adopt any regulation which prohibits the right of a law enforcement officer to bring suit arising out of his duties as a law enforcement officer.

(12) (i) A law enforcement agency may not insert any adverse material into any file of the officer, except the file of the internal investigation or the intelligence division, 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.

(ii) A law enforcement officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:

1. The law enforcement agency investigating the complaint has exonerated the officer of all charges in the complaint, or determined that the charges were unsustained or unfounded, or an administrative hearing board acquits, dismisses, or makes a finding of not guilty; and

2. 3 years have passed since the findings by the law enforcement agency or administrative hearing board.

(13) (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in this State shall function as the law enforcement officer of the same rank on the hearing board.

(ii) If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of another law enforcement agency as the law enforcement officer of the same rank on the hearing board.

(iii) If the chief of a county or municipal law enforcement agency is under investigation, the official who may appoint the chief's successor shall appoint the chief of another law enforcement agency as the officer of the same rank on the hearing board.

(iv) If the chief of a State law enforcement agency or the chief of a county or municipal law enforcement agency is under investigation, the official who may appoint the chief's successor, or that official's designee, shall function as chief for the purposes of this subtitle.

(14) The law enforcement officer's representative need not be present during the actual administration of a polygraph examination by a certified polygraph 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 examination, and if a copy of the final report of the examination by the certified polygraph 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.

(c) This subtitle does not limit the authority of the chief 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 that action is not punitive in nature and where the chief determines that action to be in the best interests of the internal management of the law enforcement agency.

§ 729.

A law enforcement officer may not be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his family or household) unless that information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, or unless such disclosure is required by State or federal law.

§ 729A.

A law enforcement agency may not prohibit secondary employment but may promulgate reasonable regulations as to a law enforcement officer's secondary employment.

§ 730.

(a) If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, except as provided under subsection (c) of this section and except in the case of summary punishment or emergency suspension as allowed by § 734A of this subtitle and before taking that action, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing.

(b) (1) Administrative charges may not be brought against a law enforcement officer unless filed within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.

(2) The 1-year limitation of paragraph (1) of this subsection does not apply to charges related to criminal activity or excessive force.

(c) A law enforcement officer is not entitled to a hearing under this section if the law enforcement officer has been charged and convicted of a felony.

(d) The hearing shall be conducted by a hearing board. Both the law enforcement agency and the law enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel.

(e) 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 conducting the hearing 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 made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(f) Every party has the right of cross-examination of the witnesses who testify, and may submit rebuttal evidence.

(g) The hearing board conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or 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 utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(h) With respect to the subject of any hearing conducted pursuant to this subtitle, the chief or the officer designated by the chief shall administer oaths or affirmations and examine any individual under oath.

(i) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the law enforcement agency.

(j) (1) The chief, or hearing board, as the case may be, shall in connection with any disciplinary hearing have the power to administer oaths and to issue summonses to compel the attendance and testimony of witnesses, and the production of books, papers,

records, and documents as may be relevant or necessary. These summonses may be served in accordance with the Maryland Rules pertaining to service of process issued by a court, without cost. Any party may request the chief or hearing board to issue a summons or order under the provisions of this subtitle.

(2) In case of disobedience or refusal to obey any of these summonses, the chief, or hearing board, may apply to the circuit court of any county where the summoned party resides or conducts business, for an order requiring the attendance and testimony of the witness and the production of books, papers, records, and documents, without cost. Upon a finding that the attendance and testimony of the witness, or the production of the books, papers, records, and documents sought is relevant or necessary, the court may issue an order requiring the attendance, testimony, or production of books, papers, records and documents without cost, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

§ 731.

(a) Any decision, 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 upon 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, and consider the law enforcement officer's past job performance and other relevant information as factors before making its recommendations to the chief. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record and to the chief. The person who may take any disciplinary action following any hearing in which there is a finding of guilt shall consider the law enforcement officer's past job performance as a factor before he imposes any penalty.

(b) After the disciplinary hearing and a finding of guilt, the hearing board may recommend punishment as it deems appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment, or other similar action which would be considered a punitive measure.

(c) The written recommendations as to punishment are not binding upon the chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall review the findings, conclusions, and recommendations of the hearing board and then the chief shall issue a final order. The chief's final order and decision is binding and may be appealed in accordance with this subtitle. Before the chief may increase the recommended penalty of the hearing board, the chief personally shall:

(1) Review the entire record of the hearing board proceedings;

(2) Meet with the law enforcement officer and permit the law enforcement officer to be heard on the record;

(3) Disclose and provide to the officer in writing at least 10 days prior to the meeting any oral or written communication not included in the hearing board record on which the decision to consider increasing the penalty is based, in whole or in part; and

(4) State on the record the substantial evidence relied on to support the increase of the recommended penalty.

(d) (1) Notwithstanding any other provisions of this subtitle, the decision of the hearing board, both as to findings of fact and punishment, if any, is final:

(i) If a chief is an eyewitness to the incident under investigation; or

(ii) If an agency or its superior governmental authority has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.

(2) The provisions of paragraph (1)(ii) of this subsection may not be the subject of binding arbitration.

(3) The decision then may be appealed in accordance with § 732 of this subtitle.

§ 732.

Appeal from decisions rendered in accordance with § 731 shall be taken to the circuit court for the county pursuant to Maryland Rule 7-202. Any party aggrieved by a decision of acourt under this subtitle may appeal to the Court of Special Appeals.

§ 733.

A law enforcement officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to his employment or be threatened with any such treatment, by reason of his exercise of or demand for the rights granted in this subtitle, or by reason of the lawful exercise of his constitutional rights.

§ 734.

Any law enforcement officer who is denied any right afforded by this subtitle may apply at any time prior to the commencement of the hearing before the hearing board, either individually or through his certified or recognized employee organization, to the circuit court of the county where he is regularly employed for any order directing the law enforcement agency to show cause why the right should not be afforded.
§ 734A.

The provisions of this subtitle are not intended to prohibit summary punishment or emergency suspension by higher ranking law enforcement officers as may be designated by the head of a law enforcement agency.

(1) Summary punishment may be imposed for minor violations of departmental rules and regulations when: (i) the facts which constitute the minor violation are not in dispute; (ii) the officer waives the hearing provided by this subtitle; and (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached.

(2) (i) Emergency suspension with pay may be imposed by the chief when it appears that the action is in the best interest of the public and the law enforcement agency.

(ii) If the officer is suspended with pay, the chief may suspend the police powers of the officer and reassign the officer to restricted duties pending a determination by a court of competent jurisdiction with respect to any criminal violation or final determination by an administrative hearing board as to any departmental violation.

(iii) Any person so suspended shall be entitled to a prompt hearing.

(3) (i) Emergency suspension of police powers without pay may be imposed by the chief if a law enforcement officer has been charged with the commission of a felony.

(ii) Any person so suspended shall be entitled to a prompt hearing.

§ 734B.

Except for the administrative hearing process provided for in Article 41, § 4-201 concerning the certification enforcement power of the Police Training Commission, the provisions of this subtitle shall supersede any State, county or municipal law, ordinance, or regulation that conflicts with the provisions of this subtitle, and any local legislation shall be preempted by the subject and material of this subtitle.

§ 734C.

Any person who knowingly makes a false statement, report, or complaint in the course of an investigation or any proceeding conducted under the provisions of this subtitle is subject to the same penalties as provided in § 150 of this article.

§ 734D.

Any officer may waive in writing any or all rights provided in this subtitle.

Source: Statute Text-1999 Session, Maryland Legal Links, Maryland State Law Library
http://mlis.state.md.us/cgi-win/web_statutes.exe

(c) The provisions of this section shall not apply to an employee of the police department, as defined in section 33-76 of this chapter, who is represented by a certified employee organization pursuant to the provisions of article V, title "Police Labor Relations," of this chapter.

(d) This section is automatically repealed upon certification that the county merit system employees in the units established under article VII are represented for the purpose of collective bargaining under article VII of this chapter. (1979 L.M.C., ch. 39, § 2; 1981 L.M.C., ch. 45, § 1; 1982 L.M.C., ch. 47, § 1; 1982 L.M.C., ch. 53, § 2; 1983 L.M.C., ch. 40, § 1; 1986 L.M.C., ch. 70, § 2.)

ARTICLE V. POLICE LABOR RELATIONS.*

Sec. 33-75. Declaration of policy.

It is the public policy of this county, pursuant to charter section 510, enacted as a result of citizen initiative, and purpose of this article to promote a harmonious, peaceful and cooperative relationship between the county government and its police employees and to protect the public by assuring, at all times, the responsive, orderly and efficient operation of the police department. Since unresolved disputes in the police service are injurious to the public and to police employees as well, adequate means should be provided for preventing such unresolved disputes and for resolving them when they occur. To that end, it is in the public interest that police employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice or to refrain therefrom; and that any collective bargaining between the county government and a representative of those police employees be done in good faith with no interference with the orderly process of government and furthermore, that agreements reached through collective bargaining be implemented.

It is also recognized, however, that police employee organizations and the county government each possess substantial means by which they may initiate actions regarding the wages, hours and working conditions of employees. Consequently, in order to preserve an appropriate balance between labor and management in the police service, the council hereby declares that once a representative has been voluntarily selected, collective bargaining shall be utilized in place of, but not in addition to, existing means of initiating governmental action as to those subjects which are defined as appropriate for collective bargaining in this article. (1982 L.M.C., ch. 53, § 3.)

***Editor's note**—Article V, sections 33-75 through 33-85, was added by § 3 of 1982 L.M.C., ch. 53, enacted Apr. 6, 1982, effective July 16, 1982. Section 2 of 1982 L.M.C., ch. 58, changed the effective date to the date on which ch. 53 became law.

Charter reference—Collective bargaining for police, § 510.

Sec. 33-76. Definitions.

When used in this article:

Agency shop means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not to exceed the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement shall not require the payment of initiation fees, an assessment, fines or any other collections or their equivalent, as a condition of continued employment.

To bargain collectively means to meet at reasonable times and places and to negotiate in good faith with respect to appropriate subjects as set out in subsection 33-80(a) of this article.

Certified representative means an employee organization selected in accordance with the procedures of this chapter to represent the unit.

Employee means any police officer in the classification of master police officer I, master police officer II, police officer I, police officer II, police officer III, and police officer candidate, or equivalent nonsupervisory classifications, but not those in the classification of police sergeant or any equivalent or higher classification.

Employer means the county executive and his designees.

Employee organization means any organization which admits to membership employees and which has as a primary purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization. Such organization shall not admit to membership any person other than law enforcement officers.

Lockout means any action taken by the employer to interrupt or prevent the continuity of work properly and usually performed by the employee for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified representative to certain collective bargaining terms.

Mediation means an effort by an impartial third party confidentially to assist in resolving, through interpretation, suggestion and advice, a dispute arising out of collective bargaining between the employer and the certified representative.

Strike means a concerted failure to report for duty, absence, stoppage of work, or abstinence in whole or in part from the full and faithful performance of the duties of employment with the employer, or deviation from normal or proper work duties or activities, where any of the preceding are done in a concerted manner for the purpose of inducing, influencing or coercing the employer in the determination, implementation, interpretation, or administration of terms or conditions of employment or of the rights,

privileges, or obligations of employment or of the status, recognition or authority of the employee or an employee organization.

Unit means all employees. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-77. Permanent umpire.

(a) There is hereby created the position of permanent umpire, so as to provide for the effective implementation and administration of sections 33-79 and 33-82 of this article concerning selection, certification and decertification procedures and prohibited practices. The permanent umpire shall exercise the following powers and perform the following duties and functions:

(1) Adopt regulations under method (1) of section 2A-15 of this Code, for the implementation and administration of sections 33-79 and 33-82 as are consistent with this article;

(2) Request from the employer or any employee organization, and the employer or such organization may at its discretion provide, such relevant assistance, service and data as will enable the permanent umpire to properly carry out his functions;

(3) Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents;

(4) Hold and conduct elections for certification or decertification pursuant to the provisions of this article and issue said certification or decertification;

(5) Investigate and attempt to resolve or settle, as provided in this article, charges of engaging in prohibited practices; however, if the employer and a certified representative have negotiated a valid grievance procedure, the permanent umpire must defer to that procedure for the resolution of disputes properly submissible to the procedure absent a showing that such deferral will result or has resulted in the application of principles repugnant to this article; furthermore, the permanent umpire shall defer to state procedures in those matters which are governed by the law enforcement officers bill of rights, article 27, sections 727 et seq., Annotated Code of Maryland.

(6) Obtain any necessary support services and make necessary expenditures in the performance of duties to the extent provided for these purposes in the annual budget of Montgomery County; and

(7) Exercise any other powers and perform any other duties and functions as may be specified in sections 33-79 and 33-82 of this article.

(b) The permanent umpire shall be appointed by the county executive, with the confirmation of the county council, shall serve for a term of five (5) years and shall be eligible for reappointment; provided, however, that the permanent umpire shall not be reappointed if, during the period between sixty (60) days and thirty (30) days prior to the expiration of his term, the certified representative files a written objection to such reappointment with the county executive. The permanent umpire shall be a person with experience as a neutral in the field of labor relations and shall not be a person who, on account of vocation, employment or affiliation, can be classed as a representative of the interests of the employer or any employee organization.

(c) The permanent umpire shall be paid a per diem fee as set forth by contract with the county and shall be reimbursed for necessary expenses. (1982 L.M.C., ch. 53, § 3; 1984 L.M.C., ch. 24, § 39.)

Sec. 33-78. Employee rights.

(a) Employees shall have the right:

(1) To form, join, support, contribute to, or participate in, or to refrain from forming, joining, supporting, contributing to, or participating in, any employee organization or its lawful activities; and

(2) To be fairly represented by their certified representative, if any.

(b) The employer shall have the duty to extend to the certified representative the exclusive right to represent the employees for the purposes of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

(c) A certified representative shall serve as the bargaining agent for all employees and shall have the duty to represent fairly and without discrimination all employees without regard to whether the employees are or are not members of the employee organization or are paying dues or other contributions to it or participating in its affairs; provided, however, that it shall not be deemed a violation of this duty for a certified representative to seek enforcement of an agency shop provision in a valid collective bargaining agreement.

(d) The right of the certified representative to receive membership dues deductions or agency shop provisions shall be determined through negotiations, unless the authority to negotiate such provisions has been suspended under section 33-84. No collective

bargaining agreement may include a provision requiring membership in, participation in the affairs of, or contributions to an employee organization other than an agency shop provision. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-79. Selection, certification and decertification procedures.

(a) The certification or decertification of an employee organization as the unit's representative for the purpose of collective bargaining shall be initiated in accordance with the following procedures:

(1) Any employee organization seeking certification as representative of the unit shall file a petition stating its name, address and its desire to be certified with the permanent umpire, and shall transmit forthwith a copy of such, not including the names of the supporting employees, to the employer. Said petition must contain the uncoerced signatures of thirty (30) percent of the employees within the unit signifying their desire to be represented by the employee organization for purposes of collective bargaining.

(2) Where an employee organization has been certified, an employee within the unit may file a petition with the permanent umpire and shall transmit forthwith a copy of such to the employer and the certified representative, not including the names of the supporting employees, for decertification of the certified representative. The petition must contain the uncoerced signatures of at least thirty (30) percent of the employees within the unit alleging that the employee organization presently certified is no longer the choice of the majority of the employees in the unit.

(3) The employer may file a petition with the permanent umpire seeking an election for certification of an employee organization or, where an employee organization is so certified, to cause decertification of the representative where the employer has reason to believe that the certified representative is not or is no longer the choice of the majority of the employees of the unit, and shall transmit a copy of such to the employee organization seeking to obtain or retain certification.

(4) Petitions may be filed between July 1, 1982, and July 31, 1982. Thereafter, petitions may be filed between September 1 and September 30 of any year, but no sooner than twenty-two (22) months following an election held pursuant to this section.

(5) If a lawful collective bargaining agreement is in effect, no petition shall be entertained unless filed during September of the final year of the agreement.

(6) If, during the period of July 1 to July 31, 1982, a petition is filed by the incumbent representative of unit employees certified under the employer-employee relations article of this chapter, and no other employee organization files a valid petition, that incumbent certified representative shall be certified without an election, provided it produces evidence, acceptable to the permanent umpire, of majority representation.

(b) If the permanent umpire determines that a petition is properly supported and timely filed, the permanent umpire shall cause an election of all eligible employees to be held within a reasonable time, but no later than October 20 of that year, to determine if and by whom the employees wish to be represented, as follows:

(1) All elections shall be conducted under the supervision of the permanent umpire and shall be conducted by secret ballot at such time and place as the permanent umpire may direct. The permanent umpire may select and retain services of an agency of the State of Maryland, or similarly neutral body to assist in conducting the election.

(2) The election ballots shall contain, as choices to be made by the voter, the names of the petitioning or certified employee organization, the name or names of any other employee organization showing written proof at least ten (10) days before the election of at least ten (10) percent representation of the employees within the unit, and a choice that the employee does not desire to be represented by any of the named employee organization(s).

(3) The employer and each party to the election may be represented by observers selected in accordance with such limitations and conditions as the permanent umpire may prescribe.

(4) Observers may challenge for good cause the eligibility of any person to vote in the election. Challenged ballots shall be impounded pending either agreement of the parties as to the validity of such challenge or the permanent umpire's decision thereon, unless the number of challenges is not determinative, in which latter event the challenged ballot(s) shall be destroyed.

(5) After the polls have been closed, the valid ballots cast shall be counted by the permanent umpire in the presence of the observers.

(6) The permanent umpire immediately shall prepare and serve upon the employer and each of the parties a report certifying the results of the election. If, and only if, an employee organization has received the votes of a majority of the employees who voted, the permanent umpire shall certify the employee organization so elected as the exclusive agent. If no employee organization has

received the votes of a majority of the employees, the permanent umpire shall certify no representative, but if a majority of the employees do not vote for no representation, a runoff election shall be conducted. The runoff election shall contain the two (2) choices which received the largest and second largest number of votes in the original election.

(c) The aforesaid certification of results shall be final unless, within seven (7) days after service of the report and certification, the employer or any other party serves on all parties and files with the permanent umpire objections to the election. Objections shall be verified and shall contain a concise statement of facts constituting the grounds thereof. The permanent umpire shall investigate the objections and, if substantial factual issues exist, the permanent umpire shall hold a hearing thereon. Otherwise, the permanent umpire may determine the matter without hearing. The permanent umpire may invite, either by rule or by invitation, written or oral argument to assist in determination of the merits of the objections. If the permanent umpire finds that the election was conducted in substantial conformity with this article, the permanent umpire shall confirm the certification initially issued. If the permanent umpire finds that the election was not held in substantial conformity with this article, the permanent umpire shall cause another election to be held pursuant to the provisions of this section.

(d) The cost of conducting an election shall be paid by the county.

(e) Voluntary recognition is prohibited under this article, and no certification may be issued without an election except as provided for in subsection 33-79(a)(6). (1982 L.M.C., ch. 53, § 3.)

Sec. 33-80. Collective bargaining.

(a) *Duty to bargain; matters subject to bargaining.* Upon certification of an employee organization, as provided in section 33-79, the employer and the said certified representative shall have the duty, through their designees, to bargain collectively with respect to those subjects as follows:

(1) Salary and wages, provided, however, that salaries and wages shall be uniform for all employees in the same classification;

(2) Pension and retirement benefits for active employees only;

(3) Employee benefits such as, but not limited to, insurance, leave, holidays and vacation;

(4) Hours and working conditions, including the availability and use of personal patrol vehicles;

(5) Provisions for the orderly processing and settlement of grievances concerning the interpretation and implementation of the collective bargaining agreement, which may include binding third party arbitration and provisions for exclusivity of forum;

(6) Matters affecting the health and safety of employees; and

(7) The effect on employees of the employer's exercise of rights enumerated in subsection (b) hereof.

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

(1) To determine the overall budget and mission of the employer and any agency of county government;

(2) To maintain and improve the efficiency and effectiveness of operations;

(3) To determine the services to be rendered and the operations to be performed;

(4) To determine the overall organizational structure, methods, processes, means, job classifications or personnel by which operations are to be conducted and the location of facilities;

(5) To direct or supervise employees;

(6) To hire, select and establish the standards governing promotion of employees and to classify positions;

(7) To relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive;

(8) To make and enforce rules and regulations not inconsistent with this law or a collective bargaining agreement;

(9) To take actions to carry out the mission of government in situations of emergency;

(10) To transfer, assign and schedule employees.

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

(d) *Time limits.* Collective bargaining shall commence no later than November 1 preceding a fiscal year for which there is no contract between the employer and the certified representative and shall be concluded by January 20. The resolution of an impasse in collective bargaining shall be completed by February 1. These time limits may be waived only by prior written consent of the parties.

(e) *Term of agreement.* Any provision of automatic renewal or extension of a collective bargaining agreement shall be void. No agreement shall be valid if it extends for less than one year or for more than three years. All agreements shall become effective July 1 and end June 30.

(f) *Effective date of agreement.* Any collective bargaining agreement shall become effective only after ratification of the agreement by the employer and the certified representative, except as provided in subsection 33-81(b)(7). A certified representative may provide its own rules for ratification procedures.

(g) *Council review.* A ratified agreement shall be binding on the employer and the certified representative, and shall be reduced to writing and executed by both parties. Any term or condition thereof which requires an appropriation of funds or enactment, repeal or modification of a County law shall be timely submitted to the County Council by the employer, and the employer shall make a good faith effort to have such term or condition implemented by Council action. On or before May 1, the County Council shall indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and shall state its reasons for any intent to reject any part of the agreement. If the Council indicates its intention to reject any part, it shall designate a representative to meet with the parties and present the Council's views in their further negotiations. This representative shall also participate fully in stating the Council's position in any ensuing impasse procedure. The parties shall thereafter meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either of the parties may initiate the impasse procedure set forth in Section 33-81. The results of the negotiation or impasse procedure shall be submitted to the Council on or before May 10. Any agreement shall provide either for automatic reduction or elimination of conditional wage and/or benefits adjustments if the Council fails to take action necessary to implement the agreement, or if sufficient funds are not appropriated for any fiscal year in which the agreement is in effect. (1982 L.M.C., ch. 53, § 3.; 1993 L.M.C., ch. 12, § 1.)

Sec. 33-81. Impasse procedure.

(a) Prior to November 10 of any year in which the employer and a certified representative bargain collectively, they shall choose an impasse neutral either by agreement or through the processes of the American Arbitration Association. The impasse neutral shall be required to be available during the period from January 20 to February 1. Fees, costs and expenses of the impasse neutral shall be shared equally by the employer and the certified representative.

(b) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the impasse neutral. If the parties have not reached agreement by January 20, an impasse shall be deemed to exist.

(2) Whenever an impasse has been reached, the dispute shall be submitted to the impasse neutral. The impasse neutral shall attempt mediation by bringing the parties together voluntarily under such favorable auspices as will tend to effectuate the settlement of the dispute.

(3) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral shall require each party to submit a final offer which shall consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the impasse neutral shall choose. If only complete package proposals are required, the impasse neutral shall require the parties to submit jointly a memorandum of all items previously agreed upon.

(4) The impasse neutral may, in the impasse neutral's discretion, require the parties to submit evidence or make oral or written argument in support of their proposals. The impasse neutral may hold a hearing for this purpose at a time, date and place selected by the impasse neutral. Said hearing shall not be open to the public.

(5) On February 1 or prior thereto, the impasse neutral shall select, as a whole, the more reasonable, in the impasse neutral's judgment, of the final offers submitted by the parties. The impasse neutral may take into account only the following factors:

a. Past collective bargaining contracts between the parties, including the past bargaining history that led to such contracts, or the pre-collective bargaining history of employee wages, hours, benefits and working conditions;

b. Comparison of wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;

c. Comparison of wages, hours, benefits and conditions of employment of other Montgomery County personnel;

d. Wages, benefits, hours and other working conditions of similar employees of private employers in Montgomery County;

e. The interest and welfare of the public;

f. The ability of the employer to finance economic adjustments and the effect of the adjustments upon the normal standard of public services by the employer.

(6) The impasse neutral shall not compromise or alter the final offer that he selects. Selection of an offer shall be based on the contents of that offer. No consideration shall be given to, nor shall any evidence or argument be received concerning the history of collective bargaining in this immediate dispute, including offers of settlement not contained in the offers submitted to the impasse neutral. However, the impasse neutral shall consider all previously agreed upon items integrated with the specific disputed items to determine the single most reasonable offer.

(7) The offer selected by the impasse neutral, integrated with the previously agreed upon items, shall be deemed to represent the final agreement between the employer and the certified representative, without the necessity of ratification by the parties, and shall have the force and effect of a contract voluntarily entered into and ratified as set forth in subsection 33-80(g) above. The parties shall execute such agreement. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-82. Prohibited practices.

(a) The employer or its agents or representatives are prohibited from:

(1) Interfering with, restraining or coercing employees in the exercise of any rights granted to them under the provisions of this article;

(2) Dominating or interfering with the formation or administration of any employee organization or contributing financial or other support to it, pursuant to contract or otherwise; provided that the employer and a certified representative may agree to and apply a membership dues deduction provision as provided herein and to reasonable use of county facilities for communicating with employees;

(3) Encouraging or discouraging membership in any employee organization by discrimination in regard to hiring, tenure, wages, hours or conditions of employment, provided that nothing in this article shall preclude an agreement from containing a provision for an agency shop;

(4) Discharging or discriminating against a public employee because he has filed charges, given testimony or otherwise lawfully aided in the administration of this article;

(5) Refusing to bargain collectively with a certified representative;

(6) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(7) Refusing to process or arbitrate a grievance if required under a grievance procedure contained in a collective bargaining agreement;

(8) Directly or indirectly opposing the appropriation of funds or the enactment of legislation by the county council to implement an agreement reached between the employer and the certified representative pursuant to this article;

(9) Engaging in a lockout of employees.

(b) Employee organizations, and their agents, representatives and employees, are prohibited from:

(1) Interfering with, restraining or coercing the employer or employees in the exercise of any rights granted under this article;

(2) Restraining, coercing or interfering with the employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) Refusing to bargain collectively with the employer if such employee organization is the certified representative;

(4) Refusing to reduce to writing or refusing to sign a bargaining agreement which has been agreed to in all respects;

(5) Hindering or preventing, by threats of violence, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstructing or otherwise unlawfully interfering with the entrance to or egress from any place of employment, or obstructing or unlawfully interfering with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance by any person, public or private;

(6) Hindering or preventing by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, supplies, equipment or services by the employer;

(7) Taking or retaining unauthorized possession of property of the employer or refusing to do work or use certain goods or materials as lawfully required by the employer;

(8) Forcing or requiring the employer to assign particular work to employees in a particular employee organization or classification rather than to employees in another employee organization or classification;

(9) Causing or attempting to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed or to be performed.

(c) A charge of prohibited practice may be filed by the employer, employee organization, or any individual employee. The charge or charges shall be filed with the permanent umpire, with copies to the party alleged to have committed a prohibited practice. All charges shall contain a statement of facts sufficient to enable the permanent umpire to investigate the charge. The permanent umpire may request withdrawal of and, if necessary, summarily dismiss charges if they are insufficiently supported in fact or in law to warrant a hearing. The permanent umpire shall have authority to maintain such independent investigation as the permanent umpire determines necessary and to develop rules and regulations therefor. If, upon investigation, the permanent umpire finds that a charge is sufficiently supported to raise an issue of fact or law, the permanent umpire shall hold a hearing on such charge upon notification to the parties. In any hearing, charging parties shall present evidence in support of the charges and the party or parties charged shall have the right to file an answer to the charges, to appear in person or otherwise and to present evidence in defense of the charges.

(d) If the permanent umpire determines that the person charged has committed a prohibited practice, the permanent umpire shall make findings of fact and conclusions of law and shall be empowered to issue an order requiring the person charged to cease and desist from the prohibited practice and to take such affirmative action as will remedy the violation(s) of this article. Remedies of the permanent umpire may include, but shall not be limited to, reinstating employees with or without back pay, making employees whole for any loss relating to county employment suffered as a result of any prohibited practice, withdrawing or suspending the employee organization's authority to negotiate or continue membership dues deductions, or agency shop benefits. If the permanent umpire finds that the party or parties charged have not committed any prohibited practices, the permanent umpire shall make findings of fact and conclusions of law and issue an order dismissing the charges.

(e) The permanent umpire shall not receive or entertain charges based upon an alleged prohibited practice occurring more than six (6) months prior to the filing of the charge. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-83. Expression of views.

The expression of any views, argument or opinion, or the dissemination thereof, whether orally, in writing or otherwise, shall not constitute or be evidence of a prohibited practice under any of the provisions of this law nor be grounds for invalidating any election conducted under this law if such expression or dissemination contains no threat of reprisal or promise of benefit. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-84. Strikes and lockouts.

(a) No employee or employee organization shall either directly or indirectly cause, instigate, encourage, condone or engage in any strike, nor the employer in any lockout. No employee or employee organization shall obstruct, impede or restrict, either directly or indirectly, any attempt to terminate a strike.

(b) The employer shall not pay, reimburse, make whole or otherwise compensate any employee for or during the period when said employee is directly or indirectly engaged in a strike, nor shall the employer thereafter compensate an employee who struck for wages or benefits lost during such strike.

(c) If an employee or employee organization shall violate the provisions of this section, the employer, after adequate notice and a fair hearing before the permanent umpire who finds that the aforesaid violations have occurred and finds that any or all of the following actions are necessary in the public interest, may, subject to the law enforcement officer's bill of rights, article 27, section 727 et seq., Annotated Code of Maryland:

(1) Impose disciplinary action, including dismissal from employment, on employees engaged in such conduct;

(2) Terminate or suspend employee organization's dues deduction privilege, if any;

(3) Revoke the certification of and disqualify the employee organization from participation in representation elections for a period up to a maximum of two (2) years.

(d) Nothing contained herein shall prohibit an employer from seeking any remedy available in a court of competent jurisdiction. (1982 L.M.C., ch. 53, § 3.)

Sec. 33-85. Effect of prior enactments.

Nothing contained in this article shall be construed to repeal any laws, executive orders, legislation, rules or regulations adopted by the county and any department or agency thereof not inconsistent with the provisions of this article. (1982 L.M.C., ch. 53, § 3.)

ARTICLE VI. DISABILITY BENEFITS.*

***Editor's note**—Article VI, §§ 33-86--33-100, was added by 1985 L.M.C., ch. 49, § 3. Section 4 of the law as amended by 1986 L.M.C., ch. 29, § 4 and § 1 of 1987 L.M.C., ch. 37, reads as follows:

"*Option for members of the county retirement system.* On or before June 1, 1987, every individual who is a member of the Montgomery County Retirement System under chapter 33 before May 15, 1986, has the option to transfer from the disability retirement program under section 33-43 of chapter 33 to the disability benefits program under article VI of chapter 33. This option is not available to retired members of the Montgomery County Retirement System.

The chief administrative officer of the county must hold seminars and provide clear written information to inform all those individuals of:

(1) The provisions of the disability benefits program;
(2) The changes to the disability retirement program; and
(3) The option of changing programs that is available to them."

Sec. 33-86. Applicability.

The provisions of this article only apply to individuals who:

(1) Are members of the retirement system under this chapter on or after May 15, 1986, and submitted an application for disability benefits on or after May 15, 1986, but before July 1, 1989, or is an elected official on July 1, 1989, and submitted an application for disability benefits on or after May 16, 1986, but before December 3, 1990;

Appendix G

Collective Bargaining Agreement

Between

Fraternal Order of Police

Montgomery County Lodge 35, Inc.

and

Montgomery County, Maryland

For The Years

July 1, 1998 - June 30, 2001

NOTICE: At the time of printing of this document the parties to this Agreement received an interest arbitration award impacting Articles 11, Chronic Incapacity, and Article 57, Retirement, of this Agreement. Upon final approval by County Council these changes will be included in the Agreement.

COLLECTIVE BARGAINING AGREEMENT

July 1, 1998 - June 30, 2001

TABLE OF CONTENTS

ARTICLE		Page
1	RECOGNITION	1
2	ADMINISTRATIVE LEAVE	1-2
3	AGENCY SHOP AND DUES CHECKOFF	3
4	PREVENTION OF SUBSTANCE ABUSE/EMPLOYEE REHABILITATION	4
5	TECH PAY	4-5
6	CLOTHING ALLOWANCE	5-6
7	COMMUNICATIONS FACILITIES	6
8	CONTRACT GRIEVANCE PROCEDURE	6-8
9	COPIES OF THE CONTRACT & OTHER INFORMATION	8
10	COURT TIME	8
11	CHRONIC INCAPACITY	9
12	SENIORITY	9
13	DESIGNATION OF SMOKING AREAS	9
14	HOLIDAY LEAVE AND PAY	10-13
15	HOURS AND WORKING CONDITIONS	13-21
16	PARENTAL LEAVE	21-22
17	DISABILITY LEAVE AND INJURY ON THE JOB	22-23
18	ANNUAL LEAVE	24-25
19	SICK LEAVE AND SICK LEAVE DONOR PROCEDURE	25-28
20	LEAVE WITHOUT PAY	28
23	LEAVE WITHOUT PAY BENEFITS (Art. 23 § A.7)	30
21	COMPENSATORY LEAVE	29
22	PROFESSIONAL IMPROVEMENT LEAVE	29-30
23	MAINTENANCE OF STANDARDS/RETENTION OF BENEFITS AND CONDITIONS	30-31
	§ A.1 Deferred Compensation	
	§ A.2 Use of Blood Bank	
	§ A.3 Physical Examinations	
	§ A.4 Workers' Compensation	
	§ A.5 Pay Differentials	
	§ A.6 Local and Non-Local Travel	
	§ A.7 Leave Without Pay Benefits	
24	INSURANCE COVERAGE AND PREMIUMS	31-33
25	TRANSFERS	33-34
26	NON-DISCRIMINATION	34
27	SECONDARY EMPLOYMENT	34-40
28	SERVICE INCREMENTS	40-41
29	PHYSICAL FITNESS AWARDS	41-42
30	UNIFORMS AND EQUIPMENT	42-44
31	REOPENER	44
32	SAFETY COMMITTEE	44-45
33	LABOR - MANAGEMENT RELATIONS COMMITTEE	45
34	GRIEVANCE REPRESENTATION	45
35	VEHICLES	46-52
36	WAGES	52-53

ARTICLE		Page
37	SPECIAL MEDICAL EXAMINATIONS	53
38	SEVERABILITY	53
39	TUITION ASSISTANCE	53
40	DEPENDENT CARE	53
41	SHIFT DIFFERENTIAL	54
42	MANAGEMENT AND EMPLOYEE RIGHTS	54-55
43	DISCIPLINE	55-58
44	PROMOTIONS	58
45	NON-LEOBR PERSONNEL ACTIONS	58
46	PROTECTION FROM COMMUNICABLE DISEASES	58-59
47	DURATION OF CONTRACT	59
48	ACTION BY MONTGOMERY COUNTY COUNCIL	59
49	AWARDS	59
50	REDUCTION-IN-FORCE AND FURLOUGH	59-60
51	PERSONNEL FILES	61-65
52	TERMINATION	65
53	PERFORMANCE EVALUATION	65
54	DEMOTION	65
55	JOB SHARING PROGRAM	66-69
56	RESIGNATION	69
57	RETIREMENT	69-71
58	STRESS COUNSELING	71-72
59	FAMILY MEDICAL LEAVE ACT	72-75
60	CAREER DEVELOPMENT STUDY COMMITTEE	76
61	DIRECTIVES AND ADMINISTRATIVE PROCEDURES	76

b. To be fairly represented by their certified representative, if any.

2. The employer shall have the duty to extend to the certified representative the exclusive right to represent employees for the purpose of collective bargaining, including the orderly processing and settlement of grievances as agreed by the parties.

Article 43 *Discipline*

Section A. Law Enforcement Officers' Bill of Rights

1. Any "law enforcement officer" as defined in Section 727 of the Law Enforcement Officer's Bill of Rights ("LEOBR", Article 27, Section 727, *et seq.*, Annotated Code of Maryland) who is the subject of a sustained complaint involving proposed punishment which is not summary punishment as defined by the LEOBR § 734A, may elect the alternate method of forming a hearing board. Said alternate method is not available with regard to a hearing convened pursuant to LEOBR § 734A(2)(iii).
2. The officer shall make such election in writing using the Notice of Election of Hearing Board form (attached and made a part of this agreement as **Appendix K**). In making such election, the officer shall waive his/her right to the formation of a hearing board pursuant to LEOBR § 727(d)(1). Such Notice of Election of Hearing Board form must be: completed by the officer; approved by the FOP Lodge 35; and delivered to the chief of police or designee within seven (7) calendar days after the date upon which the officer receives the notice of a sustained complaint together with the form.

3. The alternate method of forming a hearing board shall be as follows:

   (a) The board shall consist of 3 members: two (2) law enforcement officers and a neutral chairperson. The chairperson shall be chosen from a standing panel of arbitrators maintained for such purpose by the County and FOP Lodge 35. The chairperson shall be selected to hear cases in rotation in the order their names appear. If the arbitrator slated to hear a case cannot hold the hearing within a reasonable time, the next arbitrator shall be selected.

   (b) The chief shall appoint one (1) law enforcement member, and the FOP Lodge 35 the other. These appointments shall be announced simultaneously, without undue delay. The law enforcement member appointed by FOP Lodge 35 shall be scheduled to day work for the duration of the hearing board.

   (c) No member of the hearing board shall in any way be involved in, or a witness to, any incidents which are the subject to the complaint before them.

   (d) Except as provided in subparagraph (e), FOP Lodge 35's choice of a law enforcement member shall be any member in the bargaining unit; and The chief's choice may be any law enforcement officer in the rank of sergeant or above. Therefore, it is not required that either law enforcement member be of the same rank as the accused officer.

   (e) If the chief of police decides to select a law enforcement member from another law enforcement organization, the FOP Lodge 35 shall receive sufficient notice in time to select a law enforcement member from another law enforcement organization, if it so desires. FOP Lodge 35's choice of a law enforcement member shall be of a rank comparable to the ranks within the collective bargaining unit.

4. The fee and expenses of the neutral chairperson of the board shall be borne equally by the Department of Police and FOP Lodge 35.

((49)

5. The written decision of a hearing board formed under this section shall be processed pursuant to Article 27 § 731 (c) of the Annotated Code of Maryland, in effect as of 1/26/96.

6. Any controversy concerning this Section, excluding paragraph 5 *supra*, may be submitted to the chairperson of the hearing board for his/her hearing and/or decision. Such decision of the chairperson shall be contested pursuant to LEOBR Sections 732 or 734.

Section B. Notice of Interrogation. When the department notifies a member of the bargaining unit in writing that he/she will be interrogated, the department will also give the officer a form (MCP Form 242, **Appendix L**).

Section C. Personnel Regulations. The parties agree that there will be no change in § 27-3 of the Personnel Regulations of 1986 (as amended through August 1988) during the term of this Agreement.

Section D. Unit Members Not Covered Under The LEOBR.

1. Investigation of a Complaint

   a. Prior to any interview of an employee under investigation, the employee shall be advised of the nature of the investigation. Such notification may be verbal in nature.

   b. Representation during Interview. At the request of an employee under investigation, he/she shall have the right to be represented by counsel or any other responsible representative of his/her choice who may be present during any interview.

      An employee under investigation shall be afforded at least 24 hours to arrange for representation.

   c. Record of Interview. Upon completion of the investigation, and upon request of the employee under investigation or his representative, a copy of the transcript of the tape recorded interview (if one has been made) shall be made available to the employee.

   d. Use of MCP #50, Interrogation Rights & Waiver Form. If the employee being interviewed is under arrest or is likely to be placed under arrest as a result of an interview, he shall be completely informed of his/her Miranda rights prior to the commencement of the interview.

   e. Time, Place and Manner of Interviews.

      (1) Any interview shall take place either at the office of the command of the investigator or at the office of the police unit in which the incident allegedly occurred, as designated by the investigator unless otherwise waived by the employee, or at any other reasonable and appropriate place.

      (2) Any interview shall be conducted at a reasonable hour, preferably at a time when the employee is on duty, unless the seriousness of the investigation is of such a degree that an immediate interview is required.

      (3) Interview sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

   f. Required Interrogations and Tests Employees under investigation may be compelled to submit to Blood Alcohol Tests, blood, breath, or urine tests for controlled dangerous

50

substances where there is reasonable suspicion of alcohol or unlawful drug use, or interrogations which specifically relate to the subject matter of the investigation. Such tests shall be conducted consistent with the provisions of Article 4, *Prevention of Substance Abuse/Employee Rehabilitation* of this Agreement.

2. Notification of a Complaint

   a. Whenever a Statement of Charges (**Appendix L.2**) is executed, it will serve as written notification of the investigation.

   b. The chief of police, or his designee must give the employee a copy of the charges and provide a minimum of five (5) workdays to respond. Disciplinary actions affected by this requirement include written reprimands, within-grade reductions, suspensions, demotions, and dismissals.

   c. The department will provide the union any written statements (citizen complaints, employee observations) in the possession of the department and used in connection with an adverse action taken against a bargaining unit employee. These statements will be sanitized (name, address, phone number deleted) to protect privacy rights in accordance with the law.

   d. The written statements referred to in subsection 2.c above will be provided to the union when the employee receives the Statement of Charges.

   e. The department is under no obligation to permit the employee or union to interview the author of the statement. If the statement is used as evidence on appeal, the employee or union will have the opportunity to examine the witness.

   f. Records will be maintained in accordance with Article 51, *Personnel Files* of this Agreement.

3. Disposition

   a. An investigation shall result in no punitive action where the employee's conduct was exonerated or when there is not substantial evidence of misconduct found. In such cases, employees will be furnished a copy of any reply to a complaint or, if there is none, they will be provided a written notification of the investigative outcome.

   b. Oral admonishments and written reprimands may be given at the discretion of the chief of police. In all cases, the employee should be told why their conduct is inappropriate, what action will occur if changes are not made.

   c. In cases of within-grade reduction, demotion, suspension, and dismissal, the chief of police must provide written notice of such action at lease five (5) days prior to the effective date of the action. Exceptions to this requirement are theft and serious violations which pose a health or safety risk.

   d. The following shall apply regarding written notices to the employee from the employer pertaining to Disciplinary Action, Termination, RIF Notices, Demotions, Promotion or Reduction-In-Salary. In all instances the notices to employees identified above shall contain the following language at the bottom of the last page of the document:

NOTICE TO BARGAINING UNIT EMPLOYEES

You are entitled to be represented in this matter by FOP Lodge 35 (Union). If you wish a copy of this document sent to the union, indicate by checking the appropriate space below:

____*I do wish the union to receive this document*

____*I do not wish the union to receive this document*

_____ _____
Employee's Signature *Date*

Section E. Investigatory Files. The employer agrees that investigatory files will be provided free of charge.

Article 44 *Promotions*

Section A. Promotional Program. Promotions to positions in the unit must be made on a competitive basis after an evaluation of each individual's qualifications. Any promotional program for positions within the unit shall provide that qualified employees are given an opportunity to receive fair and appropriate consideration for higher level positions.

Section B. Appeal of Promotion. **Promotion, selection and non-selection to unit positions from a properly constituted list of employees in the highest rating category, or any category used for such purposes by the County shall be grievable under Article 8 *Contract Grievance Procedure*.**

Section C. Temporary Promotion/Assignment to Higher Classified Job. Unit members who are temporarily assigned or promoted to a higher classified job for a period of more than twenty (20) days shall receive the rate of pay of the higher classified job retroactive to the first day the unit member assumed the higher position.

Section D. Review of Examinations. All unit members participating in any promotional process for a position within the unit shall be given the opportunity to review all of their examination test scores. Unit members participating in a promotional process for a position outside the unit shall have the substantive and procedural rights accorded by state law.

Section E. Notice of Phase-in for Minimum Qualifications for MPO. Changes of minimum qualifications for the MPO rank will apply to promotional processes occurring after the 1996 scheduled examination.

Article 45 *Non-LEOBR Personnel Actions*

When any personnel action is taken or not taken regarding an employee, which action is not required to be processed pursuant to the procedures set forth in the Law Enforcement Officers' Bill of Rights, "LEOBR", (Article 27 § 727, *et seq.*, Maryland Annotated Code), the employee shall have the right to grieve and/or arbitrate said action pursuant to the procedures set forth in Article 8 of this Agreement.

Article 46 *Protection From Communicable Diseases*

Section A. Medical Tests For Communicable Diseases. Unit members shall receive medical testing for AIDS, tuberculosis, hepatitis and any other communicable diseases when an employee

believes he/she has been exposed to such diseases on the job. The costs for such tests shall be payable by the County or otherwise compensable in accordance with existing workers' compensation benefits.

Section B. Coordination and Location of Testing. The Occupational Medical Section, Office of Human Resources, will be responsible for coordinating the testing which may occur at hospital emergency rooms, private physicians or occupational medical section facilities.

Section C. Flu and Hepatitis Shots **The Employer shall provide hepatitis and flu shots to unit members desiring same.**

Article 47 *Duration of Contract*

This Agreement shall become effective on July 1, 1998 and terminate on June 30, 2001.

Article 48 *Action By Montgomery County Council*

Pursuant to § 33-80(g) of the Montgomery County Code, any wage and/or benefit adjustment set forth in this Agreement which requires the Montgomery County Council to take action necessary to implement the Agreement, or to appropriate funds, shall be automatically reduced or eliminated if the County Council fails to take the necessary action to implement the Agreement, or if funds are not appropriated or if a lesser amount is appropriated.

Article 49 *Awards*

Awards programs for unit employees shall be established and administered in a manner determined by the employer.

Article 50 *Reduction-In-Force and Furlough*

Section A. Reduction-In-Force. Reductions-in-Force shall be conducted pursuant to Administrative Procedure 4-19, *Reductions-in-Force*, as provided in **Appendix M**.

Section B. All Unit Positions Are A Single Class. For the purposes of determining job classes within the unit which may be subject to a reduction in force, all bargaining unit positions shall be considered as a single class.

Section C. Furlough.

1. *When applicable.* A furlough is a permanent relief from duty and loss of pay for hours of services which would otherwise be performed by members of the bargaining unit and which is required by the chief administrative officer due to lack of funds or work. Lost furlough pay must not be made up by the same or other employees in overtime hours or compensatory time. All reductions in salary and furlough leaves must take place within the "furlough period" designated by the chief administrative officer, ordinarily the period between the effective date of the chief administrative officer's determination to relieve members of the bargaining unit from duties due to lack of funds or work and the end of the fiscal year in which that determination is made. It is agreed that the County's determination to require the bargaining unit to make up for services lost by virtue of a furlough by reducing the bargaining unit members' opportunity to be absent on authorized leave of any other kind (other than compensatory leave) during the furlough period establishes a violation of this

Agreement for which all affected unit members will be compensated by a restoration of salary denied pursuant to § C.2 hereof.

2. *Reduction in Total County Salary.* Whenever the County determines to furlough employees for one or more eight hour days during a fiscal year the base salary as provided in the Collective Bargaining Agreement then in effect shall be reduced for all bargaining unit members by an amount equal to eight hours pay for each such furlough day. The amount of each reduction shall be spread evenly over the pay periods remaining in the fiscal year during which the furlough day(s) occur(s). The reduction or reductions shall cease and the appropriate level of base salary shall be restored at the end of the fiscal year in which the furlough day(s) occurred.

3. *Compensatory Leave and Furlough Days.* The County shall grant each unit member whose salary it reduces pursuant to § 2, eight (8) hours of compensatory time for each eight (8) hour furlough day the County decrees. The department may schedule the use of furlough time for the mutual convenience of the department and the member, or may direct a member to use furlough compensatory time on a day or days selected by the department, provided, in either event, that the use does not conflict with that or any other unit member's right to take annual or other leaves pursuant to this Agreement, established practices, or applicable law. In other respects, Compensatory Leave and Annual Leave shall be treated as provided in Articles 18 and 21 of this Agreement.

4. *Effect On Other Benefits and Payments.* The County agrees that no reduction in salary provided for herein shall reduce the amount of the pension payable upon retirement of any unit member. It is further agreed that the provisions governing payment for unused compensatory time upon retirement or separation shall apply to the compensatory time granted pursuant to this Article and that the reduction in salary agreed upon in this Article shall not reduce any other payments or benefits, including but not limited to service increments, awards, salary upon promotion or demotion, or any other pay amounts based on the employee's base salary which would have been due the officer by law or under an applicable Collective Bargaining Agreement.

5. *Effect on Secondary Employment.* During a furlough period and in accordance with existing regulations, if there is no question regarding conflict of interest, the personnel director shall act upon a request for approval of outside employment with a duration of six (6) weeks or less within seven (7) days after the member submits his/her application to the personnel director.

6. *When Furlough May be Implemented.* The salary reduction provided for herein shall be restored and all compensatory leave balances shall be appropriately adjusted if an appropriate third party determines that the County did not relieve the members of the bargaining unit from duty or did not do so due to lack of funds or work.

7. *Notice of Furlough.* Written notice shall be given to FOP Lodge 35, by Certified Mail, thirty (30) days prior to instituting a furlough provision.

8. *Administration.* All furlough provisions shall be administered equitably within the unit and, to the extent not inconsistent with this Article and otherwise applicable to members of the bargaining unit, the provisions of §§ 2.0 - 3.8 of Administrative Procedure 4-31, dated December 4, 1991, are incorporated herein by reference. **Appendix N.**

(54)

Article 51 *Personnel Files*

Section A. Definitions

1. *Employee* - An individual in the collective bargaining unit.

2. *Personnel Records* - The repository of official information regarding an active, terminated or retired employee of the Montgomery County Government. A personnel record is any personnel, medical, or departmental operating file.

3. *Authorized Official* - Individuals or organizations as listed in paragraph B (8) as authorized to review the contents of an employee's personnel file on a "need to know" basis.

Section B. Custody and Review

1. The Personnel Office shall maintain the official personnel file for each County employee.

2. The Occupational Medical Section, Department of Finance shall maintain the official medical records file for each County employee.

3. An employee's medical records file becomes a part of the employee's official personnel file when the Personnel Office has received an application for workers' compensation, disability retirement, normal retirement, long term disability claim or upon termination of employment.

4. The Department may maintain an operating file on each employee within the department. The Department may also maintain a second operating file on an employee that shall be kept within the employee's unit. The custodian of these files will be informed by the Department as to the appropriate contents of such files as provided in § C of this Article, except that the contents shall not contain disciplinary actions, including written reprimands, or at-fault accident reports.

5. Supervisors may maintain a file on each employee under their direct supervision.

6. Employees are encouraged to review their personnel records at least once each year.

7. No information shall be placed in any employee personnel file unless the employee receives a copy of the information (subject to limitations concerning medical files as referenced in § B.10) and is provided an opportunity to submit a rebuttal, if desired, to be included in the file.

8. To preserve confidentiality and protect the privacy of employees, access to an employee's personnel records shall be restricted to the following:

   a. Employee who is the subject of the file or authorized representative.

   b. Employee's supervisor. (Need to know basis)

   c. Appointing authority or designee. (Need to know basis)

   d. Personnel director or designee. (Need to know basis)

   e. Member of Merit System Protection Board or designee. (Need to know basis)

f. County attorney or designee. (Need to know basis; i.e., when an employee is in litigation against the County, e.g., Merit System Protection Board, Worker's Compensation, Disability, Retirement, etc.)

g. Chief administrative officer or designee. (Need to know basis)

9. Except for verification of employment and current salary information, the release of information from an employee's personnel records to anyone other than those listed in § B.8 requires a signed authorization from the employee who is the subject of the personnel record accompanied by a statement giving the reason for the review and a description of the material requested.
10. The release of information from an employee's medical file to anyone other than the employee, the county attorney's office, personnel director, or his designee requires a signed authorization from the employee who is the subject of the medical record accompanied by a statement giving the reason for the review and a description of the material requested. Further, the custodian of medical records may determine, consistent with state law, that certain information pertaining to psychological/psychiatric medical reports will only be released to an employee through the employee's physician.

11. Except as provided at Section B.8 of this article, or as required by law, personal information of unit members maintained by virtue of the employment relationship, such as home address, telephone number, family information, marital status, and photographs will not be released without prior written authorization of the unit member. The parties agree to develop a form to be distributed to all unit members requesting that they provide their age, area of residence, spouse's name, educational background, awards or recognition received, organizations belonged to, date of employment, and previously held positions. The form shall state that the department "respect[s] your right to privacy and if certain questions appear to be too personal, you may omit them." Further, the form shall provide the unit member with the option to provide his/her own photograph to be used instead of any other photograph maintained by the county, to authorize use of county photographs, or to provide that the county shall not release any photograph unless required by law.

12. **Restricted Duty Unit files shall be maintained in the Police Personnel Division. Restricted Duty Unit files shall be destroyed after twelve months have elapsed since the employee returned to full duty, except RDU tracking forms shall be transferred to the department unit/operating file and the official personnel file.**

Section C. Contents

1. **The contents of an employee's official personnel file shall be limited to:**

a. Applications for employment or promotion which results in appointment or promotion.

b. Employment history, including personnel action documents affecting appointment, promotion, transfer, salary change, etc.

c. Copy of commendations.

d. Employee emergency information.

e. Payroll withholding documents.

f. Insurance and retirement records.

g. Education and training records.

56

h. Performance evaluations - limited to last five years only.

i. Leave records - limited to last five years only.

j. Results of tests and examinations successfully completed - limited to two years from date of test of examination.

k. Copy of disciplinary actions.

l. Copy of reprimands - limited to two years only.

2. The contents of an employee medical file shall be limited to:

a. County medical examination records.

b. Records obtained or received from any physician in reference to an employee's or applicant's medical fitness.

c. Any medical waiver or release signed by the employee.

d. Requests to the Occupational Medical Section, Department of Finance, by an employee's supervisor and/or appointing authority for any additional or special medical examinations, the record of the actions taken by the Occupational Medical Section and the results of the additional or special medical examination.

3. Employee files held by a department shall contain documents necessary for program operations limited to:

a. Employee home address and telephone number.

b. Present job information (i.e., description, location, etc.)

c. Employee emergency information.

d. Payroll data and supporting documentation.

e. Copies of leave records - limited to five years.

f. Copies of performance evaluations including supporting documentation and the Annual Skills Inventory and Career Development forms, limited to five years.

g. Copies of commendations, awards, and disciplinary actions, including supporting documentation - limited to last five years.

h. Written reprimands limited to the last two years.

i. Copies of at-fault accident reports and supervisor documentation.

j. Copies of training requests, approvals and certificates of completion.

4. The contents of the Restricted Duty Unit files shall be limited to:

a. First Report of Injury Forms.

b. Medical and Health Status Reports and memos from the Occupational Medical Section.

c. **RDU tracking forms.**

d. **Medical evaluations from physicians as they pertain to the employee's ability to work/return to work, and his/her ability to perform the essential functions of the position, in addition to limitations and prognosis.**

e. **Memos from supervisors regarding the medical condition and the transmittal of documents.**

f. **Memos scheduling special medical examinations.**

g. **Disability leave payroll memorandums.**

h. **Supervisor's Incident Investigation Report (SIIR) forms.**

i. **Other Worker's Compensation/Trigon/Risk Management forms.**

Section D. Supervisory Files

1. Supervisors may maintain a file for each employee under their supervision which contains informal notes by the supervisor concerning the employee's job performance or conduct, notes made in performance review or other counseling sessions with the employee, copies of completed work assignments, drafts or work in progress and informal written communications between the employee and the supervisor concerning performance or conduct issues.

2. A supervisory file is reviewable by the subject employee on request, and is to be safeguarded from review by any other individual except on a need to know basis as provided in §B.8.

3. The purpose of supervisory files is to encourage supervisors to maintain an informal record on a continuing basis which will provide substantiation for performance ratings or other performance or conduct related actions.

4. Materials in a supervisory file are valid for a period of twelve (12) months, and may be used only during that time or during a rating period covering the period of the documentation, to support official personnel actions. These materials become a part of an employee's official or operating record only if they are incorporated in or attached to related personnel actions within twelve (12) months from the date they were originated. Materials in a supervisory file, which are not used to support a formal personnel action within 12 months of their inception, cannot serve as the basis for any further personnel actions, and shall be removed from the file.

Section E. Disposition Upon Separation

1. Except as provided below, all records including medical and internal affairs files, pertaining to separated employees shall be destroyed five (5) years after separation, unless the files are the subject of pending litigation. In which case, these files will be destroyed at the conclusion of the litigation.

2. The county may maintain records necessary to administer employee benefits programs, including health and retirement, a file containing the employee's name, address, date of birth, social security number, dates of employment, job titles, union and merit status, salary and like information.

3. Except as required by law, no information may be released from any file without the express written permission of the separated employee.

Section F. Record of Review Each file authorized by this article must contain a log on which the name of all reviewers and date of review. This log may be reviewed and copied by the employee or authorized representative.

Article 52 *Termination*

Section A. Definition. Termination is a nondisciplinary act by management to conclude an employee's service with the County. Reasons for termination include, but are not necessarily limited to, the following:

1. An employee's abandonment of position by failure to report for work as scheduled on three (3) or more consecutive workdays and failure to obtain approval for such absence;

2. Excessive absences caused by ongoing medical or personal problems that are not resolved within three (3) calendar months after the date the employee exhausts all paid leave, including any grants of leave received from the sick leave bank.

Section B. Management Responsibility. Prior to terminating an employee for the reasons stated in (2) above, management must inform the employee in writing of the problem, counsel the employee as to what corrective action to take, and allow the employee adequate time to improve or correct performance or attendance.

Section C. Appeal. A nonprobationary employee who is terminated may appeal to the MSPB pursuant to the Montgomery County Charter or may grieve pursuant to Article 8 of this Agreement, but not both. A probationary employee may grieve or appeal only to redress a failure to afford rights provided at Sections A.2 and B above.

Article 53 *Performance Evaluation*

Performance evaluations are not grievable except in cases of failure to follow established procedure.

Article 54 *Demotion*

Section A. Definition. Demotion is the movement of an employee from one merit system position or class to another with a lower grade level assignment.

Section B. Voluntary Demotion. Voluntary demotion may occur with the written consent of an employee. Such demotion must be without prejudice and may be used to retain an employee whose position has been abolished or reclassified downward or who, because of physical or mental incapacity, is unable to productively perform assigned duties and wishes to continue employment in a position for which qualified. Such demotion must not be detrimental to an employee's work record and must not adversely affect the employee's opportunity for future promotion to a position for which qualified.

Section C. Involuntary Demotion. A unit employee who received a less than satisfactory work performance evaluation after written warning, counseling and at least three (3) months to improve, may be demoted involuntarily. Such employee must receive written notice at least ten (10) working days prior to the effective date of the demotion. The notice must contain the reasons for the action with specific charges, or reasons, the effective date, and appeal rights.

Section D. Appeals. A unit employee may appeal an involuntary demotion.

59

Article 60 *Career Development Study Committee*

Section A. Joint Study Committee. The Study committee shall provide recommendations to the parties for the purpose of reaching further agreement on the components of a career development program. The Committee shall consist of three representatives from the Union and three representatives from the Employer.

Section B. Subjects for Review. The parties shall review in connection with their study the following subjects:

1. Training opportunities and selection
2. Career planning
3. Career counseling

Section C. Career Counseling. The County shall provide career enhancement counseling to each unit member. Such counseling shall occur annually.

Section D. Position Descriptions. The County shall develop maintain a listing of career specialty assignments which shall include the knowledge (including training), skills, and abilities ("KSA's") that are required or desired in order to be eligible for assignment to each specialized position. The completion of the listing shall be subject to the completion of a job analysis, however, as position analyses are completed, the position KSA's shall be placed on the listing.

Section E. Training Announcement. The County shall develop and annually update a listing of all internal training courses and maintain a listing of those external training courses which the Public Services Academy has identified as supporting the Department's training needs. These lists shall be available for review by all officers.

Article 61 *Directives and Administrative Procedures*

Section A. Changes to directives, rules and procedures referenced in agreement. This agreement has been negotiated in the manner set forth in the Preamble. Negotiable matters pertaining to administrative procedures, department directives, and rules referenced in this agreement (including those that are part of any appendices) are subject to addition, change, amendment, or modification, only after specific notice is provided to the union with an opportunity to bargain and after the parties reach agreement. If no agreement is reached, the addition, change, amendment, or modification shall not be implemented.

Section B. Changes to directives, rules and procedures not enumerated in agreement. Changes to directives, rules and procedures not enumerated in this agreement, or the effects on employees of the employer's exercise of a management right as enumerated in Article 42 § A, which involve matters appropriate for collective bargaining will be proposed by the County to the Union for bargaining. Thereafter, and before implementation, bargaining and agreement shall occur. Failing agreement, the dispute will be resolved pursuant to the impasse
procedures (excluding dates) of Chapter 33, § 33-81(b) of the Montgomery County Code.

Section C. Procedures for Review of Directives **Draft copies of proposed changes to directives, rules, and procedures shall be forwarded to the Union along with a copy of the current directive, rule or procedure (if applicable.) All changes shall be identified in the draft document. The Union shall notify the Department of any comments it has regarding the draft document within fourteen calendar days from its receipt of the draft. Failure to respond shall be deemed a negative reply.**

Appendix H

DEPARTMENT MISSION AND ORGANIZATIONAL VALUES

FUNCTION CODE: 210
EFFECTIVE DATE: 10-25-92

Our department's mission statement has been rewritten to reflect our transition to a community policing philosophy. It reflects our commitment to providing quality service by working in partnership with the community to resolve quality of life issues. This mission statement articulates our fundamental reason for existing as an organization and provides us with a "guide" to help us shape our future.

Mission Statement

We, the Montgomery County Department of Police, are committed to providing the highest quality of police services by empowering our members and the community to work in partnership with the goal of improving the quality of life within Montgomery County, while at the same time maintaining respect for individual rights and human dignity.

Why Organizational Values

Within our society, individuals have increased their awareness of the importance of personal values. As a result, they are more insistent that government accomplish its mission in a manner which reflects the current values of society. Our values were developed by a cross-section of the department and the community. Efforts were made to allow all members of the department the opportunity to comment on them before they were adopted. Additionally, they were presented to the community for approval at numerous public forums which were hosted throughout the county. (CALEA 1.1.5)

These values set out the context in which we will accomplish our mission. They define the acceptable means we can use in our day-to-day operations. They also represent a statement of how we, as an organization and as individuals, wish to be judged by both the department and by the public. Our values should guide us in our actions and behavior. It is important that all members of the organization consider these values prior to taking any action, making managerial decisions or when dealing with our customers. Department members are encouraged to remind each other when our actions are not in conformance with our values. Supervisors and managers must review anticipated decisions and actions to ensure that they are in compliance with our values and have the commitment to change those that do not conform to our values.

The department is beginning its efforts to incorporate these values into our organizational culture. They will be woven into the subject matter of all department training programs, incorporated into our performance appraisal system and become a part of our day-to-day operations. However, values are useless unless the members of the organization live the values. The department recognizes that this will not occur overnight. We must begin this journey now!

Function Code: 210
Effective Date: 10-25-92

Organizational Values

Partnership *We are committed to working in partnership with the community and each other to identify and resolve issues which impact public safety.*

Respect *We are committed to respecting individual rights, human dignity and the value of all members of the community and the department.*

Integrity *We are committed to nurturing the public trust by holding ourselves accountable to the highest standards of professionalism and ethics.*

Dedication *We are committed to providing the highest quality of professional law enforcement service to the community with the goal of enhancing the quality of life within Montgomery County.*

Empowerment *We are committed to empowering our members and the community to resolve problems by creating an environment that encourages solutions that address the needs of the community.*

. . . PRIDE IN OUR COMMUNITY. . .
. . . PRIDE IN OUR DEPARTMENT. . .
. . . PRIDE IN OURSELVES. . .

All functional and geographic units will be issued mission and values posters and will display these posters in prominent locations visible to both the public and our members. Requests for additional posters may be forwarded to the Office of Community Policing.

Colonel Clarence Edwards
Chief of Police

DISCIPLINARY PROCESS

FUNCTION CODE: 301
EFFECTIVE DATE: 11-15-94

Contents:

I. Policy
II. Authority in Discipline Matters
III. Definitions
IV. Initial Filing of a Complaint
V. Investigation of Complaints
VI. Summary Punishment
VII. OIA Notification Procedures
VIII. Proponent Unit
IX. Cancellation

I. Policy

A relationship of trust and confidence between the department and the community is essential to effective law enforcement. Officers must be free to exercise their own judgment and take enforcement action in a reasonable, lawful, and impartial manner without fear of reprisal. It is therefore important to establish a disciplinary process which enables the department to initiate positive, corrective action for improper conduct while at the same time protecting officers from unwarranted criticism for properly discharging their duties. It is the policy of this department to provide a thorough, fair, and expeditious disposition of complaints regarding the conduct of department employees. Further, it is the policy to invite individuals to bring to the attention of the department complaints about the conduct of its employees whenever that person believes the employee acted improperly. Complaints will be received courteously, and the department will make every effort to ensure that no adverse consequences occur to any person as a result of having brought what they believe to be a legitimate complaint or information to our attention. All complaints will be investigated in accordance with the procedures described herein. The complaint disposition will be made consistent with the obligation of providing equitable process for all parties involved. The procedures enumerated within apply to allegations of misconduct against employees of the department, both on-duty and off-duty. (CALEA 26.1.5, 26.1.7, 52.1.10)

II. Authority in Discipline Matters

The Chief of Police has authority for disciplinary action involving sworn personnel (within the guidelines of the Law Enforcement Officers' Bill of Rights - L.E.O.B.R.) and department civilian employees.

III. Definitions *CALEA 52.1.9*

A. Complaint - A complaint is an allegation of misconduct made against an employee(s) of the department.

B. Serious Allegations of Misconduct - Serious complaints include, among other acts, physical brutality, complaints which allege racial prejudice, misappropriation of monies, or untruthful statements.

C. Minor Complaints of Misconduct - Minor complaints are not enumerated in this directive, but include those allegations, which if sustained, would be appropriately disciplined through the imposition of summary punishment or use of the Supervisor's Remedial Action Form (MCP 30). (CALEA 52.1.1)

D. Brutality - Brutality is considered the use of excessive or unjustified physical force by an officer in the exercise of official duties.

E. Summary Punishment - Disciplinary action implemented by the highest ranking officer of a unit, or officer acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days suspension without pay, or a fine of $150.00.

F. Counseling - Supervisory counseling of subordinates is nondisciplinary corrective action. In most cases, the action taken will not be made part of the employee's personnel record. (An exception is the action taken in at-fault accidents.)

G. Letter of Reprimand - This is the least severe punishment which can be given to an employee. The letter documents the violation for inclusion into the employee's personnel file.

H. Non-Punitive 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 that 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." Article 27, Section 728(c).

I. Unfounded - The investigation of the complaint indicates that the acts complained of did not occur.

J. Not Sustained - The investigation failed to disclose sufficient evidence to prove or disprove the allegation.

K. Exonerated - The incident did occur, but the actions of the accused were justified, lawful and proper.

L. Sustained - The investigation disclosed sufficient evidence to prove the allegations of misconduct.

M. Policy Failure - The incident did occur, but there was an omission of policy or the established policy was insufficient or ineffective. ***Therefore, the allegation(s) involving the affected employee will be considered Not Sustained for purposes of this finding.*** The directive will be referred to the Planning & Policy Management Section for correction and re-issue.

N. Chief - Chief of Police, Montgomery County.

IV. Initial Filing of a Complaint

A. Complaints - Individuals are encouraged to use the Complaint Form, MCP #580, (Appendix A) to document their complaints alleging misconduct. Use of the Complaint Form is not a requisite for filing a complaint. The person may, as an alternative, prepare a narrative written statement about the event including the times, dates, location and name of the officer(s), if known. An individual desiring to complain about an employee of the Department of Police either in person or by telephone, will be referred to the on-duty executive officer or highest ranking police supervisor within the district of occurrence or affected functional unit. A photocopy of the complaint will be given to the complainant as a receipt. (CALEA 26.1.4, 52.1.5)

1. Minor Cases of Misconduct: If the preliminary interview by that officer indicates the complaint is of a minor nature, it can be handled by the employee's immediate supervisor. The supervisor will

document the incident with the following information included in the report: (CALEA 26.1.4, 26.1.8, 52.1.1)

a. Date, time and location of incident.
b. The name, address and telephone number of any witness(es). (CALEA 52.2.10)
c. The details of all circumstances surrounding the incident. The results will be documented in the investigation report as outlined in Section V, G. Such complaints could result in the implementation of summary punishment as outlined in Section VI of this directive. The Office of Internal Affairs will be contacted Monday thru Friday, 8:00 a.m. - 4:00 p.m. for a control number. If the circumstances are such that it is not clear as to who should conduct the investigation, the OIA Director, when contacted for the control number, will determine on the basis of the seriousness and complexity of the case, whether the complaint will be handled at the unit level or by OIA. (CALEA 52.1.1)

2. Serious Cases of Misconduct: (CALEA 52.1.1)
   a. Serious complaints should be documented in written form by the complainant and forwarded to the Office of Internal Affairs. If the complainant refuses to document the complaint, and the allegation, if factual, would constitute misconduct, the receiving officer will document the complaint utilizing the Complaint Form and forward it to OIA. At OIA the investigative assignment will be made and a letter of acknowledgment sent to the complainant. (CALEA 52.1.5)
   b. Complaints alleging brutality by a police officer must be duly sworn to prior to any investigation. "A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member of the aggrieved person's immediate family, or by any person with firsthand knowledge obtained as a result of the presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality." Article 27, Section 728 (b)(4).
   c. Recent Maryland Court decisions have carved out some exceptions to the 90 day time limit requirement. The 90 day rule is a statutory guide that should be followed in most circumstances. However, if the 90 day period has expired but it appears that good cause has been shown for not meeting the statutory 90 day limit, the excessive force complaint will be accepted and forwarded to the Director, Office of Internal Affairs. The Director will review the facts and reasons for the lack of a timely filing. The decision to investigate or not shall be made by the Chief of Police or his designee in a case-by-case basis.

B. Complaint by an Employee of the Department - Any employee desiring to

(65)

file a complaint against another employee of the department, will document the identical information prescribed above for a complaint and submit it to the Office of Internal Affairs.

C. Anonymous or Uncooperative Complainant - Anonymous complaints are not, per se, excluded from investigation. Anonymous callers will be referred to the Office of Internal Affairs. 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, and where possible, a preliminary inquiry into the complaint will be made. The investigation will be terminated when no additional evidence can be obtained. The case will then be documented and the subject officer (if known) may be informed of the nature of the complaint and the result of the investigation.

D. Nothing precludes the department from investigating allegations against police officers from whatever source consistent with law when it is determined that such investigation is in the best interests of the department.

E. Any department employee who takes retaliatory action against a complainant or witness shall incur 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. (Article 27, Section 728 (b)(11)).

V. Investigation of Complaints (CALEA 52.1.1)

A. ***The Office of Internal Affairs has primary responsibility for conducting administrative investigations in the following instances: (CALEA 52.1.1)***

1. ***All use of force complaints.***
2. ***All firearms discharges to include intentional and accidental discharges, regardless of the employee's duty status (except for range practice or the destruction of animals).***
3. ***All racial, ethnic, and sexual harassment/discrimination complaints.***
4. ***All administrative investigations required whenever an employee is charged with a criminal offense, or while operating a motor vehicle while under the influence of alcohol or drugs, or when the employee is an operator of a county vehicle involved in a fatal accident.***
5. ***Any complaint designated by the Chief of Police or his designee.***

B. The Director of Internal Affairs will use the following guidelines in determining whether the investigation will be conducted by the Office of Internal Affairs or by the individual's commanding officers, ***excluding those complaint categories as delineated in Section V., A of this directive: (CALEA 52.1.1)***

1. Type of complaint.
2. Source of the complaint.
3. Number of individuals involved (accused and/or witnesses).
4. Whether the accused officers are assigned to the same unit.
5. Jurisdictional limitations.
6. Underlying indications of graft, corruption or other serious misconduct.
7. Any other related matter that would dictate assignment.

C. In addition, the following principles will serve as guidelines for the Director

606

of Internal Affairs when determining investigative responsibility:

1. Discipline is a command responsibility, and
2. Complaints should be investigated at the lowest possible level.

D. OIA Log - An OIA log will be maintained to record all complaints against departmental personnel. This log will include the following information:

1. The name of accused employee(s).
2. Name of complainant.
3. District of complaint.
4. Nature of complaint.
5. O.I.A. control number.
6. Date complaint received.
7. Date of incident.
8. Unit assigned to investigate.
9. Disposition.

E. Cases Assigned to Units - Unit commanders assigned cases by the Office of Internal Affairs may assign an executive officer or supervisor under his command to conduct the investigation. If, after investigation, the case is sustained and the investigator feels that summary punishment is an appropriate remedy for the violation, the investigator will include a recommendation for a specific summary punishment within the report. Upon completion of the investigation, the report and recommendation, if applicable, will be forwarded to the appropriate unit commander for his review and implementation. Should the unit commander not concur with the findings or actions of the investigator, the commander may choose one of several courses of action: (CALEA 26.1.5)

1. The commander may review the case with the investigator to point out deficiencies of supportive facts.
2. The commander may direct the investigator to continue the investigation.
3. Portions of the report may require rewriting because of non-supportive critical statements.
4. The commander may issue his own comments or modifications to a disciplinary action recommendation or investigative report.
   When the unit commander concurs with the investigator on the recommended summary punishment, punishment may be implemented by the unit commander or by the investigating supervisor at the direction of the unit commander. The Chief of Police shall reserve the right to review disciplinary actions and related matters, regardless of their origin.
5. ***All internal investigations conducted at the unit level will be reviewed by the Director, Office of Internal Affairs, prior to submission to the Chief of Police.***
6. ***All internal investigations will be completed within a ninety (90) day period unless an extension is authorized by the Director, Office of Internal Affairs or his designee. (CALEA 52.1.4)***

F. Cases Assigned to OIA - When a complaint is to be handled by OIA, the OIA Director will assign an investigator from OIA to conduct an investigation and obtain any documentary evidence. After completing the investigation, an internal report will be written which the OIA Director will review and forward to the Chief of Police.

G. Internal Reports and Case Findings - All internal reports will include:

1. The allegations.
2. A statement of facts arranged in chronological order.
3. The findings of the investigation classified as one of the following:
   a. Unfounded

b. Not Sustained
c. Exonerated
d. Sustained
e. Policy Failure

4. See Appendix "B" for format of report.

H. Interrogation of Officers Under Investigation

1. Notification (Use of Form MCP 242 - Appendix "C") - "The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness not less than ten days prior to any hearing." Article 27, Section 728 (b)(5).
   In order to ensure the protection of rights guaranteed by the Law Enforcement Officers' Bill of Rights, the "Internal Investigation Notification Form", (MCP 242), is used in the administrative investigation of any incident which could lead to disciplinary action against an officer. Once an apparent violation is discovered and the supervisor's investigation focuses on a particular officer, the "Internal Investigation Notification Form" shall be executed prior to interrogation of that officer.
   For example, since many at-fault traffic accidents result in disciplinary action, this form should be executed prior to the supervisor's questioning of the responsible officer. It is suggested that the supervisor allow the accident investigator to complete the accident report prior to the start of the supervisor's investigation.
2. Representative at Interrogation - "At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present 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 ten days until representation is obtained. However, the chief may, for good cause shown, within that ten day period, extend that period of time." Article 27, Section 728 (b)(10).
3. L.E.O.B.R. Rights Waiver - A police officer under investigation may waive, in writing, any or all rights provided under the L.E.O.B.R. It is a requirement of the law that the waiver of those rights be done in writing. To that end the L.E.O.B.R. Rights Waiver Form should be utilized for that purpose.
4. Record of Interrogation - "A complete record, either written, taped or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. Upon completion of the investigation, and upon request of the law enforcement officer 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." Article 27, Section 728 (b)(8).
5. When to Use MCP #50 - Interrogation Rights & Waiver Form - "If the law enforcement officer under interrogation is 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." Article 27, Section 728 (b)(9).

6. Time, Place and Manner of Interrogations (CALEA 52.1.6)
   a. "The interrogation shall take place either at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, unless otherwise waived in writing by the law enforcement officer, or at any other reasonable and appropriate place." Article 27, Section 728 (b)(2).
   b. "The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required." Article 27, Section 728 (b)(1).
   c. "Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary." Article 27, Section 728 (b)(6).
   d. "The law enforcement officer under interrogation may not be threatened with transfer, dismissal or disciplinary action." Article 27, Section 728 (b)(7)(i).
   e. "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..." Article 27, Section 728 (b)(3).
7. Required Interrogations and Tests - "This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath or urine tests for controlled dangerous substances, polygraph examinations or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath or urine tests for controlled dangerous substances, polygraph examination or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol tests, blood, breath or urine test for controlled dangerous substances, polygraph examination or interrogation, as may be required by the law enforcement agency under this sub-paragraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the Administrative Hearing." Article 27, Section 728 (b)(7)(ii). (CALEA 52.1.6, 52.1.7)
8. During the internal investigation, any officer may be ordered by the investigator to submit a statement and/or answer all questions which specifically relate to the subject

matter of the investigation regardless of the relative rank of the officers involved.

I. An investigation shall result in no punitive action where the employee's conduct was exonerated or when there is not substantial evidence of misconduct found. In such cases, employees will be furnished a copy of any reply to a complainant. In those cases where a violation is indicated, the employee will be notified via memorandum from the Chief of Police or his designee and the complainant will be advised by letter of the outcome of the case after final adjudication. (CALEA 26.1.8)

J. Reports of internal investigations, including witness statements, are confidential. Authorization for access to these reports can only be granted by the Chief of Police. (CALEA 26.1.8, 52.1.1)

K. In those cases where a charge of misconduct has been sustained and the officer has requested a hearing board, the officer will be furnished with a copy of the investigative file under the following condition (Art. 27, Sec 728, (5) (iii): (CALEA 26.1.8)

1. Excluding the identity of confidential sources.
2. Excluding any non exculpatory information.
3. Not less than 10 days before any hearing if the officer and the officer's attorney agree:
   a. 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
   b. to pay any reasonable charge for the cost of reproducing the material involved.

VI. **Summary Punishment** (See Appendix D for format to be used.) (CALEA 52.1.1)

A. Statutory Provisions - Summary punishment may be imposed for minor violations of departmental rules and regulations when: (i) "The facts which constitute the minor violation are not in dispute; (ii) the officer waives the hearing provided by this subtitle; and (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached." Article 27, Section 734 A(1).

B. Other Considerations - The above procedure does not preclude a commander from counseling a subordinate. Use of the counseling process can correct undesirable behavior while maintaining maximum harmony between a supervisor and subordinate.

C. Review - To ensure fairness and consistency in disciplinary matters involving the offer of summary punishment, all summary punishment cases will be reviewed by the Deputy Chief of Police prior to an offer being made to an employee.

VII. **OIA Notification Procedures**
The Office of Internal Affairs may be notified between 8:00 a.m. and 4:00 p.m., Monday through Friday. At all other times, an Internal Affairs Investigator will be available through ECC under the guidelines of this directive. (CALEA 52.1.1)

A. An OIA investigator will be notified ***of and will immediately respond whenever*** an employee is involved in any of the following circumstances:

1. ***When an employee is involved in a firearm discharge whether intentional or accidental and regardless of duty status, except*** for authorized target practice or

the killing of a dangerous or injured animal as authorized by the department directive on firearm discharges. (CALEA 1.3.6)

2. When an ***employee*** is charged with a criminal offense, or anytime there is an allegation of criminal activity on the part of an employee where police investigation is necessary regardless of jurisdiction of occurrence.
3. ***When an employee is charged with operating a motor vehicle while under the influence of alcohol or drugs.***
4. When an ***employee*** is the operator of a county vehicle involved in a fatal accident.
5. Any incident where an executive officer or officer in charge of the district of occurrence feels an immediate administrative investigation is necessary or where so directed by the Chief of Police or his designee.

Note: ***Refer to F.C. 310, Administrative Leave, regarding mandatory suspension of police powers and administrative leave requirements.***

B. Notifying Officer's Responsibility
When the circumstances are such that a notification of OIA is necessary (events listed in Section A), the notification will be effected by an executive officer by direct contact with OIA during business hours or by utilizing the on-call list of OIA investigators available in ECC during off-duty hours. Any doubt should be resolved in favor of making the notification. Once notification is made, the responsibility for the administrative investigation lies with the OIA investigator. If an executive officer is unavailable, the responsibility for notification will revert to the senior ranking officer on the scene of the event.

C. On-Call Investigator's Responsibility
Upon notification, the OIA investigator will immediately respond to those incidents as listed in Section A. The responsibility of any traffic or criminal investigation rests with the appropriate unit. OIA investigators will conduct a concurrent investigation which mandates inter-unit cooperation. Interrogations of accused officers by OIA investigators will be conducted independently of any other interview or interrogation. OIA investigators will not involve themselves in the interrogation of accused officers conducted by other units unless so requested.

D. Responsibility of the Director of Internal Affairs - The officer in charge of OIA shall maintain a current and continuous list of on-call OIA investigators. This list will be accessible to ECC.

E. The Director of OIA will be responsible for immediately notifying the Chief of Police in those instances as delineated in Section A. (CALEA 52.1.3)

VIII. Proponent Unit: Office of Internal Affairs

IX. Cancellation - This directive cancels Function Code 301, dated 05-10-93.

Clarence Edwards

Colonel Clarence Edwards
Chief of Police

71

DEPARTMENT OF POLICE

Douglas M. Duncan
County Executive

To the Community:

A relationship of trust and confidence between employees of the Police Department and the community they serve is essential to effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a reasonable, lawful and impartial manner without fear of reprisal, while at the same time having a special obligation to respect the rights of all persons.

The Montgomery County Department of Police acknowledges its responsibilities to establish a system of complaint and disciplinary procedures which not only will subject the officers to corrective action when they conduct themselves improperly, but also will protect them from unwarranted criticism when officers discharge their duties properly.

It is the purpose of these procedures to provide a prompt, open and expeditious disposition of complaints regarding the conduct of employees of the Department of Police. To this end, individuals are encouraged to bring complaints about department operations and the conduct of its employees to our attention whenever they believe that such an act is improper.

Should you have any questions regarding these procedures, please contact the Office of Internal Affairs at 217-4060 (TDD 762-7619) during normal business hours, Monday through Friday. The department's procedural directive on complaints is also available for inspection, upon request.

Carol A. Mehrling

Carol A. Mehrling
Chief of Police

72

Office of the Chief of Police
2350 Research Boulevard • Rockville, Maryland 20850-3294

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE
COMPLAINT FORM

MCP 580
Rev. 05/95

Today's Date

Your Name (last, first, middle)

Address (number & street)

City/State/Zip

Home Phone # Work Phone #

Incident Date and Time

Incident Location

I am making this complaint against:

Name(s), if known

Witness Name (last, first, middle)

Address (number/street/city/state/zip)

Home Phone # Work Phone #

Witness Name (last, first, middle)

Address (number/street/city/state/zip)

Home Phone # Work Phone #

DESCRIPTION OF COMPLAINT

(Be detailed - use additional paper if necessary)

Your Signature

COMPLAINTS OF BRUTALITY MUST BE SWORN TO

Name of the Police Department employee to whom this complaint form is given:

Please note: Complaints against police officers are investigated within the guidelines of the Law Enforcement Officers' Bill of Rights as enumerated in Article 27 of the Annotated Code of Maryland. If you are not contacted by an investigator within a reasonable time period, please contact the Office of Internal Affairs at 217-4060.

FUNCTION CODE: 301
CALEA: 52.1.12
PROPONENT UNIT: Office of Internal Affairs

DISTRIBUTION:
Original - OIA
Copy - To Complainant as receipt

73

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE

MCP 242
Rev. 5/96

INTERNAL INVESTIGATION NOTIFICATION MEMORANDUM

TO: _____

FROM: _____

SUBJECT: **INTERNAL INVESTIGATION NOTIFICATION MEMORANDUM**

DATE: _____

In compliance with the Law Enforcement Officers' Bill of Rights, Article 27, Sections 727 through 736D, and the Department Directive on disciplinary process, Function Code 301, you are hereby notified that you are the subject of an internal investigation being conducted by this Department.

The nature of the investigation is:

_____

_____

Investigating Officer _____ Assignment _____

NOTICE OF RIGHTS

You have the right to the presence and assistance of a responsible representative or attorney of your choice during the questioning. If you are an active member of F.O.P. Lodge 35, the Lodge will represent you in this matter. The interrogation shall be suspended for a period of time not to exceed ten (10) days until representation is obtained. Before making a statement, contact your Steward or the Lodge office at 948-HELP (4357). Your F.O.P. may be able to provide you with valuable assistance in this matter.

NOTICE OF INTERROGATION

YOU ARE DIRECTED TO REPORT TO THE OFFICE OF INTERNAL AFFAIRS ON _____ AT _____ HOURS FOR YOUR SCHEDULED INTERROGATION. TO REQUEST ANY CHANGE OF YOUR SCHEDULED INTERROGATION, YOU MUST CONTACT THE OFFICE OF INTERNAL AFFAIRS.

I hereby acknowledge receipt of a copy of this form and have noted the assigned interrogation date and time.

Officer's Signature _____ Date _____

Serving Officer's Signature _____ Date _____

FUNCTION CODE: 301, 350
CALEA: 52.1.6
PROPONENT UNIT: OIA

74

Montgomery County Government

APPENDIX "B"
FC 301

FORMAT OF INTERNAL INVESTIGATION REPORTS

TO: Chief of Police

VIA: Deputy Chief

FROM:

SUBJECT: Internal Investigation FILE: OIA # ____

DATE:

ACCUSED: DOE, John J., - PO III
Wheaton Glenmont District
(If more than one officer, list all accused officers - Accused # 1, etc.)

COMPLAINANT: JONES, Jack J.
12345 Any Street
Wheaton, Maryland 20014
Phone: 777-1234

FOR: ADAMS, William S.
94 Water Street
Rockville, Maryland 20906
Phone: 555-1234
(Use only if the complaint was made in another's half)

ALLEGATION #1: COURTESY
DEPARTMENT RULES, FUNCTION CODE 300, RULE 22.
"EMPLOYEES WILL BE COURTEOUS AND DISCREET TO MEMBERS OF THE PUBLIC, AND ALL MEMBERS OF THE LAW ENFORCEMENT COMMUNITY INCLUDING DEPARTMENT PERSONNEL. EMPLOYEES WILL MAINTAIN PROPER DECORUM AND COMMAND OF TEMPER, AND AVOID THE USE OF VIOLENT, INSOLENT OR OBSCENE LANGUAGE."

TO WIT: JONES alleges that during a traffic stop on July 6, 1980, DOE called him a "son-of-a-gun."

FINDING: SUSTAINED

Department of Police
2350 Research Boulevard, Rockville, Maryland 20850-3294, TDD 762-7619

ALLEGATION #2: CONDUCT UNBECOMING
DEPARTMENT RULES, FUNCTION CODE 300, RULE 14.
"NO EMPLOYEE WILL COMMIT ANY ACT WHICH CONSTITUTES CONDUCT UNBECOMING AN EMPLOYEE OF THE DEPARTMENT OF POLICE. CONDUCT UNBECOMING INCLUDES,BUT IS NOT LIMITED TO, ANY CRIMINAL, DISHONEST OR IMPROPER CONDUCT."

TO WIT: JONES alleges that during a traffic stop on July 6, 1980, DOE kicked the car door without provocation.

FINDING: EXONERATED

(Numerically list all other allegations)

INVESTIGATOR: Sergeant D. E. WILLIAMS

* In sustained cases, except where Summary Punishment has been accepted, list all witnesses' names, addresses, home and work numbers.

STATEMENT OF FACTS

In chronological order, relate the facts revealed during the investigation. Pay special attention to information that would affect the finding of an allegation and identify the source. (i.e., "During interrogation DOE stated....", "A witness, Mr. BROWN observed...").

FINDINGS

Allegation #1: This allegation is SUSTAINED due to DOE'S admission that he did call JONES a "son-of-a-gun."

Allegation #2: DOE is EXONERATED from JONES' allegation that he kicked the car door without provocation. This finding is based on DOE'S statement that he kicked the door when JONES tried to hit him with it. DOE'S statement is supported by the observations of Mr. BROWN.

(The preceding section will be attached to the right side of the file folder with prong type fasteners).

MEMORANDUM OF NOTIFICATION

FUNCTION CODE: 301.B
EFFECTIVE DATE: 05-23-97

Contents:

I. Procedure
II. Proponent Unit
III. Cancellation
Appendix A - Memorandum of Notification, MCP 552

I. Procedure

A. A Memorandum of Notification, MCP 552, shall be used whenever any information is to be placed into an employee's personnel file (includes unit files). This procedure does not apply when the Supervisor's ***Documentation*** Form, MCP 30, is used.

B. Mark the category(ies) that most closely represent the subject matter.

C. Distribution
One original and two copies of the MCP 552 will be distributed as follows:
1. Original to the employee,
2. One copy placed in the station level file, and
3. One copy forwarded with the rest of the package to the respective bureau chief via the chain of command.

II. Proponent Unit: Personnel Division

III. Cancellation

This directive cancels Function Code 301.B, effective 08-15-91.

Carol A. Mehrling
Chief of Police

77

Department of Police
Montgomery County, Maryland

MCP 552
Revised 04/01/97

Memorandum of Notification

TO: _____

FROM: _____

REFERENCE: _____

The Following Referenced Documentation Is Being Forwarded For Inclusion Into Your Personnel File

[ ] Employer's First Report of Injury Form

[ ] Motor Vehicle Accident or Loss notice

[ ] MCP Event Report

[ ] Maryland Vehicle Accident Report

[ ] Immediate Supervisor's Investigative Memorandum

[ ] Other (identify)_____

[ ] The documentation indicated above **may be considered "ADVERSE MATERIAL".** A copy is therefore attached for your review. You may make written comments on a separate sheet of paper. Please sign below to indicate your receipt of the materials checked above and return to your commanding officer.

_____
Employee Signature

_____ _____
Commanding Officer's Signature **Date & Time Form Executed**

Function Code: 301.B
CALEA: 26.1.4
Proponent Unit: Personnel Division

Distribution	
Original	- Employee
Yellow Copy	- Station
Pink Copy	- Bureau Chief

ADMINISTRATIVE AND SUSPENSION HEARING BOARDS

FUNCTION CODE: 301.C
EFFECTIVE DATE: 03-17-97

Contents:

I. Policy
II. Definitions
III. Administrative Hearing Boards
IV. Emergency Suspension Hearing Boards
V. Proponent Unit
VI. Cancellation

I. Policy - It is the policy of this department to provide fair and thorough hearings for those employees accused of misconduct in order to maintain an atmosphere of integrity and professionalism.

II. Definitions

A. **Administrative Leave** - Leave with pay (non-punitive) as opposed to an action resulting in an employee being suspended (which is a punitive action and is without pay). Placing an employee on administrative leave is not disciplinary; however, some events require this action (Refer to DD 310).

B. **Emergency Suspension** - An action by the Chief of Police, or designee, to temporarily relieve an officer of powers of arrest and use of police equipment, and to discontinue pay.

C. ***Traditional Administrative Hearing Board - The Board will consist of three members. All members of the board are selected by the Chief of Police, with one member being of equal rank as that of the accused. The chairperson will be an executive officer appointed by the Chief of Police.***

D. ***Alternative Administrative Hearing Board - The Board will consist of three members. The Chief of Police will appoint one member, as will the FOP. The third member, who will function as the chairperson, will be selected from a previously agreed upon panel of arbitrators. The Alternative Hearing Board process is not available in hearings stemming from summary punishment cases.***

III. Administrative Hearing Boards

A. *"If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, except as provided under subsection (c) of this section ("A law enforcement officer is not entitled to a hearing under this section if the law enforcement officer has been charged and convicted of a felony.") and except in the case of summary punishment or emergency suspension as allowed by Section 734A of this subtitle and before taking that action, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing."* Article 27, Section 730 (a).

B. The Administrative Hearing Board, convened by direction of the Chief of Police, conducts administrative

hearings to hear charges against department personnel. It brings forth to the Chief of Police a finding of fact concerning the charges and, in sustained cases, recommends a course of action. It is the duty of the board to judge the validity of charges made against officers. The decision will be made upon the information contained in investigative reports, statements, documents, testimony of witnesses, and other appropriate evidence introduced during the hearing. The recommendation of the board is based on a simple majority vote. A hearing by the board is an administrative proceeding in which neither life nor liberty is placed in jeopardy. The rules of evidence applicable in a criminal trial need not be strictly followed; hearsay and other evidence may be introduced for probative value. However, a hearing by the board is a quasi-judicial proceeding; as such it should be conducted in adherence to appropriate guidelines. The proceeding will be conducted with a certain amount of informality; however, a set agenda and definite rules of procedure will be established and explained to all parties at the opening of the hearing.

C. Upon completion of an investigation where an administrative charge has been sustained, a memorandum will be prepared and sent to the officer. That memorandum, bearing the signature of the Chief of Police, shall cite the charge(s) sustained, and the recommended punishment for each charge. Attached to that memorandum will be a ***"Notice of Elective Hearing Board" (Appendix A)*** informing the officer of hearing rights. The officer shall make a decision within 7 (seven) days as to acceptance or refusal of the offered punishment. If the officer declines the punishment, the type of hearing requested must be indicated. If an alternative hearing is requested, that request must be approved in writing by an authorized representative of the FOP and then forwarded to the Director, OIA. The selection form must be returned to the Director, OIA, within 7 (seven) days. Failure to return the memorandum within that time limit will result in the automatic setting of a traditional hearing board. A memorandum returned by the accused officer requesting an alternative board, but not bearing the signature of an authorized FOP representative, will result in a traditional hearing board being set. Once the accused officer has made a selection as to the type of hearing desired, that decision is irrevocable. When an officer chooses to waive the hearing, such waiver will be documented and forwarded to the Chief of Police prior to the hearing date. In consideration of the potential inconvenience to witnesses, it is required that this waiver be made in time to allow proper notification. A waiver will result in a predetermined punitive action being administered.

D. Formation of a Traditional Administrative Hearing Board
   1. The chairperson will be an executive officer appointed by the Chief of Police.
   2. The Director, OIA, will contact the applicable Bureau Chief. The Bureau Chief, or designee, will select the two remaining board members.
   3. The Bureau Chief, or designee, will make the individual selection based on the following guidelines:
      a. The officer selected is regularly scheduled for daywork on the date the hearing is scheduled.
      b. The officer selected is not assigned to the same geographic or functional unit as the accused officer.
      c. The officer selected is not a close, personal friend of the accused officer or a relative.

80

d. The officer selected is not a former immediate supervisor or subordinate of the accused officer.

4. The same guidelines will be followed for selection of the third board member who must be of the same rank as that of the accused officer.
5. The accused officer or his counsel may challenge for cause any officer selected to serve on the board. If the Chairperson of the board determines that cause for removal has been established, the challenged officer will be removed and another officer will be selected to serve on the board in accordance with this Directive.

E. ***Formation of an Alternative Administrative Hearing Board***

1. ***The board shall consist of three members: two law enforcement officers and a neutral chairperson. The Chairperson shall be chosen from a standing panel of arbitrators maintained for such purpose by the County and FOP Lodge 35. The Chairperson shall be selected to hear cases in rotation in the order their names appear. If the arbitrator slated to hear a case cannot hold the hearing within a reasonable time, the next arbitrator shall be selected.***
2. ***The chief shall appoint one law enforcement officer and the FOP Lodge 35 the other. These appointments shall be announced simultaneously, without undue delay. The law enforcement member appointed by FOP Lodge 35 shall be scheduled to daywork for the duration of the hearing board.***
3. ***No member of the hearing board shall in any way be involved in, or a witness to, any incidents which are the subject to the complaint before them.***
4. ***Except as provided in subsection 5, FOP Lodge 35's choice of a law enforcement member shall be any member of the bargaining unit; and the Chief's choice may be any law enforcement officer in the rank of sergeant or above. Therefore, it is not required that either law enforcement member be of the same rank as the accused officer.***
5. ***If the Chief of Police decides to select a law enforcement member from another law enforcement organization, the FOP Lodge 35 shall receive sufficient notice in time to select a law enforcement member from another law enforcement organization, if it so desires. FOP Lodge 35's choice of a law enforcement member shall be of a rank comparable to the ranks within the collective bargaining unit.***
6. ***Any controversy concerning the formation of an alternative hearing board may be submitted to the chairperson of the hearing board for their hearing and/or decision. Such decision of the chairperson shall be contested pursuant to LEOBOR Sections 732 or 734.***

F. The Administrative Hearing Board Chairperson will contact the other board members prior to the hearing, inform them of the name of the accused officer and the charge(s), and ensure they are familiar with their responsibilities as hearing board members. Additionally, the Chairperson will explicitly instruct the board members that all information obtained through their assignment as a board member be held strictly confidential. The Chairperson will also

issue witness summonses upon request by either party to the hearing (Appendix B). The Chairperson will preside over the board proceedings and decide any questions of procedure, acceptability, and relevancy of evidence. The Chairperson will rule on objections which are raised and all other related matters. The Chairperson will inquire into any discrepancies arising from any testimony, evidence or other facts presented at the hearing. If an issue is identified at the hearing which is unrelated to the issue(s) in question, and in the opinion of the board the new issue warrants formal attention, the board should so recommend in the memorandum they forward to the Chief of Police. They will not further consider such an issue in the deliberations at hand, but if the Chief concurs with such recommendation, the Chief may direct an investigation into the newly developed issue. The Administrative Hearing Board Chairperson will be responsible for apprising the Chief and the affected employee of the Board's findings, recommendations, and actual vote in writing. After deliberation by the Board on the issue(s) in question, the Chairperson and the board members shall reach a consensus as to the appropriate finding of fact for each issue. Included within such finding of fact will be a concise statement applicable to each issue. The discussion of each issue will include references to any testimony or evidence which were relied on for the decision. In the event a Board member dissents from any portion of the finding of fact or the recommendations for action, the Chairperson will note the fact in the report to the Chief. The dissenting member will also submit the rationale for such dissent, and this opinion will be included in the report to the Chief. In setting forth the duties of the Chairperson, it is to be understood that it is not feasible to enumerate all the decisions, rulings, and findings that the Chairperson may be called upon to make. The Chairperson will make the necessary rulings according to their knowledge and objectives, keeping in mind the relevancy of the issue at hand. In the event that an objection or Constitutional challenge to the introduction of certain evidence is made and the Chairperson decides to allow admission of the evidence, the Chairman should note the objection or challenge in the record and proceed with the testimony.

G. General Administrative Hearing Board Order of Proceedings (Appendix C)
- Presentation of Department's case.
- Cross-examination by defense.
- Examination by Board.
- Presentation of defense.
- Cross-examination by Department.
- Examination by Board.
- Summation by Department.
- Summation by defense.
- Final rebuttal by Department.

H. Role of the Administrative Hearing Board
- Examination of all witnesses who testify at the hearing.
- Examination of all evidence presented at the hearing.
- Examination of all officers who testify at the hearing.
- Deliberation leading to findings of fact and recommendation(s) by the Board. This will be done in closed session.

I. The degree of proof necessary for a hearing board to make a finding of guilt is the "preponderance of the evidence". Preponderance of evidence denotes evidence which is of greater weight or more convincing than that which is offered in opposition to it; that is, evidence which as a whole shows that fact or causation sought to be proved is more probable than not.

82

The trier of facts has to determine on which side of an issue the majority or "preponderance" of credible evidence falls.

J. Should an officer disobey a direct order to testify specifically, directly, and narrowly to the facts, the officer may be subjected to disciplinary action for failing to obey a lawful and proper order.

K. Hearing Board Results and Subsequent Action

- *"Any decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by the findings of fact. The findings shall consist of a concise statement upon each issue in the case. A finding of not guilty terminates the action. ..."* Article 27, Section 731 (a). Findings should be made as a matter of principle. This is important for several reasons: the case may be subject to further review; findings apprise the parties of the basis for the decision, and finally, a statement of findings fosters the belief that matters were carefully considered. The members of the Board, during their deliberations, should consider the evidence related to each issue (charge) and come to a conclusion as to their validity.
- *"... If a finding of guilt is made, the hearing board shall reconvene the hearing, receive evidence, and consider the law enforcement officer's past job performance and other relevant information as factors before making its recommendation to the chief. ..."* Article 27, Section 731 (a). *"... The hearing board may recommend punishment as it deems appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment or other similar action which would be considered a punitive measure."* Article 27, Section 731 (b).
- *"... A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record and to the chief. ..."* Article 27, Section 731(a). The written recommendations will be completed by the Board and forwarded to the Chief of Police and the accused officer within 10 (ten) working days after the Board finally adjourns. An extension may be granted by the Chief upon request; the board will then notify the officer of that action.
- *"... The person who may take any disciplinary action following any hearing in which there is a finding of guilt, shall consider the law enforcement officer's past job performance as a factor before he imposes any penalty."* Article 27, Section 731 (a).
- *"The written recommendations as to punishment are not binding upon the chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall review the findings, conclusions and recommendations of the hearing board and then the chief shall issue a final order. The chief's final order and decision is binding and may be appealed in accordance with this subtitle. Before the chief may increase the recommended penalty of the hearing board, the chief personally shall: (1) Review the entire record of the hearing board proceedings;* ***(2) Meet with the law enforcement officer and permit the law enforcement officer to***

be heard on the record; (3) Disclose and provide to the officer in writing at least 10 days prior to the meeting any oral or written communication not included in the hearing board record on which the decision to consider increasing the penalty is based, in whole or in part; and (4) State on the record the substantial evidence relied on to support the increase of the recommended penalty." Article 27, Section 731(c). (CALEA 26.1.6)

- *"Appeal from decisions rendered in accordance with Section 731 shall be taken to the circuit court for the county pursuant to Maryland Rule B2. Any party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals."* Article 27, Section 732. (CALEA 26.1.6)

IV. Emergency Suspension Hearing Boards

A. Once an employee is placed on administrative leave and the Chief of Police is notified of the incident by the employee's Unit Commander, the Chief, or designee, shall determine if an emergency suspension is warranted. *"Emergency suspension **with pay** may be imposed by the chief when it appears that the action is in the best interest of the public and the law enforcement agency. ... Any person so suspended shall be entitled to a prompt hearing."* Article 27, Section 734 A(2). If the Chief, or designee, imposes suspension, they shall notify the employee promptly in writing of that decision and inform the employee that they are entitled to a prompt hearing. The Chief will ensure that a hearing is scheduled as soon as possible and that the employee is notified in writing of the date and time of that hearing.

An officer may waive in writing any or all rights provided in Sections 727 through 734 of the Annotated Code of Maryland.

B. Suspension Hearing Board
1. The purpose of the suspension hearing is to determine whether the suspension of an officer by the Chief of Police, or designee, is reasonable under the circumstances. The procedures for the suspension hearing will follow that of the Administrative Hearing Board with the following exceptions:
   a. The Suspension Hearing Board does not bring forth to the Chief a finding of fact, but merely examines the evidence to the point of determining the reasonableness of the suspension;
   b. Since the board does not determine guilt or innocence, the "preponderance of the evidence" rule applies only to that amount of evidence necessary to determine the reasonableness of the suspension; and
   c. The board does not recommend punishment, but merely recommends action on the issue of suspension.
2. The format to be followed can be found in Appendix D.
3. The hearing can make any of the following recommendations:
   a. The officer be placed on administrative leave.
   b. The officer be suspended without pay.
   c. The officer be returned to full duty.
   d. The officer be assigned to administrative/ restricted duty.
4. The recommendations of the Board will be put in writing and forwarded to the Chief of Police

and the employee within three (3) days of the hearing.

5. Upon receipt of the Board's recommendation, the Chief shall review the recommendation and notify the officer promptly in writing of their status.

V. Proponent Unit
Office of Internal Affairs

VI. Cancellation
Department Directive 301.C, dated 08-15-91.

Carol A. Mehrling

Carol A. Mehrling
Chief of Police

APPENDIX A

NOTICE

You may ACCEPT or NOT accept the punitive action offered. If you choose to NOT ACCEPT the punitive action offered, you are entitled to a regular LEOBR hearing board or an alternate hearing board. Pursuant to your collective bargaining agreement:

1. You have the right to select an alternate hearing board within seven (7) calendar days. A Notice of Election of Hearing Board is set forth below.

2. The alternate hearing board consists of:
   - A police officer selected by FOP Lodge 35 (MPO or below), and;
   - A police officer selected by the Chief of Police (Sergeant or above), and;
   - A neutral labor arbitrator selected from a list previously agreed to by FOP Lodge 35 and the County.

3. If you do not select an alternate board, your case will be heard by:
   - Three police officers all selected by the Chief of Police. One of these police officers must be of your same rank.

4. You are urged to discuss your options with your steward or other FOP Lodge 35 official right away.

5. Once you make your decision, it cannot be revoked.

6. You must deliver this document to the Chief of Police with seven (7) calendar days from the date you receive this notice.

INSTRUCTIONS: Check the appropriate box(es) and sign on the appropriate line.

( ) I ACCEPT the punitive action and WAIVE my rights to an administrative hearing.

Officer's Signature: _____ Date: _____

( ) I DO NOT ACCEPT the punitive action offered and demand an administrative hearing. (Complete Notice of Election of Hearing Board).

Officer's Signature: _____ Date: _____

NOTICE OF ELECTION OF HEARING BOARD

I desire an alternate hearing board consisting of officers selected by the Chief of Police, FOP Lodge 35, and a neutral chairperson.

Officer's Signature: _____ Date: _____

Approved by FOP Lodge 35:

Authorized Representative: _____

I desire a regular LEOBR hearing board consisting of three police officers selected by the Chief of Police.

Officer's Signature: _____ Date: _____

APPENDIX B

ADMINISTRATIVE HEARING BOARD

Montgomery County Department of Police	*	OIA NO.
	*	
	*	
	*	
	*	
VS.	*	

SUMMONS

TO:

Pursuant to Article 27, Section 730 of the Annotated Code of Maryland, you are hereby summonsed to appear before the administrative hearing board for the Montgomery County Department of Police, at Police Headquarters, 2350 Research Blvd., Conference Room, Rockville, Maryland on the _____, 1996, at ____ a.m., to testify for the department.

_____ _____

Hearing Board Chairman Date

_____ _____

Served By Date

APPENDIX C

ADMINISTRATIVE HEARING BOARD PROCEDURE

(RECORDING SYSTEM ACTIVATED)

This Administrative Hearing Board is hereby convened and called to order. For the purpose of identification on the recording system, will the following parties identify themselves when called upon to do so;

A. I am _____, Chairman of the Administrative Hearing Board.

B. Will the next highest ranking officer serving as an Administrative Hearing Board member identify himself?

C. Will the officer of equal rank serving as an Administrative Hearing Board member identify himself?

D. Will the respondent's representative/attorney identify himself (if applicable)?

E. Will the respondent identify himself?

F. Will the prosecutor identify himself?

I. INTRODUCTORY STATEMENT BY CHAIRMAN OF THE ADMINISTRATIVE HEARING BOARD:

Officer _____, on the _____ day of _____, 19 __, you received a notification of the administrative charges against you which constitute the issues to be heard by this Board, convened this _____ day of _____, 19 ___, at _____ hours.

The purpose of this Administrative Hearing Board is to hear evidence and arguments concerning the charges that have been placed against you, to make a determination of facts, to recommend a course of disciplinary action if applicable, and to submit a written report, including findings of fact and recommendations, to the Director of Police who shall then determine the final action to be taken in this matter.

Pursuant to the provisions of the Law Enforcement Officers' Bill of Rights, Article 27, Sections 727-734, of the Annotated Code of Maryland, 1957 Edition as amended, you have been charged with violation(s) of Montgomery County Police Departmental rules, policies or procedures.

Note to Chairman: Read the charge(s) as specified in the letter of notification.

Charge #1: _____

_____

_____

To wit: _____

_____

_____

Charge #2: _____

_____

_____

To wit: _____

_____

_____

Charge #3: _____

_____

_____

To wit: _____

_____

_____

Etc.

89

Officer_____, you will be asked to either admit or deny the charges against you. If you admit those charges, you have the right to present any evidence and argument to this Board that you wish to be considered prior to our recommendation of disciplinary action.

If you deny the charges against you, this Board will hear evidence and arguments and determine whether or not the Police Department has proven the charges against you. If we find that the charges have not been sustained, we shall so advise the Director of Police. However, if we find that the charges are sustained, we will reconvene and receive evidence reference to your past performance as a police officer prior to a decision on a recommendation as to disciplinary action.

You may also waive your right to be present at this hearing or to present evidence and arguments in your behalf; however, whether you choose to be present or not, or whether you choose to offer any evidence and arguments or not, this Board will consider the charges against you as presented by the Department and will recommend a course of action to the Director of Police.

Do you understand what has just been explained to you?

Do you admit or deny the charges against you?

(NOTE: If the person charged stands mute, he or she shall be advised that silence will be considered a denial of the charges)

II. OATH TO WITNESSES:

The chairman of the Hearing Board will administer the following oath prior to a witness testifying:

> "Do you solemnly affirm and declare under the pain and penalty of perjury that the testimony you shall give before this Hearing Board is the truth, the whole truth and nothing but the truth."

The witness will be requested to raise his/her hand when the above oath is administered, and also he/she will be asked to respond "I do" after said oath is read by the chairman.

III. PRESENTATION OF EVIDENCE AND ARGUMENTS:

1. Department presents its case. Each department witness is first questioned by the department's counsel and then is subject to cross examination by officer and Board.

2. Officer presents his or her case. Each defense witness is first questioned by the officer's counsel and then is subject to cross examination by Department and Board.

3. Rebuttal by Department, which may only address those matters raised by the officer or the Board.

4. Surrebuttal by officer, which may only address those matters raised by the Department or the Board during rebuttal.

5. Summation by Department.

6. Summation by officer.

7. Final summation by Department.

Board adjourned at _____hours for purpose of deliberation.

IV. RECONVENING OF BOARD IF GUILT IS FOUND:

If after deliberation there is a finding of guilt, the Chairman will make the necessary verbal notification as to time and date of the reconvening of the Board. After notification, the Chairman will cause the Board to reconvene on the record for the purpose of receiving evidence of the officer's past job performance and other relevant information. The date, time and purpose for the reconvened hearing will be explained on the tape prior to receiving information. After receiving the information, the hearing will be adjourned.

Board adjourned at _____ hours for purpose of deliberation.

(91)

APPENDIX D

SUSPENSION HEARING BOARD PROCEDURE

(RECORDING SYSTEM ACTIVATED)

This Suspension Hearing Board is hereby convened and called to order. For the purpose of identification on the recording system, will the following parties identify themselves when called upon to do so;

A. I am _____, Chairman of the Suspension Hearing Board.

B. Will the next highest ranking officer serving as a Suspension Hearing Board member identify himself?

C. Will the officer of equal rank serving as a Suspension Hearing Board member identify himself?

D. Will the respondent's representative/attorney identify himself (if applicable)?

E. Will the respondent identify himself?

F. Will the prosecutor identify himself?

I. INTRODUCTORY STATEMENT BY CHAIRMAN OF THE SUSPENSION HEARING BOARD:

Officer _____, on the _____ day of _____, 19___, you received notification of suspension.

This suspension hearing is not a judicial proceeding, nor is it directed to the findings of fact or law. The hearing is limited to a presentation of circumstances surrounding the suspension. The board's findings will be submitted to the Chief of Police who shall then make a final determination concerning suspension.

Pursuant to the provisions of the Law Enforcement Officers' Bill of Rights, Article 27, Section 734A (2), of the Annotated Code of Maryland, 1957 Edition as amended, you have been suspended for alleged violation(s) of Montgomery County Police Departmental rules, policies or procedures.

Note to Chairman: Read the charge(s) as specified in the letter of notification.

Charge #1: _____

_____

_____

To wit: _____

_____

_____

Charge #2: _____

_____

_____

To wit: _____

_____

_____

Charge #3: _____

_____

_____

To wit: _____

_____

_____

Etc.

You may waive your right to be present at this hearing or to present evidence and arguments in your own behalf. However, whether

you choose to be present, or whether you choose to offer any evidence or arguments, this board will only consider the circumstances surrounding the suspension.

Do you understand what has just been explained to you?

II. OATH TO WITNESSES:

The Chairman of the hearing board will administer the following oath prior to a witness testifying:

"Do you solemnly affirm and declare under the pain and penalty of perjury that the testimony you shall give before this hearing board is the truth, the whole truth and nothing but the truth?"

The witness will be requested to raise his hand when the above oath is administered, and also, he will be asked to respond "I do" after the oath is read by the chairman.

III. PRESENTATION OF EVIDENCE AND ARGUMENTS:

1. Department presents its case, subject to cross examination by officer and board.

2. Officer presents his case, subject to cross examination by Department or board.

3. Rebuttal by department, which may only address those matters raised by the officer or the board.

4. Surrebuttal by officer, which may only address those matters raised by the department or the board during rebuttal.

5. Summation by department.

6. Summation by officer.

Board adjourned at _____ hours for purpose of deliberation.

IV. RECONVENING OF BOARD AFTER DELIBERATION:

After deliberation, the board shall reconvene and advise the participating parties of their decision. After the decision is announced, the hearing will be adjourned. The Chairman of the board shall submit a written report to the Chief of Police and the officer detailing their findings.

EXPUNGEMENT OF INTERNAL AFFAIRS RECORDS

FUNCTION CODE: 301.D
EFFECTIVE DATE: 10-09-95

Contents:

I. Scope of the Law
II. Procedures for Expungement
III. Proponent Unit
IV. Cancellation

I. Scope of the Law

A. Article 27, Section 728(b)(12)(ii) of Maryland law states, "A law enforcement officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:
   1. The law enforcement agency investigating the complaint has exonerated the officer of all charges in the complaint, or determined that the charges were unsustained or unfounded; and
   2. 3 years have passed since the findings by the law enforcement agency."

B. A case file resulting in a "Not Guilty" or "Policy Failure" finding at a hearing board will also be expunged at the officer's request.

II. Procedures for Expungement (CALEA 26.1.8)

A. If an officer wishes to have his record(s) expunged, he/she must forward a ***"Record Expungement Request Memorandum", MCP# 301,*** (original and one copy) directly to the Director, Office of Internal Affairs (OIA), requesting the expungement. Officers shall first call OIA to obtain their case number(s).

B. If the statutory requirements for expungement are met, the OIA Director will expunge the file and notify the officer within 30 days by returning directly to him/her ***a copy of the MCP# 301*** marked with the expungement date.

C. If the expungement requirements are not met, the OIA Director will notify the officer by returning ***a copy of the MCP# 301*** within 30 days indicating the request will not be granted and the reasons for the denial.

D. In both situations, the original ***MCP# 301*** will be placed in the OIA case file.

E. The method of expungement will be destruction (shredding) except in the following circumstances:
   1. The file contains names of two or more accused officers and charges against one or more of the officers were sustained. The entire file will then be placed in limited access. Any reference to those officers who were exonerated, or who had charges placed that were unfounded or not sustained, will be obliterated (marked over).
   2. Entries in the OIA log will be obliterated.

III. Proponent Unit: OIA

IV. Cancellation: *301.D, dated 11-15-94.*

Carol A. Mehrling

Carol A. Mehrling
Chief of Police

95

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE

MCP 301
Rev. 08/95

INTERNAL AFFAIRS
RECORD EXPUNGEMENT REQUEST MEMORANDUM

TO: Director, Office of Internal Affairs

FROM: _____

Duty Assignment: _____ ID No.: _____

SUBJECT: **INTERNAL AFFAIRS RECORD EXPUNGEMENT REQUEST**

DATE: _____

The Law Enforcement Officers' Bill of Rights provides that records of a formal complaint that result in a not sustained, exonerated, or unfounded finding may be expunged after three (3) years. Pursuant to Maryland Code, Article 27, Section 728(b)(12)(ii), Annotated Code of Maryland, I hereby request expungement of the following files which may meet this criteria:

OIA Case No.	Final Disposition Date	OIA Case No.	Final Disposition Date

Signature of Requesting Officer: _____

Director, OIA - *check one of the following*

☐ Request granted; date expunged: _____
I have determined the request meets statutory criteria.

☐ Request denied; date: _____
Reason(s):

Signature of Director, OIA: _____

FUNCTION CODE: 301.D
CALEA: 52.1.6
PROPONENT UNIT: OIA

96

DISCIPLINARY PROCESS FOR CIVILIANS, POLICE OFFICER CANDIDATES, AND PROBATIONARY OFFICERS

FUNCTION CODE: 301.F
EFFECTIVE DATE: 08-15-91

Contents:

I. Purpose
II. Authority in Discipline Matters
III. Definitions
IV. Filing of a Complaint
V. Investigation of a Complaint
VI. Notification of a Complaint
VII. Disposition
VIII. Grievances
IX. Appeals
X. Scope of the Law
XI. Procedures for Expungement
XII. Proponent Unit
XIII. Cancellation

I. Purpose

This directive sets forth policy and procedure regarding the investigation/disciplinary process for non-sworn employees and probationary police officers of the Police Department. Any procedure or situation not addressed in this directive should be resolved by referring to the County Personnel Regulations. Any procedure set forth herein which conflicts with the County Personnel Regulations will be resolved in favor of the County Personnel Regulations or collective bargaining agreement, whichever is applicable. (CALEA 26.1.3.D, 26.1.4)

II. Authority in Discipline Matters

A. The Chief of Police has authority for all disciplinary action involving non-sworn department personnel (Personnel Regulations, Section 27.5).

B. In disciplinary matters, Police Officer Candidates and probationary police officers (except for those charged with brutality) will be treated as civilian employees.

III. Definitions

A. Minor Complaints of Misconduct - include those allegations which, if sustained, would be appropriately disciplined through the use of the Supervisor's Remedial Action Form.

B. Serious Allegations of Misconduct - include among other acts, complaints which allege racial prejudice, misappropriation of monies, untruthful statements, and allegations of alcohol or unlawful drug use.

C. Due Process - the right of an employee to be afforded those procedural and substantive protections established by applicable provisions of the Charter, Merit System Law, regulations or administrative procedures in any matter affecting terms or conditions of employment (Personnel Regulations, Section 3.2).

D. Grievance - a formal written complaint by an employee arising out of a misunderstanding or disagreement between a merit system employee and supervisor, which expresses the employee's dissatisfaction concerning a term or condition of employment or treatment by management, supervisors, or other employees (Personnel Regulations, Section 28.2).

E. Appeal - the written request of an employee for review by the Merit Board of an administrative decision on a grievance, disciplinary action, or other personnel action which adversely affects employment or opportunity for employment or promotion for which appeal privileges are provided (Personnel Regulations, Section 29.1). For members of MCGEO, Local 400, an appeal is in accordance with the terms of the collective bargaining agreement.

IV. Filing of a Complaint (CALEA 26.1.4, 26.1.8, 52.2.2)

A citizen desiring to complain about an employee of the Department, either in person or by telephone, will be referred to the on-duty supervisor or officer-in-charge of the respective district or functional unit. For both minor and serious cases of misconduct, complaints will be handled as detailed in Function Code 301, Section IV.

V. Investigation of a Complaint

A. Prior to any interview of an employee under investigation, the employee shall be advised of the nature of the investigation. Such notification may be verbal in nature.

B. Representation during Interview - At the request of an employee under investigation, he/she shall have the right to be represented by counsel or any other responsible representative of his/her choice who may be present during any interview. Under provisions of the negotiated contract between MCGEO, Local 400 and the Montgomery County Government, an employee under investigation shall be afforded at least 60 minutes to arrange for representation.

C. Record of Interview - Upon completion of the investigation, and upon request of the employee under investigation or his counsel, a copy of the transcript of the tape recorded interview (if one has been made) shall be made available to the employee.

D. Use of MCP #50 - Interrogation Rights & Waiver Form - If the employee being interviewed is under arrest or is likely to be placed under arrest as a result of an interview, he shall be completely informed of his Miranda rights prior to the commencement of the interview.

E. Time, Place and Manner of Interviews
1. Any interview shall take place either at the office of the command of the investigator or at the office of the police unit in which the incident allegedly occurred, as designated by the investigator, unless otherwise waived by the employee, or at any other reasonable and appropriate place.
2. Any interview shall be conducted at a reasonable hour, preferably at a time when the employee is on duty, unless the seriousness of the investigation is of such a degree that an immediate interview is required.
3. Interview sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

F. Required Interrogations and Tests
1. Employees under investigation may be compelled to submit to Blood Alcohol Tests, blood, breath, or urine tests for controlled dangerous substances (Personnel Regulations, Section 5.12) where there is reasonable suspicion of alcohol or unlawful drug use, or interrogations which specifically relate to the subject matter of the investigation.

2. All urinalysis testing will be coordinated through the Office of Internal Affairs. Supervisors are instructed to contact the on-call officer from the Office of Internal Affairs after normal work hours.

VI. Notification of a Complaint

A. Whenever a Statement of Charges (Appendix A) is executed, it will serve as written notification of the investigation.

B. The Chief of Police, or his designee must give the employee a copy of the charges and provide a minimum of five (5) workdays to respond. Disciplinary actions affected by this requirement include written reprimands, within-grade reductions, suspensions, demotions, and dismissals.

C. When the employee involved is a unit member of MCGEO, Local 400, SLT/OPT:
1. The Department will provide the union any written statements (citizen complaints, employee observations) in the possession of the Department and used in connection with an adverse action taken against a bargaining unit employee. These statements will be sanitized (name, address, phone number deleted) to protect privacy rights in accordance with the law.
2. The written statements referred to in Subsection 1 will be provided to the union when the employee receives the Statement of Charges.
3. The Department is under no obligation to permit the employee or union to interview the author of the statement. If the statement is used as evidence on appeal, the employee or union will have the opportunity to examine the witness.

VII. Disposition

A. An investigation shall result in no punitive action where the employee's conduct was exonerated or when there is not substantial evidence of misconduct found. In such cases, employees will be furnished a copy of any reply to a complainant or, if there is none, they will be provided a written notification of the investigative outcome. In such cases where complaints are determined to be unfounded or found to be without merit by the Merit Board, the records of the case will be processed in accordance with Administrative Procedure 4-8, Review of Employee Personnel Records. (CALEA 52.2.2)

B. Oral admonishments and written reprimands may be given at the discretion of the Chief of Police. In all cases, the employee should be told why their conduct is inappropriate, what needs to be done to change, and what action will occur if changes are not made. Signed notice of disciplinary action for within-grade reduction, suspension, demotion, or dismissal must be received by the Personnel Office for review and approved by the CAO prior to the employee being advised of any action.

C. In cases of within-grade reduction, demotion, suspension, and dismissal, the Chief of Police must provide written notice of such action at least five (5) days prior to the effective date of the action. Exceptions to this requirement are theft and serious violations which pose a health or safety risk (Personnel Regulations, Section 27.4/MCGEO Contract).

D. Summary of Steps in Procedure
1. Department
   a. Prepares Statement of Charges; gives employee

99

opportunity to respond (Appendix A).

b. Prepares notification document (Appendix B) and Personnel Action Form (PAF) for proposed disciplinary action.

c. Sends notification document, statement of charges, supporting documentation, and Personnel Action Form to the Personnel Director's office. The normal processing time is five workdays; the action date should be established accordingly.

d. Documentation must be submitted in duplicate to the Personnel Office.

e. For employees who are members of MCGEO, Local 400, the following shall apply regarding written notices to the employee from the employer pertaining to Disciplinary Action, Termination, RIF Notices, Demotions, Promotion or Reduction-In-Salary. In all instances the notices to employees identified above shall contain the following language at the bottom of the last page of the document:

NOTICE TO BARGAINING UNIT EMPLOYEES
You are entitled to be represented in this matter by Montgomery County Government Employees Organization, UFCW Local 400, AFL-CIO (Union). If you wish a copy of this document sent to the union, indicate by checking the appropriate space below:
____ I do wish the union to receive this document ____ I do not wish the union to receive this document

_____
Employee's Signature

_____
Date

2. Personnel Office

a. Personnel Office and County Attorney's Office review notification document for approval.

b. Returns employee and Department copies.

E. Employee Relations will coordinate and review all disciplinary actions with the County Attorney's Office rather than the Department directly contacting the latter.

VIII. Grievances

A grievance may be filed if an employee believes he has been adversely affected by an alleged:

A. Violation, misinterpretation or improper application of established law, rules, regulations, procedures or policies.

B. Improper or unfair act by a supervisor or other employee, which may include coercion, restraint, reprisal, harassment, or intimidation.

C. Improper, inequitable or unfair act in the administration of the merit system, which may include promotional opportunities, selection for training, duty assignments, work schedules, evaluation of work performance, transfers, and reduction in force.

D. Improper, inequitable or unfair application of the compensation policy and employee benefits, which may include salary, pay differentials, awards, overtime pay, leave, insurance, retirement and holidays.

E. Disciplinary action, which includes written reprimands and within-grade reductions (Personnel Regulations, Section 28.2/MCGEO Contract).

100

IX. Appeals (CALEA 26.1.6)

A. An employee shall have the right of appeal before the Merit Board from a demotion, suspension, dismissal, involuntary resignation, written reprimand, or within-grade reduction (Personnel Regulations, Sections 27.6 and 29.2). An employee has ten (10) workdays from receipt of a written decision of the CAO or notice of a disciplinary action to note an appeal in writing with the Merit Board (Personnel Regulations, Section 29.4).

B. For additional steps in the appeal process, refer to the Personnel Regulations, Section 29, entitled "Appeals and Hearings."

C. Employees who are members of MCGEO, Local 400 may choose to appeal in accordance with the terms of the collective bargaining agreement and waive their right to appeal to the Montgomery County Merit System Protection Board.

X. Scope of the Law (CALEA 26.1.8)
A member, upon written request, may have any internal affairs record of a formal complaint made against him/her expunged from any file if:

A. The law enforcement agency investigating the complaint has exonerated the member of all charges in the complaint, or determined that the charges were unsustained, unfounded ***or a policy failure***; and

B. Three (3) years have passed since the findings by the law enforcement agency.

C. For Department, unit and supervisors personnel files, copies of reprimands and disciplinary actions shall be maintained for five (5) years only.

D. For members of MCGEO, Local 400, all reprimands contained in central personnel files shall become null and void after a period of two (2) years.

XI. Procedures for Expungement (CALEA 26.1.8)

A. OIA investigative files shall be available for expungement provided:
1. Three (3) years have elapsed since the investigative report was approved by the Chief of Police and;
   - The OIA investigation resulted in a finding of not sustained, exonerated, unfounded, ***policy failure*** or,
   - A sustained finding was overturned in any subsequent hearing.
2. Investigative OIA files which resulted in a sustained finding and discipline was subsequently administered shall not be available for expungement.

B. If a member wishes to have his/her OIA record(s) expunged, he/she must forward a memorandum (original and one copy) directly to the Director, O.I.A., requesting the expungement. Members shall first call O.I.A. to obtain their case number(s) and then forward the memorandum in the format shown in Appendix D.

C. If the requirements for expungement are met, the Director, O.I.A., will:
1. Expunge the file.
2. Notify the member within thirty (30) days by returning directly the copy of his/her memorandum marked with the date the expungement was completed.

D. If the expungement requirements are not met, the Director, O.I.A., will:
1. Notify the member by returning the copy of his memorandum within thirty (30) days and

101

indicating the expungement request will not be granted.
2. List on the memorandum the reasons for the expungement request denial.

E. In both situations, the original of the expungement request (with the action taken indicated on it) will be placed in the case file at O.I.A.

F. The method of expungement will be destruction (shredding) except in the following circumstances:
1. The file contains names of two or more accused members and charges against one or more of the members were sustained. The entire file will then be placed in limited access. Any reference to those members who were exonerated, or who had charges placed that were unfounded or not sustained, will be obliterated (marked over).
2. Entries in the O.I.A. log will be obliterated.

XII. Proponent Unit: Office of Internal Affairs

XIII. Cancellation

This directive cancels Department Directive 86-12, Function Code 301.F and Headquarters Memoranda 86-43 and 90-55.

Clarence Edwards

Colonel Clarence Edwards
Chief of Police

102

Appendix A

MEMORANDUM

TO: (Employee)

FROM: Donald E. Brooks, Chief of Police

SUBJECT: Statement of Charges

You are hereby notified that the following reasons may serve as the basis for (type of disciplinary action). This constitutes a formal notice of statement of charges as required by Section 27.5 (b) of the Personnel Regulations.

You may respond to the charges as stated below either in person and/or writing, to this office by the close of business (minimum two workdays from receipt of notice), prior to final action being taken on this matter.

1. State specific charges and supporting reasons (include pertinent times, dates, places where appropriate).

2.

3.

4.

Appendix B

MEMORANDUM

TO: (Employee)

FROM: Donald E. Brooks, Chief of Police

SUBJECT: Notice of Disciplinary Action

You are hereby notified that the following reasons will serve as the basis for (type of action/length of time when appropriate) to be effective (minimum of five days from date of notice).

This action is being taken for the following reasons:

1. State specific charges and supporting reasons (include pertinent times, dates, places where appropriate).

2.

3.

4.

In accordance with Section _____of the Personnel Regulations, you have the right of appeal within _____ workdays from receipt of notification of this action to the Merit System Protection Board.

Appendix C

MEMORANDUM

TO: (Employee)

FROM: Donald E. Brooks, Chief of Police

SUBJECT: Written Reprimand

This constitutes a written reprimand which is being given for the following reasons:

1. State specific charges and supporting reasons (include pertinent times, dates, places where appropriate).

2.

3.

4.

You are advised that such conduct will not be permitted in the future, and should it continue, you may expect further disciplinary action, up to and including dismissal.

In accordance with Section 27.6 of the Personnel Regulations, you may appeal this action within five workdays upon receipt of this notice.

Appendix D

MEMORANDUM

TO: Director, Office of Internal Affairs

FROM: ID # _____

SUBJECT: Internal Affairs Record Expungement Request

DATE OF REQUEST:

In accordance with Article 27, Section 728(b)(12)(ii), Annotated Code of Maryland, I hereby request expungement of the following record(s):
List O.I.A. Case Number(s):

SIGNATURE OF REQUESTING MEMBER: _____

Director, OIA - Check one of the following:

___ Request granted; date expunged _____.

___ Request denied; date _____.

Reason(s):

SIGNATURE OF DIRECTOR, OIA: _____

Q. ***Will my complaint impact on any charges placed against me by the police?***

A. No. Criminal or traffic charges filed must be resolved by the courts.

Q. ***What happens at the conclusion of the investigation?***

A. If the investigation fails to sustain any misconduct, you will receive a letter from the Chief advising you of the outcome. However, if misconduct is established the Chief will make a disciplinary recommendation to the employee. If the employee accepts that recommendation the matter will be concluded. Should the employee decline the offer, the matter will follow established procedures. In the case of a civilian employee, a grievance process is implemented. In those cases involving sworn police officers, an administrative hearing will be convened and testimony will be taken under oath. In all cases the complainant will be notified of the investigative results.

Q. ***Will I be informed of the disciplinary action taken?***

A. No. Such actions are regarded as personnel actions and usually remain confidential under State Law.

Telephone Contact Numbers

Montgomery County Department of Police

OFFICE OF INTERNAL AFFAIRS

800 South Frederick Avenue
Suite 201
Gaithersburg, Maryland 20877
(301) 840-2730

District Stations

Rockville ..... (301) 279-1591
1451 Seven Locks Road
Rockville, Maryland 20854

Bethesda ..... (301) 652-9200
7359 Wisconsin Avenue
Bethesda, Maryland 20814

Silver Spring ..... (301) 565-7744
801 Sligo Avenue
Silver Spring, Maryland 20910

Wheaton/Glenmont ..... (301) 217-4400
2300 Randolph Road
Wheaton, Maryland 20902

Germantown ..... (301) 840-2650
20000 Aircraft Drive
Germantown, Maryland 20874

A Nationally Accredited Law Enforcement Agency

Montgomery County

Department of Police

Appendix J

How Do I File a Complaint Against a Police Department Employee?

Office of Internal Affairs
(301) 840-2730

Chief's Message

The Montgomery County Department of Police is recognized as one of the finest law enforcement agencies in the nation. We are proud of the high level of dedication to the community demonstrated by the men and women of the department. This dedication is the foundation on which the excellence of service to our citizenry is built. To maintain this well deserved reputation we must constantly strive for excellence.

It is crucial that all allegations of alleged police misconduct are thoroughly and objectively investigated to assure the public that official police misconduct will not be tolerated and at the same time, provide a means whereby officers unjustly accused can be vindicated. The responsibility and authority for these investigations within the Montgomery County Police is vested in the Office of Internal Affairs.

Complaints

The Office of Internal Affairs has as its major function the receipt, processing and the investigation of complaints made against both police officers and civilian members of the department. To ensure the continuing public trust and maintain the department's integrity, the office conducts immediate, thorough, objective and unbiased investigations of official misconduct. Through this process the department can correct misconduct, clear those wrongly accused, identify problem areas which can be remedied through training, identify at risk employees and, where necessary, facilitate the disciplinary process. The filing of a false complaint may lead to criminal or civil sanctions.

Frequently Asked Questions & Answers

Q. ***How do I file a complaint against an employee of the Montgomery County Police Department?***

A. Complaints will be accepted at any Montgomery County Police Department facility on a walk-in basis or may be mailed to Internal Affairs. Complaints should be in writing, either on a complaint form available at all M.C.P.D. facilities or in letter form. Be sure to include your name, address and both a daytime and home phone number.

Q. ***What happens to my complaint?***

A. All formal complaints, regardless of where submitted, are forwarded to Internal Affairs where they will be evaluated for investigative merit, and, if appropriate, assigned for investigation. Not all complaints are investigated by Internal Affairs. Based on the nature of the complaint some cases will be referred to the District or unit level for inquiry.

Q. ***Will I be contacted by the department?***

A. Yes. Following the assignment of the complaint, you will be contacted by an investigator as will any witnesses you may have. The investigator will then interview all independent witnesses and involved members of the department. At the conclusion of the investigation, all information will be viewed in the light of Departmental Rules and Directives and findings made subject to the review and approval of the Chief of Police.

Q. ***How long does the investigation take?***

A. The average investigation takes from thirty days to six months to complete. This will depend on the complexity of the case, the availability of witnesses and the involvement of other investigating agencies or units.

Appendix K: MCPD Complaint Form
MCP 580, revised 1990

DEPARTMENT OF POLICE

Douglas M. Duncan
County Executive

To the Community:

A relationship of trust and confidence between employees of the Police Department and the community they serve is essential to effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a reasonable, lawful and impartial manner without fear of reprisal, while at the same time having a special obligation to respect the rights of all persons.

The Montgomery County Department of Police acknowledges its responsibilities to establish a system of complaint and disciplinary procedures which not only will subject the officers to corrective action when they conduct themselves improperly, but also will protect them from unwarranted criticism when officers discharge their duties properly.

It is the purpose of these procedures to provide a prompt, open and expeditious disposition of complaints regarding the conduct of employees of the Department of Police. To this end, individuals are encouraged to bring complaints about department operations and the conduct of its employees to our attention whenever they believe that such an act is improper.

Should you have any questions regarding these procedures, please contact the Office of Internal Affairs at 301-840-2730 during normal business hours, Monday through Friday. The department's procedural directive on complaints is also available for inspection, upon request.

Carol A. Mehrling

Carol A. Mehrling
Chief of Police

MONTGOMERY COUNTY, MARYLAND
DEPARTMENT OF POLICE
COMPLAINT FORM

MCP 580
Rev. 10/98

DOB _____
Race _____
Sex _____

_____
Today's Date

_____
Your Name (last, first, middle)

_____
Address (number & street)

_____
City/State/Zip

_____ _____
Home Phone # Work Phone #

_____
Incident Date and Time

_____
Incident Location

I am making this complaint against:

_____
Name(s), if known

_____
Witness Name (last, first, middle)

_____
Address (number/street/city/state/zip)

_____ _____
Home Phone # Work Phone #

_____
Witness Name (last, first, middle)

_____
Address (number/street/city/state/zip)

_____ _____
Home Phone # Work Phone #

DESCRIPTION OF COMPLAINT

(Be detailed - use additional paper if necessary)

_____ _____
Your Signature

COMPLAINTS OF BRUTALITY MUST BE SWORN TO

Name of the Police Department employee to whom this complaint form is given:
Date and Time:

Please note: Complaints against police officers are investigated within the guidelines of the Law Enforcement Officers' Bill of Rights as enumerated in Article 27 of the Annotated Code of Maryland. If you are not contacted by an investigator within a reasonable time period, please contact the Office of Internal Affairs at 301-840-2730.

FUNCTION CODE: 301
CALEA: 52.1.12
PROPONENT UNIT: Office of Internal Affairs

DISTRIBUTION:
Original - OIA
Copy - To Complainant as receipt

DEPARTMENT OF POLICE

Douglas M. Duncan
County Executive

GOBIERNO DEL CONDADO DE MONTGOMERY

A La Comunidad:

Una relación de mutua confianza y apoyo entry los empleados del Departamento de Policía y la comunidad a la cual ellos sirven, es esencial para el cumplimiento efectivo de la ley. Los agentes de policía deben de ejercer su buen juicio e iniciar las acciones para hacer cumplir la ley de una manera razonable, legal e imparcial sin temor a represalias, y al mismo tiempo con la obligación especial de respeter los derechos de todas las personas.

El Departamento de Policía del Condado de Montgomery reconoce su responsabilidad de establecer un sistema de quejas y de procedimientos disciplinarios que no sólo sometan a los oficiales a acciones correctivas cuando se comporten inadecuadamente, sino que también los proteja de las críticas injustificadas cuando los oficiales cumplen adecuadamente con sus obligaciones.

El propósito de estos procedimientos es el de proporcionar un sistema para recibir las quejas relacionadas con la conducta de los empleados del Departamento de Policía de una manera rápida y eficaz. Con este fin, los exhortamos a presentar sus quejas en relación con las operaciones del departamento de Policía y de la conducta de sus empleados, siempre que consideren que sus acciones no son apropiadas.

Para mayor información o preguntas relacionadas con estos pocedimientos, por favor llame a la Oficina de Asuntos Internos, (Office of Internal Affairs) de lunes a viernes, en horas de oficina, al teléfono 301-840-2730. El regiamento del departamento de Policía sobre quejas está disponible para su inspección, si usted lo desea.

Carol A. Mehrling
Jefe de Policía

Traducción coordinada por la Oficina de Asuntos Multiculturales, Sección Hispana del Condado de Montgomery, 101 Monroe Street, Rockville, Maryland 20850. OMMA/06-93

(111)

CONDADO de MONTGOMERY, MARYLAND
DEPARTAMENTO DE POLICÍA
FORMULARIO DE QUEJA

MCP 580
Rev. 10/98

Fecha de nacimiento _____
Raza _____
Sexo _____

_____
Fecha de Hoy

_____
Su Nombre (apellido, nombre, e inicial)

_____
Dirección (número y calle)

_____
Ciudad/Estado/Código Postal

_____ _____
Número de Teléfono en su Casa Número de Teléfono en su Trabajo

_____
Fecha y Hora del Incidente

_____
Lugar del Incidente

Hago esta queja en contra de:

_____
Nombre(s) si Ud. sabe

_____
Nombre del Testigo (apellido, nombre, e inicial)

_____
Dirección (número/calle/ciudad/estado/código postal)

_____ _____
Número de Teléfono en su Casa Número de Teléfono en su Trabajo

_____
Nombre del Testigo (apellido, nombre, e inicial)

_____
Dirección (número/calle/ciudad/estado/código postal)

_____ _____
Número de Teléfono en su Casa Número de Teléfono en su Trabajo

DESCRIPCION DE LA QUEJA

(DE DETALLES - Use papel adicional si fuere necesario)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Firma

LAS QUEJAS DE BRUTALIDAD TIENAN QUE SER JURAMENTADAS

Nombre del empleado del Departamento de Policia a quien esta queja ha sido presentada:
Fecha/Hora:

NOTA: Las quejas contra los oficiales de la policia se investigan segun las normas de la ley de derechos de los oficiales enumeradas en el Articulo 27, del Codigo de Maryland. Si usted no es contactado por un investigador dentro de un periodo razonable de tiempo, por favor llame a la Oficina de Asuntos Internos (Office of Internal Affairs).

Translation by the County Executive's Office of Community Outreach, 101 Monroe Street, Rockville, Maryland 20850.

FUNCTION CODE: 301
CALEA: 52.1.12
PROPONENT UNIT: Office of Internal Affairs

DISTRIBUTION:
Original - OIA
Copia - al demandante, como recibo

Appendix L

Department of Police
Montgomery County, Maryland

MCP 302
Rev. 10/98

OIA INTAKE FORM

COMPLAINANT'S NAME: _____

ADDRESS: _____

PHONE: (H): _____ (W): _____ DOB: _____ SEX: _____ RACE: _____

NAME(S) OF ACCUSED: SWORN ☐ NON-SWORN ☐ ID # _____ CAR # _____

1. _____ 2. _____

LOCATION OF OCCURRENCE: _____

DATE OF OCCURRENCE: _____

- COMPLAINT NAACP REFERRED YES☐ NO☐
- OTHER LAW ENFORCEMENT AGENCY YES☐ NO☐ _____
- OTHER ORGANIZATION YES☐ NO☐ _____

NARRATIVE (Brief synopsis-attach additional notes, if necessary): _____

COMPLAINT RECEIVED BY: _____ DATE RECEIVED: _____

COMPLAINT FORWARDED TO: _____(Commanding Officer of Unit/Station)

INVESTIGATED BY: _____(Assigned person at Unit/Station)

INITIAL CONTACT OF COMPLAINANT BY: _____ DATE/TIME: _____

CLOSURE CONTACT OF COMPLAINANT BY: _____ DATE/TIME: _____

~ ALL BLOCKS MUST BE COMPLETED FOR ABOVE SECTIONS, UNLESS COMPLAINANT REFUSES ~

COMPLAINT HANDLED AT DISTRICT/UNIT: YES ☐ NO ☐

DISPOSITION: FOUNDED ☐ UNFOUNDED ☐ EXONERATED ☐ NOT SUSTAINED ☐

Employee/Officer counseled	YES ☐	NO ☐
Employee/Officer Supervisors Remedial Action Form	YES ☐	NO ☐
Complaint Referred to OIA for further action	YES ☐	NO ☐

Other, Explain: _____

NOTE: THIS FORM IS TO BE COMPLETED FOR ALL COMPLAINTS RECEIVED OR GENERATED BY DEPARTMENT PERSONNEL UNLESS OTHERWISE DOCUMENTED ON THE CITIZEN COMPLAINT FORM (MCP 580). ATTACH ALL SUPPORTING DOCUMENTATION.
SUSPENSE DATE: THIRTY (30) DAYS FROM RECEIPT OF FORM.
REVIEWED BY UNIT/DISTRICT COMMANDER ON: _____
COMMANDER'S SIGNATURE: _____ **DATE:** _____

CONCUR ☐ **DO NOT CONCUR** ☐

Function Code: 301
CALEA: 52.1.10
Proponent Unit: OIA

Appendix M: Models of Citizen Involvement in Complaint Handling: Examples

This appendix supplements the information in Chapter V of the report. Chapter V describes the five models of complaint review (traditional investigation, auditor, appeal review, citizen monitor, and citizen review models) and police commissions. This appendix provides two examples of the four models that involve citizens in complaint review and police commissions. Additional information about each example jurisdiction is available from the Office of Legislative Oversight.

I. Auditor Model

A. San Jose, California's Independent Police Auditor

Intake	Investigation	Review	Determination of Findings	Discipline
Individuals submit complaints to the police department or the Independent Police Auditor (IPA).	The police department investigates the complaint. The auditor monitors the progress of the investigation.	The auditor reviews individual police department investigations, and analyzes patterns and trends in complaints.	Police Chief determines findings.	Police Chief imposes discipline.

The City of San Jose implemented an auditor model of complaint review by city ordinance in 1993. The Independent Police Auditor (IPA) reports directly to the mayor and city council. To help maintain the IPA's independence, the office is located at a separate facility from the police department and city hall. The IPA staff consists of the auditor, appointed by the mayor and confirmed by the city council; two analysts; and an executive assistant.

The IPA's functions include:

- Accept complaints of police misconduct from citizens;
- Review all police department investigations of complaints alleging excessive or unnecessary force;
- Review at least 20 percent of all other police department investigations of complaints; and
- Recommend changes to the police department in general areas involving policy, procedures and training to the mayor and city council.

To complete these functions, the auditor has access to any police department information relevant to policy issues studied and citizen complaints, including total access to Internal Affairs files.

The complaint review process in San Jose begins when an individual files a complaint with the Office of the Independent Police Auditor (IPA) or the police department. The police department's Professional Standards and Conduct Unit determines whether the complaint will be handled informally by the officer's supervisor or formally investigated. The Professional Standards and Conduct Unit consults the IPA on the method used to handle a complaint and the IPA audits the methods selected.

The Professional Standards and Conduct Unit investigates each formal complaint and recommends a finding. The IPA monitors the progress of the investigation and can participate in interviews of witnesses and officers. The auditor reviews completed police department investigations for thoroughness and objectivity, and to ensure that the evidence supports the police department's finding. The auditor can request additional investigation by the police department, if not satisfied that the evidence supports the finding.

The police chief makes the final determination of findings in cases of complaints of police misconduct. If the auditor does not agree with a finding, he or she can take the case to the city manager for review and resolution. The police chief has sole responsibility for imposing discipline.

In addition to reviewing individual complaints, the IPA is authorized to recommend changes to police department complaint polices and procedures to the mayor and city council. The IPA also analyzes patterns and trends in complaints and investigations. This analysis and the recommended policy changes are published in biannual newsletters and a year end report.

Part of the IPA's mandate is to promote awareness of a citizen's right to file a complaint. To this end, the auditor provides information to the citizens through radio, television, and community meeting presentations.

B. Seattle, Washington's Internal Investigations Auditor

Intake	**Investigation**	**Review**	**Determination of Findings**	**Discipline**
Individuals submit complaints to the police department, the Office for Civil Rights, or the Citizen's Services Bureau.	The police department's Internal Investigations Section investigates the complaint.	The auditor reviews all cases alleging unnecessary or excessive force, a sample of other complaints, and police department policies and procedures.	Police Chief determines findings.	Police Chief imposes discipline.

A Seattle ordinance established the Internal Investigations Auditor (IIA) position in 1992. The mayor appoints the IIA, subject to confirmation by the city council. The IIA is a private attorney working under a fixed term contract with the city. He or she reviews complaint investigations completed by the police department and provides recommendations for policy changes within the police department.

Individuals can file complaints by telephone, mail or in person at the Police Department's Internal Investigation Section, a police precinct, the city's Citizen's Service Bureau, or the city's Office for Civil Rights. Most complaints go to the police department's Internal Investigation Section for investigation. In some cases, complaints are forwarded to the officer's commander or supervisor to handle informally.

The IIA audits all completed investigations for complaints alleging unnecessary or excessive force, to ensure that each received appropriate attention. The auditor also randomly selects approximately 20% of the other complaints for review. The IIA may request additional investigative work from the police department. Following investigation and auditor review, the police chief determines findings and identifies disciplinary action.

The IIA also reviews the Internal Investigation Section's contact log and line referral investigations. These are complaints that the police department determined did not require further action and complaints that were handled by the officer's supervisor rather than the Internal Investigation Section. The IIA can request a full formal investigation of those complaints.

To complete the reviews, the IIA has access to all police department Internal Investigations Section files (unless the files relate to an active criminal investigation of an officer.) The IIA prepares semi-annual reports for city officials and the public of his or her audit activities. The auditor also meets periodically with the mayor, city council and chief of police to discuss recommendations to improve the police department's investigative process.

If a complainant is not satisfied with the outcome of their complaint, they can request an appeal. The chief of police will review the complaint and investigation to determine if it was handled properly. In some cases, the chief convenes a board of high-ranking commanders, called a Complaint Advisory Board, to conduct a hearing into the matter.

II. Appeal Review Model

A. Omaha, Nebraska's Citizen Complaint Review Board

Intake	Investigation	Determination of Findings	Review	Discipline
Police and Fire Departments receive complaints from citizens.	The Office of Professional Standards investigates the complaints.	Police Chief or Fire Chief determines findings.	If not satisfied, the complainant may request a review by the Citizen Complaint Review Board.	Police Chief or Fire Chief imposes discipline.

An Executive Order of the Mayor created Omaha's Citizen Complaint Review Board in 1993. Mayor Hal Daub amended the order on May 16, 1997. The Complaint Review Board reviews selected complaints against sworn members of the Omaha Police and Fire Departments and the Communications Department.

According to the Mayor's Executive Order, the police and fire departments have initial original jurisdiction on all complaints against sworn police or fire employees. The police and fire departments receive and investigate complaints from citizens. The chief of police or fire chief determines a finding based on the internal investigation.

Following this process, complainants who are not satisfied with the outcome may request a review by the Citizen Complaint Review Board. Board review applies to allegations of police harassment, excessive use of force, use of inappropriate language, or other violations of standard operating procedures, rules, or regulations. The Board is made up of nine members with staggered terms. The members include:

- Two sworn members of the police department (selected from a list of officers prepared by the police union),
- One sworn member of the fire departments (selected from a list of firefighters prepared by the fire union),
- Three citizens of a protected class including one woman and two minorities (appointed by the mayor),
- Three citizens who are not of a protected class, one of which must be a woman (appointed by the mayor).

Complainants who file appeals provide testimony at a Citizen Review Board hearing. Due to provisions of the collective bargaining agreements and the Omaha Municipal Code, the proceedings of the Citizen Complaint Review Board are considered confidential and not open to the public or the media.

Based on the hearing and investigation reports, the Board renders a recommendation regarding the proper disposition of the citizen's complaint to the mayor and the police or fire chief. The appropriate chief makes the final determination of findings and imposes discipline.

B. Portland, Oregon's Police Internal Investigations Auditing Committee

Intake	Investigation	Determination of Findings	Review	Discipline
Citizens submit complaints of police misconduct to the police department.	The police department's Internal Affairs Division investigates complaints.	The Internal Affairs Division determines findings.	The PIIAC reviews appeals brought forward by citizens whose complaints were not investigated or who were not satisfied with the police department investigation. PIIAC makes recommendations about the adequacy of the investigation.	Police chief determines discipline.

In Portland, individuals can file complaints directly with the police department's Internal Affairs Division (IAD) or fill out and mail in a citizen complaint form available at police precincts and Neighborhood Coalition Offices. Individuals may file a complaint against any police department employee.

The commander of the police department's Internal Affairs Division receives all complaints and determines how to proceed with the case. The IAD commander chooses one of the following approaches:

- Assign the case for mediation;
- Assign the case to the division involved (in which case, the division manager investigates the complaint and contacts the complainant to report the results);
- Assign the case for criminal investigation;
- Conduct a complete investigation within IAD; or
- Decline to look into the matter further (if the allegation is deemed false or without merit.)

When IAD investigates a complaint, the IAD Commander reviews the investigation to ensure that it is complete and determines a finding. For sustained complaints, senior commanders in the Police Chief's Office recommend discipline to the Chief. Some discipline actions are also reviewed by the mayor. IAD notifies the complainant by letter of the result of the investigation and how to appeal the decision.

Portland's Police Internal Investigations Auditing Committee reviews appeals from complainants not satisfied with the IAD commander's decision to decline an investigation. PIIAC also reviews appeals from complainants who are not satisfied with the adequacy of an IAD investigation and finding. The PIIAC is officially made up of the members of the Portland City Council who delegate duties and responsibilities to citizen advisors appointed by the City Council.

The citizen advisors meet and review appeals and make recommendations to the PIIAC about the adequacy of IAD investigations. The PIIAC members then decide whether additional investigation is warranted. The PIIAC findings are reported to the police chief, but the chief is under no obligation to change a finding of the IAD.

The PIIAC also monitors other complaints, including all use of force and disparate treatment complaints. Similar to the auditor model of complaint review, the PIIAC's Monitoring Subcommittee reviews a random sample of IAD cases that were not appealed to assess trends and patterns in complaints and identify policy and procedural changes. The PIIAC can also review and make recommendations about the IAD process to improve community credibility in the police department and the complaint review process. PIIAC produces quarterly reports that summarize citizen appeals and report complaint data and citizen feedback.

III. Citizen Monitor Model

A. Prince George's County, Maryland's Citizen Complaint Oversight Panel

Intake	Investigation	Review	Determination of Findings	Discipline
Police department, Human Relations Commission and Citizen Complaint Oversight Panel intake complaints.	Police conduct investigations. The County's Human Relations Commission may investigate complaints simultaneously with the police department investigation.	The CCOP reviews the investigation(s) and reports to the chief on the appropriateness of the police department recommendation.	The chief makes the final determination of findings.	Police chief imposes discipline.

Prince George's County implemented a citizen monitor model of complaint review in 1990. County law (CB-25-1990) created the Citizen Complaint Oversight Panel (CCOP), which consists of seven County residents appointed by the County Executive and confirmed by the County Council. The purpose of the CCOP is to review police department investigations of complaints of excessive force, abusive language or harassment, and to advise the chief if the investigations was complete, thorough, and impartial.

In Prince George's County, individuals can submit written complaints to the police department, the County's Human Relations Commission, or the Citizen Complaint Oversight Panel (CCOP) office. The Internal Affairs Division of the County Police Department investigates all complaints. The Human Relations Commission also receives a copy of every complaint alleging use of excessive force, abusive language, or harassment by a law enforcement officer. The County Human Relations Commission may investigate complaints simultaneously with the police department.

According to County law, "The investigation and hearing by the Human Relations Commission shall not be construed to constitute an investigation or hearing that could lead to disciplinary action, demotion, or dismissal of a law enforcement officer." The purpose of the Commission's comments is to provide additional information to assist the CCOP members with their analysis of the completeness and impartiality of the Internal Affairs investigation.

In cases of alleged excessive force, abusive language or harassment, the Internal Affairs Division and the Human Relations Commission each submit a report of their investigation and a recommended finding to the CCOP and the Police Chief. The CCOP reviews the investigations of the police department and the Human Relations Commission. The CCOP submits a recommended finding to the chief and comments on the appropriateness of the police department's finding. The CCOP also reports comments and findings to the County's chief administrative officer.

By law, the police chief "shall give due consideration to the comments and recommendations of the Panel" and may request further investigation by the Internal Affairs Division. The Chief determines the final disposition and discipline in each case.

The CCOP issues an annual report of its activities to the public. The reports include some background and history of the CCOP, statistical data on complaints, and discussion of concerns regarding the complaint review process in general.

B. Baltimore, Maryland's Complaint Evaluation Board

Intake	**Investigation**	**Review**	**Determination of Findings**	**Discipline**
Individuals may file a complaint at any police station, the Legal Aid Bureau, the Maryland Human Relations Commission, or the Baltimore Community Relations Commission.	The police department completes an investigation. The Civilian Review Board may investigate a complaint simultaneously.	The Civilian Review Board reviews the investigations and submits findings and recommendations to the Police Commissioner.	The Police Commissioner makes the determination of findings.	Police Commissioner imposes discipline.

Baltimore is in the process of implementing a new system for reviewing complaints of police misconduct. During 1999, the General Assembly passed a bill creating a Civilian Review Board to replace the previous Complaint Evaluation Board. The legislation takes effect in October 1999.

The recently enacted State legislation establishes a 12-member Civilian Review Board consisting of:

- One member of the public from each of the nine police districts in Baltimore City, selected by the Mayor, subject to the advice and consent of the City Council,
- One representative of the Fraternal Order of Police,
- One representative of the Vanguard Justice Society, and
- The Police Commissioner or the Commissioner's designee.

The nine citizen members are voting members. The remaining three members are non-voting. The new Civilian Review Board's jurisdiction will include allegations of harassment, abusive language and use of excessive force.

Individuals can file complaints with the police department, the Legal Aid Bureau, the Maryland Human Relations Commission, or the Baltimore Community Relations Commission. The Police Department's Internal Investigation Division and the Civilian Review Board receive copies of each complaint.

The Internal Investigative Division conducts a comprehensive investigation of each complaint and submits a report to the Board. The new law authorizes the Civilian Review Board to investigate any complaint it deems appropriate, simultaneously with the police department.[1]

Upon review of the police department's investigation and the Board investigation, if available, the Board submits written findings and recommendations to the Baltimore City Police Commissioner. The Board may also recommend appropriate disciplinary action against the police officer. The Police Commissioner has final decision making authority, but cannot take final action until after reviewing the Board's recommendation.

The new legislation gives the Board the authority to subpoena witnesses (other than the accused individual) and review internal police documents in conjunction with investigations. The legislation also indicates that the Board will publish semiannual statistical reports regarding the complaints processed for the Mayor, City Council and Police Commissioner.

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[1] OLO believes that this new provisions may raise some legal issues regarding the limitations that the Law Enforcement Officer Bills of Rights places on civilian participation in complaint review.

IV. Citizen Review Model

A. Minneapolis, Minnesota's, Civilian Police Review Authority

Intake	Investigation	Determination of Findings	Discipline
Civilian Police Review Authority staff take written formal complaints from citizens and determine whether to recommend mediation, dismissal, or investigation.	Civilian Police Review Authority staff conduct investigations.	The Executive Director determines whether there is probable cause that a violation occurred. If so, a panel of the Civilian Police Review Authority holds an evidentiary hearing and make findings of fact and determination.	Police Chief imposes discipline.

Minneapolis established its Civilian Police Review Authority by city ordinance in 1990. The Authority receives, investigates, and recommends findings for all citizen complaints about police misconduct. The Civilian Police Review Authority has authority over complaints of use of excessive force; inappropriate language or conduct; harassment; discrimination; or failure to provide adequate or timely police protection.

The Authority is an independent city agency and includes a seven-member citizen board. The City Council appoints four of the Board members and the mayor appoints the remaining three, subject to the approval of the majority of the council.

The Civilian Police Review Authority is located in a facility separate from the police department and is staffed by a non-sworn executive director, investigators, and administrative staff. Authority investigators take written, formal complaints of misconduct from citizens. Within 30 days, the Authority's executive director recommends dismissal, mediation, or investigation of the complaint.

For all complaints recommended for investigation, one of the Authority's staff investigators conducts an investigation. The investigator submits a completed investigation report to the executive director who makes one of the following determinations:

- There is probable cause that a violation exists and the complaint should proceed to an evidentiary hearing, or
- There is no probable cause that a violation exists and the complaint should be dismissed.

Next, a panel of Civilian Police Review Board members holds a full evidentiary hearing. At the hearing, "the review authority shall weigh and consider all reliable and credible evidence presented." The executive director represents the complainant and presents evidence to the panel. A police federation attorney represents the officer.

Following the evidentiary hearing, the panel produces written findings of fact and a determination of findings. The Authority submits the findings of fact and the determination to the police chief, who makes a disciplinary decision, based on the information.

Minneapolis law requires the police department and all other city employees to cooperate with the Civilian Police Review Authority. This includes responding to requests for information, participating in evidentiary hearings, and for access to data and records for the purposes of enabling the Authority to carry out its responsibilities. Failure to do so is deemed an act of misconduct.

B. New Orleans, Louisiana's Office of Municipal Investigation

Intake	Investigation	Determination of Findings	Discipline
Departments and OMI receive complaints.	OMI conducts investigations. Departments may also conduct investigations.	OMI determines a finding. If the finding conflicts with a department's investigation and finding, the CAO makes a final decision.	The CAO and department heads determine discipline.

Established by Council Ordinance in 1981, the Office of Municipal Investigation (OMI) investigates and inquires into any alleged misconduct by a classified or unclassified city employee. OMI is a division of the city's chief administrator's office (CAO). The chief investigator, the head of the office, reports directly to the CAO.

The complaint review system in New Orleans in somewhat unique in that the Office of Municipal Investigation reviews misconduct by any city employee, with the exception of elected municipal officials or individuals appointed by and serving at the pleasure of those elected officials. According to OMI, the office investigates complaints of:

- Bribery,
- Theft of city property,
- Improper discharge of firearms,
- Coercion,
- Excessive us of force,
- Illegal or improper performance, and
- Violation of a law, rule or regulation.

Citizens or city employees may submit complaints to OMI or city departments. OMI handles complaints that involve illegal or improper conduct. The appropriate department handles complaints involving "minor infractions". After OMI conducts an investigation, the CAO and the relevant department are notified of OMI's findings. OMI and another city department may conduct parallel investigations regarding the same employee and incident. If the two investigations do not come to the same conclusion, the CAO makes a final decision.

OMI personnel may administer oaths, subpoena witnesses, and compel the production of documents. According to city ordinance, OMI has access to any documents, city records, and personnel records that are available to city law enforcement officers. OMI can also request, from an agency head, any files held by the agency. OMI is authorized to require any city employee to appear for interviews related to an investigation. The employee may be represented by an attorney at the interview, and employees who fail to answer OMI questions are subject to disciplinary action.

V. Police Commissions

A. Los Angeles Board of Police Commissioners

The five member Los Angeles Board of Police Commissioners legally directs the Los Angeles Police Department and sets overall policy. In particular, the Board receives complaints of police misconduct, reviews every incident of a weapon discharge, and has authority to appoint, discipline, and remove the chief of police. The Commissioners are appointed by the mayor and confirmed by the city council.

The Police Commissioners Office is under the direction of an executive director and divided into the Executive Section, the Commission Investigation Division, and the Office of the Inspector General. The Executive Section is the Board's liaison to the police chief and police department. The Commission Investigation Division processes, issues and investigates enforcement of Police Commission permits (e.g., massage therapists, tow unit operators, pool rooms).

The Office of the Inspector General provides oversight of the police department's internal disciplinary process and undertakes special projects for the Commissioners. The Inspector General falls most closely under the auditor model of complaint review.

Individuals submit complaints of police misconduct to the Board of Police Commissioners, the police department's internal affairs division or other police department offices. The internal affairs division investigates the complaints of police misconduct. The inspector general receives copies of every complaint, tracks each complaint through the investigation process, and reviews each completed investigation. Los Angeles reports that the inspector general also conducts systematic review of the disciplinary system and carries out the investigation when individuals submit allegations against the Chief of Police.

Examples of special projects conducted by the Inspector General for the Police Commission include analysis of the correlation between police officers' domestic violence history and their use of force, and investigating complaints of discrepancies in punishments between command and rank-and-file officers for similar departmental violations.

B. Milwaukee Fire and Police Commission

The City of Milwaukee has a Fire and Police Commission comprised of five civilians appointed by the mayor and approved by the city council. A 12-member staff headed by an executive director, carries out the Commission functions. The Commission's responsibilities include:

- recruitment and testing,
- handling citizen complaints of misconduct,
- handling appeals by members of the police and fire departments who have been disciplined by their chief, and
- policy review.

Complainants may submit complaints of misconduct to the Police or Fire Departments. Complaints filed directly with the Departments do not come to the Commission unless the Chief imposes discipline and the employee appeals that discipline.

The Commission also directly accepts complaints alleging specific acts of wrongdoing by members of either Department. Complaints are categorized as discourtesy, excessive force, or misconduct. Some complaints do not warrant further attention and are dismissed by the Commission. In other cases, the Commission passes the complaint on to the police or fire chief to handle.

The Commission refers other complaints for conciliation, in which case, the complainant and employee are encouraged to resolve the matter through discussion. If conciliation does not result in an agreement, the Commission reviews the case and decides whether to conduct a trial before the Commission or a hearing examiner. The trial is open to the public and involves presenting witnesses and exhibits. The Commission can suspend, demote, or discharge Department members for conduct in violation of Department rules and regulations.

Appendix N

Resolution: 13-1389
Introduced: August 4, 1998
Adopted: August 4, 1998

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By County Council

SUBJECT: Establishment of an Office of Legislative Oversight (OLO) Resource Committee

Background

1. Chapter 29A, Montgomery County Code, establishes the Office of Legislative Oversight (OLO) with the responsibility to serve as the principal means through which the County Council exercises its legislative oversight functions. This includes the responsibility to provide the Council with information and recommendations concerning the performance and operations of public and private agencies, programs, and functions for which funds are appropriated or approved by the Council.

2. The Office of Legislative Oversight's FY 99 Work Program, as approved by Council Resolution on August 4, 1998, includes a project to review how the Montgomery County Police Department responds to formal and informal complaints concerning the conduct of Police Department employees.

3. The County Council believes that input from a diverse group of Council-appointed individuals, including citizens and police representatives, is an important element of this Office of Legislative Oversight project.

Action

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

The Montgomery County Council hereby establishes a Resource Committee to provide the Office of Legislative Oversight with a diverse group of individuals, including citizens and police representatives, to consult with about the issues being addressed in OLO's FY 99 project to review how the Montgomery County Police Department responds to formal and informal complaints (from citizens or others) about the conduct of Police Department employees.

Scope of Work

1. It is anticipated that the Resource Committee will meet at least twice a month between October 1998 and June 1999. The Resource Committee meetings will be open to the public.

2. The Resource Committee will begin its work with a set of meetings, planned jointly by OLO and the Resource Committee Chair, that provides members with a common background about the Police Department, how complaints are received and processed, and the role and operations of the Police Department's Office of Internal Affairs.

3. At subsequent meetings, OLO will consult with the Resource Committee about specific issues being addressed in OLO's study. Examples of issues that OLO will share information and seek input on include:

    - the accessibility of the complaint process;
    - historical and current complaint data;
    - design of citizen surveys about the conduct of Police Department employees;
    - the perceived advantages and disadvantages of different models of citizen involvement; and
    - what issues deserve additional research.

4. Concurrent with OLO's interim reports to the Public Safety Committee, the Resource Committee will be invited to submit its own observations and comments on its work to date.

5. Within four weeks after OLO submits its final report to the Council, Resource Committee members will provide the Council with any written observations and comments on the issues addressed in the final OLO's report, including Resource Committee members' views concerning future citizen involvement in the oversight of Police Department complaint handling. The Resource Committee is not required to reach consensus on specific matters.

Appointment by the County Council Outreach and Membership

1. The Resource Committee will consist of 9 to 13 members, appointed by the County Council.

2. The Resource Committee will represent a balance of different points of view, and include diversity with respect to age, race, gender, and communities in the County.

3. To encourage the appointment of a broad based Resource Committee, Council staff will make a special effort to publicize the Council's establishment of the Resource Committee. The application period will remain open through September 16, 1998.

4. The County Council will designate the Chair and Vice-Chair of the Resource Committee.

5. At minimum, two of the Resource Committee members must be police representatives. At least one of the police representatives will be from a list of candidates nominated by the Fraternal Order of Police, Montgomery County Lodge 35.

Staff Support

1. Central Council office staff will assist with the Council's appointment of the Resource Committee. Central Council office staff will also assist the Resource Committee members with production of their own written comments and observations to the Council.

2. All other staff support will be provided by the Office of Legislative Oversight

This is a correct copy of Council action.

Mary A. Edgar

Mary A. Edgar, CMC
Secretary of the Council

(28)

Appendix O

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Appendix P

Review of Police Disciplinary Procedures in Maryland and Other States

Project X-47

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Contents

Acknowledgments ii
Executive Summary iii
Introduction 1
Current Law in Maryland 1
1997 Proposal to Change Current Maryland Law 5
Study Methodology 5
Comparison of State Statutes 8
Officers Covered by Statutory Provisions 8
Requirements Concerning Internal Investigations 10
Requirements Concerning Disciplinary Procedures 15
Hearing Requirements 15
Hearing Board Composition 18
Selection of Hearing Board Members 21
Effect of Decision 22
Appeals 25
Maryland Compared to Other States 26
Disciplinary Hearing Practices in Maryland Police Agencies 28
Composition and Conduct of Hearing Boards 28
Prevalence of Hearing Boards 30
Hearing Board Outcomes 32
Punishment Imposed by Chief 34
Summary 40

Appendices

Appendix A. State Statutes that Address Police Disciplinary Procedures A-1
Appendix B. Survey of Police Disciplinary Practices in Maryland B-1
Appendix C. Responses to Survey Questions 1 and 2 . . . . . C-1
Appendix D. Responses to Survey Questions 3 through 6 . . . . . D-1
Appendix E. Cases in Which Chief Imposed Different Punishment than Recommended E-1
Appendix F. Responses to Survey Addendum F-1

136

Executive Summary

At the request of the Maryland Association of Counties and the Maryland Municipal League, the Institute for Governmental Service at the University of Maryland documented and compared the provisions of statutes in other states to Maryland's Law Enforcement Officers' Bill of Rights (LEOBR) and determined how the provisions of Maryland law regarding disciplinary procedures have actually been implemented. The research was undertaken in anticipation of the reintroduction of amendments to Maryland's LEOBR statute that would reduce the authority of police chiefs.

The study methodology involved a review of the statutes in all 50 states and the District of Columbia and a mail survey of the 117 police agencies in Maryland that were subject to LEOBR. One hundred and six police agencies responded to the survey.

Current Maryland Law

Maryland law concerning police disciplinary procedures appears under the subtitle "Law Enforcement Officers' Bill of Rights" in Article 27, Sections 727 through 734D of the Annotated Code of Maryland. It extends uniform protections to officers in a broad list of local and state police agencies. The LEOBR statute covers two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer, and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined.

Maryland's LEOBR statute offers a fairly extensive set of protections to officers during internal investigations, such as limitations on the time, place and duration of an interrogation. The statute also protects the officer's right to obtain certain information and to have an attorney present. When a complaint against a police officer is sustained by the internal investigation, Maryland's LEOBR statute entitles the officer to a hearing before a board of sworn officers selected by the chief. (For minor offenses, the board may be a single officer.) Police agencies and officers may enter into collective bargaining agreements that permit an alternate method of forming the hearing board. The statute also contains requirements for the conduct of the hearing.

Once a hearing board has rendered a decision regarding an officer's guilt or innocence, that decision is binding. For cases in which the finding is guilt, the hearing board makes a punishment recommendation, which the chief may accept or reject, unless the agency and officers have a collective bargaining agreement that makes the hearing board's punishment recommendation binding on the chief. If the chief decides to impose a more severe punishment than the hearing board recommended, the chief must document the reasons for that decision.

Laws in Other States

The provisions of other state laws regarding police discipline vary widely from the Maryland law and from each other in the set of police agencies subject to the provisions, whether both internal investigations and disciplinary actions are addressed, the protections afforded during internal investigations, the types of disciplinary actions covered, and the specific processes and

procedures required for disciplinary matters. In many states, different provisions apply to different police agencies and some categories of police agencies (e.g., sheriffs departments) are not covered by the law at all. In some states, although the provisions are a part of state law, they do not apply to a given local police agency unless adopted by the local government.

Only 15 states besides Maryland have statutes that cover the conduct of internal investigations. Most of these statutes provide fewer protections for officers than are contained in the Maryland law.

State laws that require hearings in police disciplinary cases are split about evenly between those that require a hearing prior to imposition of discipline (a trial board) and those that require a hearing at the request of the officer once a disciplinary action has been taken (an appeal board).

The composition of hearing boards specified in state law also varies from state to state and within some states by category of police agency. The most common type of hearing board is a civilian civil service commission or merit board, generally composed of residents of the community appointed for fixed terms. Under some statutes, these boards are general civil service commissions that establish personnel policies and handle discipline for other public employees as well as police officers. Under other statutes, the boards are specifically constituted to handle police personnel issues, including disciplinary actions.

Like hearing boards in Maryland, the boards specified by statute for all covered agencies in Delaware, Florida, Rhode Island and Virginia are composed entirely of sworn officers. In seven other states (Kentucky, Michigan, Missouri, Pennsylvania, Vermont, Washington and West Virginia), hearing boards for the state police and certain other police agencies are composed entirely of sworn officers.

Other variations of hearing board composition are police oversight boards composed of public officials including those in law enforcement, the local governing body, the agency with appointing and removal authority, grievance committees, arbitrators and judges. Some state laws permit the composition of the hearing board to be determined locally, while others do not even address the composition of the hearing board.

The variety in hearing board composition corresponds to the variety of methods by which hearing board members are selected. In states that specify that civilian merit boards conduct the disciplinary hearing, a common method for appointing the board is for the local governing body or executive to select the members. In some states that provide for civilian merit boards or police oversight boards to hear police disciplinary cases, the governor is involved in the selection of members. Regarding police agencies for which the local governing body serves as the hearing board, the electorate is responsible for its selection.

Among the 12 states that specify hearing boards composed of sworn officers, the accused officer has a role in the selection of the hearing board members in four states (Florida, Rhode Island, Vermont and Virginia). Delaware's statute does not address how hearing board members are selected. In the other seven states, including Maryland, statutes provide for the agency head to select all members of the hearing board.

Unlike Maryland's law, most statutes provide that hearing board decisions regarding both guilt and punishment are binding on the police agency. In seven states in addition to Maryland, statutes applying to certain agencies provide that hearing board decisions are not

binding. Several state statutes are silent as to whether the hearing board's decision is binding, often because the hearing process itself has been left to the discretion of local jurisdictions. In general, an aggrieved officer is entitled to appeal the decision of a hearing board or higher administrative authority to the court system.

Maryland Law Compared to Other States

Maryland law contains many provisions that are more favorable to officers than provisions in other states. However, the Maryland law has two drawbacks from the officers' perspective. The chief selects all members of the hearing board (unless a collective bargaining agreement provides otherwise). Plus, the hearing board's punishment recommendation is not binding on the chief, unless a collective bargaining agreement provides otherwise. Despite these drawbacks, the Maryland law appears to accommodate officers more than any other state law, except possibly that of Rhode Island.

Actual Practice in Maryland

The survey of disciplinary practices in Maryland police agencies solicited detailed information on how police agencies have implemented the provisions of Maryland's LEOBR statute. One hundred and six police agencies, including all of the large police agencies, responded. Ten agencies reported having collective bargaining agreements which address disciplinary procedures. Two of these agreements contain provisions for an alternate method of forming hearing boards. Other agreements provide officers with peremptory challenges of hearing board members.

In addition to the provisions of collective bargaining agreements, agencies have implemented internal policies that enhance the neutrality of hearing boards. Two common mechanisms are random selection of hearing board members and obtaining hearing board members from other police agencies.

The vast majority of disciplinary cases in Maryland police agencies are resolved without a hearing. For the three-year period from January 1995 to early December 1997, responding agencies reported over 10,000 complaints against police officers that required investigation. One-third of all complaints were sustained by internal investigations.

Based on data from 96 agencies, more than 80 percent of the time the officer accepted the discipline that was recommended by the internal investigators. The remaining cases were resolved through a variety of means, including the officer negotiating a lesser punishment, the officer resigning or retiring and the convening of a hearing board.

A total of 381 hearings occurred in the responding agencies during the period. More than half of Maryland police agencies did not convene any hearing boards during 1995, 1996 or 1997. Forty-two agencies conducted at least one hearing during the period; four agencies (Baltimore City, Baltimore County, Maryland State, and Prince George's County) convened 202 hearing boards, or more than half of the total of 381 hearing boards reported.

For the cases reported for the 1995 to 1997 period, about three-quarters of the hearing board decisions were findings of guilt. Suspension was most frequently the most severe penalty recommended by the hearing board.

As discussed above, under Maryland law, the hearing board's decision regarding guilt is binding, whereas the agency chief can decide whether to accept the hearing board's recommendation regarding punishment (unless a collective bargaining agreement provides otherwise). Of the 278 cases for which the hearing board made a punishment recommendation during the three-year period, agency chiefs made their penalty decisions in 274 cases. The chiefs imposed the penalty recommended by the hearing board in more than nine out of 10 cases. During the three-year period, an agency chief imposed a more severe penalty than recommended by the hearing board in 14 cases. In six cases, an agency chief imposed a less severe penalty than the hearing board recommended.

Conclusions

Overall, Maryland's LEOBR statute compares well to the laws of other states in providing protections to police officers facing the possibility of disciplinary action. Maryland's statute extends uniform protections to officers in a broad list of local and state police agencies, addresses both investigations and resulting disciplinary actions, contains extensive protections during internal investigations, covers all types of disciplinary actions, and specifies a hearing board composed of sworn officers. Only a few other state statutes contain all these features, and only one statute--Rhode Island's--appears to be more favorable to officers than Maryland's.

The fact that police agencies must investigate numerous complaints against police officers underscores the importance of having extensive provisions concerning internal investigations in Maryland's LEOBR statute. Under current law, the internal investigation process resolves the vast majority of disciplinary cases without proceeding to the hearing stage.

The provisions of Maryland's LEOBR law that may be viewed as accommodating police officers are offset by provisions that may be viewed as accommodating management: the chief's selection of all hearing board members and the chief's authority to overrule the hearing board's recommendation regarding punishment. The survey of Maryland agencies reveals that the chief's selection power is often mitigated by collective bargaining agreements or by the policies and procedures of individual agencies, and that the chief's authority to overrule hearing board recommendations is invoked in only a small percentage of cases.