

2023 PAB REPORT WITH CCSO RESPONSES

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

1. identifies any trends in the disciplinary process of police officers in the county; and
2. makes recommendations on changes to policy that would improve police accountability in the county.

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

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

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

CCSO COMMENT:

The Police Accountability Act ("PAA") of 2021 became effective on July 1, 2022. Thanks to the hard work of the County Attorney's Office, Charles County was the first county to establish a Police Accountability Board ("PAB") and Administrative Charging Committee ("ACC"). The Charles County ACC was the first to receive investigations, the first to issue recommendations and charges. The Charles County Sheriff's Office was the first police agency in the State to conduct trial boards under the PAA.

Being first means that Charles County has been the first county to grapple with the many ambiguities and uncertainties that occur throughout the PAA. Charles County is not the only county dealing with these issues, and there does not appear to be consistency across the State among counties, ACC's, or police agencies.

A copy of the Police Accountability Act can be found at ccso.us.

Administrative Charging Committee Statistics

To our knowledge, the Charles County ACC was the first in the State of Maryland to begin reviewing cases in accordance with the Act. The ACC has received 44 complaints that include 98 violations of police misconduct as of November 2023. Each case requires review of the investigative file prepared by the agency in response to the complaint. The types of offenses alleged against officers is vast, but the most frequently complained of offenses include the following: 1. Performance of Duty; 2. Courtesy; 3. Traffic Stops; and 4. Bias.

CCSO COMMENT:

The Sheriff's Office is responsible for investigating all "complaints of police misconduct" involving any of its officers. By law, "On completion of a complaint of police misconduct involving a member of the public and a police officer, regardless of whether the complaint originated from within the law enforcement agency or from an external source," the Sheriff's Office is required to forward "the investigatory files for the matter" to the ACC. Md. Code Ann., Pub. Safety §3-104(d).

There are two important points to make here. First, the ACC reviews cases "involving a member of the public and a police officer." During 2023, the Sheriff's Office's Office of Professional Responsibility opened 51 investigations into possible misconduct by officers. 28 investigations were closed and 19 were sent to the ACC. Of the nine Sheriff's Office matters, four investigations resulted in sustained findings of misconduct and four officers were disciplined in accordance with the Maryland Statewide Disciplinary Matrix. This does not include accident cases, as discussed below.

Of the 98 violations contained in 44 cases, the ACC administratively charged the law enforcement officer for 23 violations. The officer was deemed exonerated or the violations alleged were deemed unfounded in 70 instances. To date, no complaint of bias or excessive force has been sustained by the ACC. A failure of supervision was identified by the ACC as causing or contributing to the officer's misconduct in 2 cases.

CCSO COMMENT:

The ACC began receiving investigations on January 25, 2023. By that point, there were 10 investigations waiting for their review. Of the 44 cases reviewed by the ACC, 25 of them were 2022 cases. The members of the ACC worked hard to get caught up, and by the end of 2023 they were successfully transmitting their reports and charges within the 30-day timeframe required by the PAA. Md. Code Ann., Pub. Safety §3-113(b).

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

Traffic Accidents

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

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

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

The additional requirement that the police misconduct involve a "member of the public" may be accomplished by something as tenuous as an officer accidentally striking an inanimate object with his vehicle that is owned by a "member of the public." Therefore, a minor traffic accident may qualify in the technical sense as "police misconduct involving a member of the public," but it remains difficult to square this interpretation with the common sense understanding of what is commonly thought of as "police misconduct."

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

CCSO COMMENT:

The Sheriff's Office reviews all agency vehicle crashes ("accidents"). The Sheriff's Office policy regarding the process can be found in 6-600 of our Administrative & Operations Manual at ccso.us/about/transparency/. Any employee, including a police officer, who is found to be at fault in an accident may be subject to discipline. The Statewide Disciplinary Matrix has an entire section devoted to "Departmental Collisions."

The PAB has accurately described the definition of "police misconduct," and the Sheriff's Office agrees with what appears to be the prevailing view across the State that violation of an Agency policy, regardless of how minor, is "misconduct." The Sheriff's Office is required to follow the statutory definition of "police misconduct" and not, as the PAB suggests, some undefined "common sense understanding." The ACC's request and PAB's recommendation are contrary to the law as it currently exists. There is no support in the PAA for the ACC's position that accident cases involving a member of the public are exempt from the ACC's jurisdiction. There is certainly no support for the notion that the ACC should only receive accident cases "that involve citizen complaints." §3-104(d) requires the ACC to receive investigations "*regardless of whether the complaint originated from within the law enforcement agency or from an external source.*" The limitations on accident cases requested by the ACC are also not supported by the statute, and the phrase "serious neglect" is not a legal term and would open up questions about who should decide what was and was not "serious neglect."

In short, the Sheriff's Office is unable to accede to the PAB's recommendation that it "cease transmitting accident cases to the ACC" unless certain criteria are met. That being said, the Sheriff's Office agrees with the PAB that the General Assembly should clarify the issue. The Sheriff's Office agrees that the time and attention of the ACC members would be better spent focusing on issues that have significant community impact and that minor accidents are not among them. The Sheriff's Office would be able to impose discipline much more efficiently and swiftly if it did not have to wait for ACC review. Until the law changes, however, both the ACC and the Sheriff's Office are required to deal with the law as it exists.

The PAB did not include in their report that the Sheriff's Office has made repeated efforts to reduce the burden accident cases impose on the ACC. The Sheriff's Office has modified its collision review forms to create a space for the Chairman of the ACC to simply adopt the collision committee's findings if the ACC deems it appropriate. Routine accident cases, unlike an OPR investigation, do not involve 30 to 40 page reports and can be reviewed relatively quickly.

Finally, the Sheriff's Office is not in a position to explain or defend the La Plata Police Department's decision to not send accidents to the ACC. As the PAB noted, police agencies across the State are taking different approaches. No police agency, as far as the Sheriff's Office is aware, has been able to articulate how withholding accident cases involving a member of the public from an ACC is authorized under the PAA.

Trial Board Processes

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

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

CCSO COMMENT:

When the PAA was first passed in 2021, there were two different ways a police officer could challenge a finding of misconduct, depending on whether misconduct was found by the ACC or the agency. In 2022, the legislature clarified that the Statewide Disciplinary Matrix applies to *all* misconduct, and that the trial board process in §3-106 is to be used “to adjudicate *all* matters for which a police officer is subject to discipline.” In other words, unless an officer agrees to a proposed discipline, there *must* be a trial board, no matter how minor the offense might be.

If the ACC concludes that an officer committed police misconduct, the ACC is required to prepare administrative charges. The charges identify the section of the AOM the officer is alleged to have violated and a “recommendation” as to the appropriate discipline based on the ACC’s interpretation of the Statewide Disciplinary Matrix.

Once the charging document has been received, the Sheriff has fifteen days to “offer” the discipline to the officer. At this stage, the Sheriff has very little discretion. He “may offer the same discipline that was recommended by the administrative charging committee or a higher degree of discipline within the applicable range of the disciplinary matrix, but may not deviate below the discipline recommended by the administrative charging committee.”

In practice, this means that if the ACC determines that a violation is a “Category A” offense, the lowest level of offenses, the Sheriff is not allowed to offer discipline within a Category C range. Similarly, the Sheriff is not allowed to offer Category A if the ACC said Category B. If the ACC did not sustain a charge, the Sheriff is not allowed to impose any discipline at all. In one case, for example, the Office of Professional Responsibility believed an officer failed to deescalate a situation. The ACC did not sustain that violation and the Sheriff is unable to impose discipline.

The ACC is required to provide a copy of their report and charging document to the officer. When the discipline is offered, Sheriff's Office policy requires that the officer also be provided with any recommendations that OPR had provided to the ACC. (The ACC is not required to accept any recommendations made by the Sheriff's Office, and may accept, reject, or ignore any findings or conclusions made by OPR in their report.) The officer must accept or reject the discipline; Sheriff's Office policy gives the officer five business days to make a decision.

To our knowledge, Charles County was the first county in the State of Maryland to conduct a trial board under the Act. To date, Charles County has completed 6 trial board hearings, each of which were requests by CCSO officers. During the process of coordinating the hearings, it came to the attention of the PAB that when CCSO makes an offer of discipline based upon the decision of the ACC, the written policy of CCSO is to include and CCSO's recommended disposition and discipline. Additionally, if CCSO is of the opinion that the findings of the ACC are not supported by evidence or law, it is their written policy to prepare a memorandum to the officer explaining the position of CCSO to attach to the ACC charging document.² The PAB is very concerned about this process and the obvious impact of undermining the charges and discipline determined by the ACC. We do not believe this policy is consistent with the intent of the General Assembly when mandating the establishment of an independent ACC to review and decide complaints of police misconduct.

CCSO COMMENT:

Regarding this stage of the process, the Sheriff's Office policy currently says:

Within 15 calendar days of receipt of administrative charges against an officer, the Sheriff, through the officer's Division Commander / Director, shall offer discipline to the officer. The Division Commander / Director will provide the officer with the administrative charging document, the ACC report, and the Agency's recommended disposition and discipline. The officer may have a collective bargaining unit representative or an administrative sergeant present when the administrative charges are presented. The Sheriff may increase within the applicable range of the disciplinary matrix, but may not decrease, the discipline recommended by the ACC.

If, in the opinion of the Sheriff, the findings of the ACC *are not supported by evidence or law*, the Office of General Counsel will be directed to prepare a memorandum to the officer explaining the Sheriff's position. The memorandum will be provided to the officer with the administrative charges. The Office of General Counsel will also send a letter to the ACC informing them of the Agency's position. (emphasis added)

There a few points to be made here. First, there is a tendency to forget that "police discipline" is fundamentally nothing more nor less than an employment issue. Violation of the AOM is the same as the violation of "company rules." Neither the Police Accountability Act nor the Law Enforcement Officer Bill of Rights ("LEOBR") that preceded it has any impact on a person's ability to *sue* a police officer for civil tort or

violation of civil rights, or a prosecutor to *prosecute* an officer for committing a crime. The argument that an employer is not allowed to speak with an employee about a workplace issue is, to be blunt, ridiculous. All government employees, including police officers, are entitled to due process and the Sheriff's Office sees the PAB's position as creating a "shell game." The PAB would require an officer to plead guilty or "roll the dice" without knowing important information. The men and women of the Sheriff's Office deserve better.

Second, a memorandum describing the Sheriff's position is generated only when there are sustained ACC findings *not supported by evidence or law*. Any employee *who did nothing wrong* is entitled to be told so by his or her employer. This has been, and no doubt will continue to be, an extremely rare occurrence. Only twice has the ACC returned charges that, in the view of the Sheriff, were wholly unjustified.

Third, the Sheriff's Office is completely transparent when this occurs. The ACC is notified, in writing, of the Sheriff's position and is provided the reasons why. Whether the ACC is persuaded by the reasons is a matter for the ACC. The public is free to reach their own conclusions by reviewing the letters sent to the ACC which will be posted on ccso.us

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

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

CCSO COMMENT:

The PAB has correctly identified one of the largest difficulties with implementing the PAA. As the PAB notes, the PAA requires each *agency* to “establish a trial board process.” In other words, the agency determines how the trial board works. Additionally, the PAA provides, “[A] *law enforcement agency* has the burden of proof by a preponderance of the evidence in any proceeding under this subtitle.” A police agency is handed charges issued by a different entity. The ACC is not required to evaluate whether the charges can actually be proven and is not required to explain or defend its determination. The agency is not allowed to prosecute charges the ACC did not sustain.

The Sheriff carefully reviews the findings and charges of the ACC, as well as the investigatory report and any recommendations that had been made by OPR. At a trial board, the Sheriff and the officer are the parties in the case – not the ACC. Neither the Sheriff nor the Sheriff’s Office’s attorneys represent the ACC. Accordingly, the Sheriff determines the positions the Agency will take at the hearing, based on the evidence and the Statewide Matrix. The Sheriff, through his Office of General Counsel, communicates the position he will take to the officer. If the officer has the same position, the agency and the officer prepare a consent position for review by the trial board. The officer is not required to take the same position as the agency. To date, the Sheriff’s Office has not “negotiated” any lesser penalty.

The trial board is presented with the ACC’s charging document and the consent. Under the Sheriff’s Office trial board process, the trial board is not allowed to merely “rubber stamp” the agreement. The trial board is required to review the agreement and determine if the result is an abuse of discretion. As part of its review, the trial board is free to ask about the agreement and require the Sheriff’s Office (and/or the officer) to explain why its position is not identical to the ACC’s.

Trial boards are, broadly speaking, open to the public. The date, time, and place of Sheriff’s Office trial boards are posted on ccso.us. The Sheriff’s Office is open and transparent about the positions it takes at each trial board.

PAB Membership and Training

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

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

Recommendations

- County to issue 5 county-owned laptops to ACC members to better ensure proper security of confidential documents.

- County to adjust ACC members' compensation to an hourly rate rather than an annual stipend to better reflect the seriousness of their responsibilities and the time commitment required to dispose of complaints of police misconduct.
- CCSO to cease transmitting traffic accident cases to the ACC unless the traffic accident includes claims of willful neglect, personal injury, driving while under the influence, or complaints submitted by a member of the public.

CCSO RESPONSE:

As discussed above, the Sheriff's Office does not believe it can legally comply with this request.

- County to request a State legislative amendment to clarify that traffic accidents involving an officer, absent willful neglect, personal injury, driving while under the influence, or complaints submitted by members of the public, are not eligible for ACC review under Md. Public Safety Code Ann. § 3-104.

CCSO RESPONSE:

The Sheriff's Office agrees that there is a need for the legislature to carefully define the scope of the ACC's role and that many minor violations, including minor accident cases, are best handled internally. The ACC's role should be to focus on allegations of serious misconduct.

- County to request a State legislative amendment to amend Md. Public Safety Code Ann. § 3-106(a)(h) to allow the trial board process to be established by the ACC, and to allow the trial board case to be brought on behalf of the ACC.

CCSO RESPONSE:

The Sheriff's Office agrees that requiring the ACC to prove its charges and defend its position is one possible approach. As the officer's employer, the police agency must continue to be a party to the trial board proceedings.

- CCSO to cease providing the position of the agency along with the offer of discipline to the officer required pursuant to Md. Public Safety Code Ann. §3-105, as it does not comport with the purpose of the ACC recommendation under the Act, and effectively makes an offer of discipline less than that of the ACC recommendation in some instances, which is not permitted under the Act.

CCSO RESPONSE:

As discussed above, the Sheriff's Office will not follow this recommendation. The Sheriff's Office disagrees with the suggestion that any of its actions are "not permitted under the Act."

- County to request a State legislative amendment to amend Md. Public Safety Code Ann. § 3-105 to include clear language that prohibits inclusion of the position of the chief of the law enforcement agency in the offer of discipline and limits the ability to communicate a recommendation of the agency until such time as the officer has declined the offer of discipline from the ACC.

CCSO RESPONSE:

As discussed above, the Sheriff's Office disagrees with this recommendation.

- County to enhance their recruitment efforts to be more aggressive and proactive when advertising vacancies on the PAB.

PAB to request attendance of the LPPD Chief and CCSO Sheriff, rather than representatives, at least twice annually.

CCSO RESPONSE:

This recommendation comes as a surprise. The Sheriff has not heard any concerns from the PAB that the Sheriff's designees at the PAB meetings (including commanders of the Office of Professional Responsibility and attorneys from the Office of General Counsel) have not been able to provide information or communicate the Sheriff's position on issues. While Public Safety §3-102(a) directs a PAB to "hold quarterly meetings with heads of law enforcement agencies," nothing in Maryland law prevents a chief or sheriff (or any other executive member of government, such as a State's Attorney, department secretary, or county executive) from designating persons to act on his behalf. The idea that a county-appointed board of citizens could have the authority to direct a constitutionally elected official to appear at a time and place of their choosing is antithetical to the constitutional office of sheriff.

- PAB to provide the Board of Commissioners quarterly updates on high level information concerning the mandate of the PAB.