

BERLIN POLICE DEPARTMENT
Berlin, Maryland

SUBJECT: DISCIPLINARY PROCESS - GENERAL		NO: 500 D-1
APPROVED/EFFECTIVE DATE January 9, 1995	AMENDS	RESCINDS G.O. 47-86
DISTRIBUTION/DATE A	REFERENCES Maryland Public Safety Article Title 3, Section 3-101 through 3-111	

- .10 Actions of a non-punitive nature; including training, documented counseling, transfers or reassignment of duties, determined to be in the best interest of the department and consistent with the law, are not covered by the provisions of this order series.
- .20 This order shall apply to personnel as follows:
- A. The sections covering the Handling of Complaints and Investigative Procedures shall apply to all employees of this department.
 - B. The sections pertaining to Departmental Charges, The Administrative Hearing Board and Suspension from Duty, which are governed by the Law Enforcement Officer's Bill of rights shall apply to all non-probationary sworn personnel.
 - C. Disciplinary action against probationary sworn personnel (with the exception of brutality charges) and civilian employees shall be governed by the Town of Berlin Rules and regulations on classified employees.
- .30 Each member of the department shall assume the obligations of his/her rank and perform his/her duties in the investigation of complaints or allegations of misconduct against members, and shall cooperate fully with personnel conducting these investigations.
- .40 Command and supervisory personnel shall initiate investigations when the alleged violation reported or observed is within the scope of their authority. Violations outside the individual's authority shall be reported promptly to higher authority consistent with procedures herein.
- .50 Untruthfulness by a member of the police department is a very serious transgression and any member found to be guilty of the transgression may be subject to dismissal or such other punishment as may be adjudged.

Section 3-101 - Definitions

- (a) In this subtitle the following words have the meanings indicated.
- (b) (1) "Chief" means the head of a law enforcement agency.
 - (2) "Chief" includes the officer designated by the head of a law enforcement agency.
- (c) (1) "Hearing" means a proceeding during an investigation conducted by a hearing board to take testimony or receive other evidence.
 - (2) "Hearing" does not include an interrogation at which no testimony is taken under oath.
- (d) "Hearing board" means a board that is authorized by the chief to hold a hearing on a complaint against a law enforcement officer.
- (e) (1) "Law enforcement officer" means an individual who:
 - (i) in an official capacity is authorized by law to make arrests; and
 - (ii) is a member of one of the following law enforcement agencies:
 1. the Department of State Police;
 2. the Police Department of Baltimore City;
 3. the Baltimore City School Police Force;
 4. the Baltimore City Watershed Police Force;
 5. the police department, bureau, or force of a county;
 6. the police department, bureau, or force of a municipal corporation;
 7. the office of the sheriff of a county;
 8. the police department, bureau, or force of a bicounty agency;
 9. the Maryland Transportation Authority Police;
 10. the police forces of the Department of Transportation;
 11. the police forces of the Department of Natural Resources;
 12. the Field Enforcement Bureau of the Comptroller's Office;
 13. the Housing Authority of Baltimore City Police Force;
 14. the Crofton Police Department;
 15. the police force of the Department of Health and Mental Hygiene;
 16. the police force of the Department of General Services;
 17. the police force of the Department of Labor, Licensing, and Regulation;
 18. the police forces of the University System of Maryland;
 19. the police force of Morgan State University;
 20. the office of State Fire Marshal;
 21. the Ocean Pines Police Department;
 22. the police force of the Baltimore City Community College; or
 23. the police force of the Hagerstown Community College.
- (2) "Law enforcement officer" does not include:
 - (i) an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
 - (ii) an individual who serves at the pleasure of the appointing authority of a charter county;
 - (iii) the police chief of a municipal corporation;

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- (iv) an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer's duties is made;
- (v) a Montgomery County fire and explosive investigator as defined in § 2-208.1 of the Criminal Procedure Article;
- (vi) an Anne Arundel County or City of Annapolis fire and explosive investigator as defined in § 2-208.2 of the Criminal Procedure Article;
- (vii) a Prince George's County fire and explosive investigator as defined in § 2-208.3 of the Criminal Procedure Article;
- (viii) a Worcester County fire and explosive investigator as defined in § 2-208.4 of the Criminal Procedure Article; or
- (ix) a City of Hagerstown fire and explosive investigator as defined in § 2-208.5 of the Criminal Procedure Article.

Section 3-102 - Effect of Subtitle Maryland Law Enforcement Officer's Bill of Rights Public Safety Article, Title 3 2

- (a) Except for the administrative hearing process under Title 3, Subtitle 2 of this article that relates to the certification enforcement power of the Police Training Commission, this subtitle supersedes any other law of the State, a county, or a municipal corporation that conflicts with this subtitle.
- (b) Any local law is preempted by the subject and material of this subtitle.
- (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 transfer and reassignment if:
 - (1) that action is not punitive in nature; and
 - (2) the chief determines that action to be in the best interests of the internal management of the law enforcement agency.

Section 3-103 - Rights of Officers Generally

- (a) (1) Subject to paragraph (2) of this subsection, a law enforcement officer has the same rights to engage in political activity as a State employee. (2) This right to engage in political activity does not apply when the law enforcement officer is on duty or acting in an official capacity.
- (b) A law enforcement agency:
 - (1) may not prohibit secondary employment by law enforcement officers; but
 - (2) may adopt reasonable regulations that relate to secondary employment by law enforcement officers.
- (c) A law enforcement officer may not be required or requested to disclose an item of the law enforcement officer's property, income, assets, source of income, debts, or personal or domestic

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expenditures, including those of a member of the law enforcement officer's family or household, unless:

- (1) the information is necessary to investigate a possible conflict of interest with respect to the performance of the law enforcement officer's official duties; or
 - (2) the disclosure is required by federal or State law.
- (d) A law enforcement officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to the law enforcement officer's employment or be threatened with that treatment because the law enforcement officer:
- (1) has exercised or demanded the rights granted by this subtitle;
or
 - (2) has lawfully exercised constitutional rights.
- (e) A statute may not abridge and a law enforcement agency may not adopt a regulation that prohibits the right of a law enforcement officer to bring suit that arises out of the law enforcement officer's duties as a law enforcement officer.
- (f) A law enforcement officer may waive in writing any or all rights granted by this subtitle

Section 3-104 - Investigation or Interrogation of an Officer

- (a) The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with this section.
- (b) For purposes of this section, the investigating officer or interrogating officer shall be:
 - (1) a sworn law enforcement officer; or
 - (2) if requested by the Governor, the Attorney General or Attorney General's designee.
- (c) (1) A complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, by:
 - (i) the aggrieved individual;
 - (ii) a member of the aggrieved individual's immediate family;
 - (iii) an individual with firsthand knowledge obtained because the individual was present at and observed the alleged incident; or
 - (iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.
- (2) Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken. Maryland Law Enforcement Officer's Bill of Rights Public Safety Article, Title 3 3
- (d) (1) The law enforcement officer under investigation shall be informed of the name, rank, and command of:

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- (i) the law enforcement officer in charge of the investigation;
 - (ii) the interrogating officer; and
 - (iii) each individual present during an interrogation.
- (2) Before an interrogation, the law enforcement officer under investigation shall be informed in writing of the nature of the investigation.
- (e) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall be informed completely of all of the law enforcement officer's rights before the interrogation begins.
- (f) Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty.
- (g) (1) The interrogation shall take place:
- (i) 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; or
 - (ii) at another reasonable and appropriate place.
- (2) The law enforcement officer under investigation may waive the right described in paragraph (1)(i) of this subsection.
- (h) (1) All questions directed to the law enforcement officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation consistent with paragraph (2) of this subsection.
- (2) Each session of interrogation shall:
- (i) be for a reasonable period; and
 - (ii) allow for personal necessities and rest periods as reasonably necessary.
- (i) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.
- (j) (1) (i) On request, the law enforcement officer under interrogation has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation.
- (ii) The law enforcement officer may waive the right described in subparagraph (i) of this paragraph.
- (2) (i) The interrogation shall be suspended for a period not exceeding 10 days until representation is obtained.
- (ii) Within that 10-day period, the chief for good cause shown may extend the period for obtaining representation.
- (3) During the interrogation, the law enforcement officer's counsel or representative may:
- (i) request a recess at any time to consult with the law enforcement officer;
 - (ii) object to any question posed; and

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- (iii) state on the record outside the presence of the law enforcement officer the reason for the objection.
- (k) (1) A complete record shall be kept of the entire interrogation, including all recess periods, of the law enforcement officer.
- (2) The record may be written, taped, or transcribed.
- (3) On completion of the investigation, and on request of the law enforcement officer under investigation or the law enforcement officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.
- (l) (1) The law enforcement agency may order the law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation.
- (2) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal.
- (3) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the law enforcement officer.
- (m) (1) If the law enforcement agency orders the law enforcement officer to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the law enforcement agency and the law enforcement officer agree to the admission of the results.
- (2) The law enforcement officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner if:
- (i) the questions to be asked are reviewed with the law enforcement officer or the counsel or representative before the administration of the examination;
- (ii) the counsel or representative is allowed to observe the administration of the examination; and
- (iii) a copy of the final report of the examination by the certified polygraph examiner is made available to the law enforcement officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the examination.
- (n) (1) On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be:
- (i) notified of the name of each witness and of each charge and specification against the law enforcement officer; and
- (ii) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to:

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1. execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer; and
 2. pay a reasonable charge for the cost of reproducing the material.
- (2) The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer under this subsection:
- (i) the identity of confidential sources;
 - (ii) nonexculpatory information; and
 - (iii) recommendations as to charges, disposition, or punishment.
- (o) (1) The law enforcement agency may not insert adverse material into a file of the law enforcement officer, except the file of the internal investigation or the intelligence division, unless the law enforcement officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.
- (2) The law enforcement officer may waive the right described in paragraph (1) of this subsection.

Section 3-105 - Application for Show Cause Order

- (a) A law enforcement officer who is denied a right granted by this subtitle may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted.
- (b) The law enforcement officer may apply for the show cause order:
 - (1) either individually or through the law enforcement officer's certified or recognized employee organization; and
 - (2) at any time prior to the beginning of a hearing by the hearing board.

Section 3-106 - Limitation on Administrative Charges

- (a) Subject to subsection (b) of this section, a law enforcement agency may not bring administrative charges against a law enforcement officer unless the agency files the charges within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.
- (b) The 1-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force.

Section 3-107 - Hearing by a Hearing Board

- (a) (1) Except as provided in paragraph (2) of this subsection and § 3-111 of this subtitle, if the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.
- (2) A law enforcement officer who has been convicted of a felony is not entitled to a hearing under this section.
- (b) (1) The law enforcement agency shall give notice to the law enforcement officer of the right to a hearing by a hearing board under this section.
- (2) The notice required under this subsection shall state the time and place of the hearing and the issues involved.
- (c) (1) Except as provided in paragraph (4) of this subsection and in § 3-111 of this subtitle, the hearing board authorized under this section shall consist of at least three members who:
 - (i) are appointed by the chief and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency; and
 - (ii) have had no part in the investigation or interrogation of the law enforcement officer.
- (2) At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint is filed.
- (3) (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the 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 to function as the law enforcement officer of the same rank on the hearing board.
- (iii) If the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.
- (iv) If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor, or that official's designee, shall function as the chief for purposes of this subtitle.
- (4) (i) A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board.
- (ii) A law enforcement officer may elect the alternative method of forming a hearing board if:

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1. the law enforcement officer works in a law enforcement agency described in subparagraph (i) of this paragraph; and
 2. the law enforcement officer is included in the collective bargaining unit.
 - (iii) The law enforcement agency shall notify the law enforcement officer in writing before a hearing board is formed that the law enforcement officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.
 - (iv) If the law enforcement officer elects the alternative method, that method shall be used to form the hearing board.
 - (v) An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing board.
 - (vi) If the law enforcement officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.
 - (vii) If authorized by local law, this paragraph is subject to binding arbitration.
- (d) (1) In connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.
- (2) The subpoenas may be served without cost in accordance with the Maryland Rules that relate to service of process issued by a court.
 - (3) Each party may request the chief or hearing board to issue a subpoena or order under this subtitle
 - (4) In case of disobedience or refusal to obey a subpoena served under this subsection, the chief or hearing board may apply without cost to the circuit court of a county where the subpoenaed party resides or conducts business, for an order to compel the attendance and testimony of the witness or the production of the books, papers, records, and documents.
 - (5) On a finding that the attendance and testimony of the witness or the production of the books, papers, records, and documents is relevant or necessary:
 - (i) the court may issue without cost an order that requires the attendance and testimony of witnesses or the production of books, papers, records, and documents; and
 - (ii) failure to obey the order may be punished by the court as contempt.
- (e) (1) The hearing shall be conducted by a hearing board.
- (2) The hearing board shall give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved.
 - (3) The law enforcement agency and law enforcement officer may be represented by counsel.
 - (4) Each party has the right to cross-examine witnesses who testify and each party may submit rebuttal evidence.
- (f) (1) Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect.

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- (2) The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.
- (3) Each record or document that a party desires to use shall be offered and made a part of the record.
- (4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
- (g) (1) The hearing board may take notice of:
 - (i) judicially cognizable facts; and
 - (ii) general, technical, or scientific facts within its specialized knowledge.
- (2) The hearing board shall:
 - (i) notify each party of the facts so noticed either before or during the hearing, or by reference in preliminary reports or otherwise; and
 - (ii) give each party an opportunity and reasonable time to contest the facts so noticed.
- (3) The hearing board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.
- (h) (1) With respect to the subject of a hearing conducted under this subtitle, the chief shall administer oaths or affirmations and examine individuals under oath.
- (2) In connection with a disciplinary hearing, the chief or a hearing board may administer oaths.
 - (i) (1) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.
 - (2) Witness fees, mileage, and the actual expenses necessarily incurred in securing the attendance of witnesses and their testimony shall be itemized and paid by the law enforcement agency.
- (j) An official record, including testimony and exhibits, shall be kept of the hearing.

Section 3-108 - Disposition of Administrative Action

- (a) (1) A decision, order, or action taken as a result of a hearing under § 3-107 of this subtitle shall be in writing and accompanied by findings of fact.
- (2) The findings of fact shall consist of a concise statement on each issue in the case.
- (3) A finding of not guilty terminates the action.
- (4) If the hearing board makes a finding of guilt, the hearing board shall:
 - (i) reconvene the hearing;
 - (ii) receive evidence; and
 - (iii) consider the law enforcement officer's past job performance and other relevant information as factors before making recommendations to the chief.

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- (5) A copy of the decision or order, findings of fact, conclusions, and written recommendations for action shall be delivered or mailed promptly to:
 - (i) the law enforcement officer or the law enforcement officer's counsel or representative of record; and
 - (ii) the chief.
- (b) (1) After a disciplinary hearing and a finding of guilt, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive.
- (2) The recommendation of a penalty shall be in writing.
- (c) (1) Notwithstanding any other provision of this subtitle, the decision of the hearing board as to findings of fact and any penalty is final if:
 - (i) a chief is an eyewitness to the incident under investigation; or
 - (ii) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.
- (2) The decision of the hearing board then may be appealed in accordance with § 3-109 of this subtitle.
- (3) If authorized by local law, paragraph (1)(ii) of this subsection is subject to binding arbitration.
- (d) (1) Within 30 days after receipt of the recommendations of the hearing board, the chief shall:
 - (i) review the findings, conclusions, and recommendations of the hearing board; and
 - (ii) issue a final order.
- (2) The final order and decision of the chief is binding and then may be appealed in accordance with § 3-109 of this subtitle.
- (3) The recommendation of a penalty by the hearing board is not binding on the chief.
- (4) The chief shall consider the law enforcement officer's past job performance as a factor before imposing a penalty.
- (5) The chief may increase the recommended penalty of the hearing board only if the chief personally:
 - (i) reviews the entire record of the proceedings of the hearing board;
 - (ii) meets with the law enforcement officer and allows the law enforcement officer to be heard on the record;
 - (iii) discloses and provides in writing to the law enforcement officer, at least 10 days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and
 - (iv) states on the record the substantial evidence relied on to support the increase of the recommended penalty.

Section 3-109 - Judicial Review

- (a) An appeal from a decision made under § 3-108 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202.
- (b) A party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals.

Section 3-110 - Expungement of Record of Formal Complaint

On written request, a law enforcement officer may have expunged from any file the record of a formal complaint made against the law enforcement officer if:

- (1) (i) the law enforcement agency that investigated the complaint:
 - 1. exonerated the law enforcement officer of all charges in the complaint; or
 - 2. determined that the charges were unsustainable or unfounded; or
- (ii) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty; and
- (2) at least 3 years have passed since the final disposition by the law enforcement agency or hearing board.

Section 3-111 - Summary Punishment

- (a) This subtitle does not prohibit summary punishment by higher ranking law enforcement officers as designated by the chief.
- (b) (1) Summary punishment may be imposed for minor violations of law enforcement agency rules and regulations if:
 - (i) the facts that constitute the minor violation are not in dispute;
 - (ii) the law enforcement officer waives the hearing provided under this subtitle; and
 - (iii) the law enforcement officer accepts the punishment imposed by the highest ranking law enforcement officer, or individual acting in that capacity, of the unit to which the law enforcement officer is attached.
- (2) Summary punishment imposed under this subsection may not exceed suspension of 3 days without pay or a fine of \$150.
- (c) (1) If a law enforcement officer is offered summary punishment in accordance with subsection (b) of this section and refuses:
 - (i) the chief may convene a hearing board of one or more members; and
 - (ii) the hearing board has only the authority to recommend the sanctions provided in this section for summary punishment.
- (2) If a single member hearing board is convened:
 - (i) the member need not be of the same rank as the law enforcement officer; but
 - (ii) all other provisions of this subtitle apply.

Section 3-112 - Emergency Suspension

- (a) This subtitle does not prohibit emergency suspension by higher ranking law enforcement officers as designated by the chief.
- (b) (1) The chief may impose emergency suspension with pay if it appears that the action is in the best interest of the public and the law enforcement agency.
- (2) If the law enforcement officer is suspended with pay, the chief may suspend the police powers of the law enforcement officer and reassign the law enforcement officer to restricted duties pending:
 - (i) a determination by a court with respect to a criminal violation;
or
 - (ii) a final determination by a hearing board with respect to a law enforcement agency violation.
- (3) A law enforcement officer who is suspended under this subsection is entitled to a prompt hearing.
- (c) (1) If a law enforcement officer is charged with a felony, the chief may impose an emergency suspension of police powers without pay.
- (2) A law enforcement officer who is suspended under paragraph (1) of this subsection is entitled to a prompt hearing.

Section 3-113 - False Statement, Report or Complaint

- (a) A person may not knowingly make a false statement, report, or complaint during an investigation or proceeding conducted under this subtitle.
- (b) A person who violates this section is subject to the penalties of § 9-501 of the Criminal Law Article