

**Comments from the Maryland Office of the Public Defender**  
**Draft Policy 321 – Expedited Resolution of Minor Misconduct**  
**August 2019**

The Maryland Office of the Public Defender provides this comment on Draft Policy 321, which was newly created to establish an expedited resolution process for minor misconduct by BPD members and is modeled after a policy Commissioner Harrison implemented in New Orleans. The effort to streamline minor misconduct matters so that the Public Integrity Bureau (PIB) can focus its resources on more serious misconduct will hopefully result in more timely and effective resolution of all police misconduct allegations – particularly PIB’s investigation of allegations brought by members of the general public, which are rightly excluded from this policy. We offer the following suggestions to ensure that the expedited process focuses on sufficiently minor matters and does not ignore trends in repeated minor violations that may be indicative of greater concerns.

Recommendation 1: Provide greater notice to the public and stakeholders about newly developed and proposed policies.

As an initial matter, this policy and its public comment period were raised at the most recent quarterly public hearing, but we are unaware of any other public communication about the development of this policy. The BPD website lists all of its draft policies, including this one, but does not list which are currently open for comment; the Independent Monitor’s website does not mention this policy and its calendar has not been updated for months. The newsletters provided by the Monitor’s Community Liaison reiterate the deadlines from the Monitoring Plan, and only mentioned this policy in the deadlines of its August newsletter, which was released just one week before the comment period closed. We urge the BPD and the Monitor to ensure that, in the future, new policies under consideration are better communicated to the public, and that there is a clear and reliable place for stakeholders and other interested parties to receive timely updates about the deadlines for public comment periods. Such communications are an important component of transparency and improving community perceptions and relations with the police.

Recommendation 2: Make clear that minor misconduct is still a disciplinary matter that must be disclosed in accordance with Policy 1809.

While this policy will allow for some minor misconduct to bypass a PIB investigation, disclosure requirements should remain the same. A seemingly innocuous violation may be relevant to a criminal case and for impeachment or exculpatory purposes. As Policy 1809 requires the member to provide their own disciplinary history to the prosecution, this policy should make clear that these items must continue to be disclosed.

Recommendation 3: Remove the confidentiality provision.

The confidentiality provision at the bottom of page six is counter to both the disclosure obligations of disciplinary matters and to the purpose of this policy. Expedited resolution is for minor, uncontested matters that will not receive a thorough investigation and have no

overarching concerns. There is no clear need for confidentiality of these matters and they should never be shielded from disclosure beyond the general protection of personnel records.

Recommendation 4: Exclude from the eligible minor policy violations Neglect of Duty – Failure to Appear in Court (FTA), Neglect of Duty – Off post or leaving assignment without permission, Absence without Leave (AWOL) from Appendix A.

Often, minor transgressions are indicative of larger problems. Our office generally knows which officers are abusive – not just because of the accounts that we hear from our clients, but because these officers disproportionately do not show up for court appearances, avoiding any scrutiny of their actions. The Gun Trace Task Force officers, as a glaring example, did not show up for court appearances against arrestees from whom they stole.<sup>1</sup> Consistent with this concern, it is our understanding that the BPD had commissioned a study from Johns Hopkins University which likewise identified FTAs as a factor to be considered for patterns of misconduct.

The DOJ report shows FTAs to be among the most common misconduct charge, which makes it especially appealing to streamline their treatment. However if the BPD wants to reduce the trend of officers not attending court, it should take these charges seriously and encourage stringent review with recordkeeping for analysis.

Absent without leave (AWOL) and off post or leaving assignment without permission raise similar concerns as FTAs. While there may be an innocuous explanation, which the member can provide and document during an investigation, these charges can be indicative of other misconduct that may go undetected if these allegations are not sufficiently investigated.

Recommendation 5: Do not allow for expedited resolution of infractions beyond Category B, or any infraction that occurs more than three times in one year.

The disciplinary matrix distinguishes the severity of different violations through the use of categories, ranging from single minor violations resulting in no disciplinary penalty (Category A) to more serious and repeated violations that result in termination (Category F).

Several of the violations eligible for expedited resolution can range from Category A through D, although no explanation is provided in the disciplinary matrix or the expedited resolution policy of what constitutes each level, except for repeated violations of the prior level. Similar to the concerns regarding FTAs, repeated allegations of the same misconduct are likely to be indicative of a larger problem and warrant greater attention and investigation. Likewise, enhanced misconduct which establishes it as a more serious violation is no longer appropriate for expedited review.

It is our understanding that this disciplinary matrix is a ‘placeholder’ as the disciplinary policies have not yet been updated with other consent decree documents. The concerns here – namely

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<sup>1</sup> Joy Lepola & Paul McGrew, Fox45 Investigates: Failure to appear (6/12/2017), <https://foxbaltimore.com/news/gun-trace-task-force/fox45-investigates-failure-to-appear>.

that repeated violations and enhanced violations warrant a PIB investigation – should be incorporated, whether by a reference to an updated disciplinary matrix with a similar scheme or directly in this policy.

Recommendation 6: Exclude violations that include allegations of dishonesty.

Regardless of the type of violation alleged, if the member tried to cover it up or otherwise was dishonest about the underlying incident, that on its own should warrant an investigation. For example, if a member claimed to their supervisor that they were at their post when they were not, that is more serious than merely being late for duty and should trigger a complete investigation.

Recommendation 7: Make clear that the Commanding Officer can move any violation up to a full investigation.

While the policy notes that any matter can be handled through the formal investigation process, it does not explicitly authorize anyone other than the accused member to move a minor violation up to the PIB. The Commanding Officer may have additional context and/or information warranting a fuller investigation. We suggest explicitly including this in the section Minor Policy Violations that Cannot be Resolved through ER ¶ 1.

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Because this policy was newly created without any external notice or discussion, it raises questions that may warrant additional recommendations. For one, this proposed policy relies on BlueTeam entries to start this process. It is our understanding that the BlueTeam has been disbanded. If that is the case, then the process for the initial complaint needs to be revised so that it is consistent with actual practice.

Finally, the policy relies on Commanding Officers to impose discipline for eligible minor misconduct, but does not specify the applicability of this policy to Commanding Officers themselves. If they do not meet the criteria in General ¶ 4 who are not afforded the benefits of this policy (i.e. neither serve at the pleasure of the Commissioner nor are civilian employees) then they should also be explicitly excluded.