

**Maryland Office of the Public Defender  
Baltimore City District Office  
Comments on Draft Policies Pertaining to Youth  
November 2019**

**Draft Policy 1207 - Youth Interrogations**

The dangers of coercive interrogation techniques leading to inaccurate results are well-documented, with adolescents particularly vulnerable to false confession. As was recently recounted in the Netflix series *When They See Us*, in 1989 members of the New York Police Department used common interrogation techniques to force five teenagers to enter false confessions to the brutal rape of a jogger in Central Park. Five innocent children were wrongfully imprisoned and brutalized for over a decade based on these false confessions. While this high profile case may seem exceptional, data makes clear it is not: according to the National Registry of Exonerations, 36% of crimes allegedly committed by youth involved false confessions, triple the estimated rate of false confessions overall.<sup>1</sup>

Even before the *Miranda* rights were formally established, the U.S. Supreme Court made clear that, in the context of police interrogation, events that “would leave a man cold and unimpressed can overawe and overwhelm a lad ...”<sup>2</sup> The Supreme Court has since stressed what “any parent knows”—indeed, what any person knows—that “children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”<sup>3</sup> Adolescents lack the experience, perspective, developmental maturity, and judgment to recognize and avoid choices that could be detrimental to them.<sup>4</sup> Young people are extremely vulnerable to complying with authority figures and “yea –saying” or acquiescing to police officers, making them uniquely vulnerable during the pressure-cooker environment of police interrogation.

The distinctions of youth implicate every aspect of an interrogation – including the tone and language used, the likelihood an interaction will be considered custodial, the need for access to an attorney and parent/legal guardian, and the impact of deceptive interrogation techniques. Training will be especially important to ensure that BPD members understand the developmental limitations of all youth and appropriately account for age in their interactions.

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<sup>1</sup> National Registry of Exonerations, Table: Age and Mental Status of Exonerated Defendants Who Falsely Confess – 26 February 2019.

<sup>2</sup> *Haley v. Ohio*, 332 U. S. 596, 599 (1948) (plurality opinion); see also *Gallegos v. Colorado*, 370 U. S. 49, 54 (1962) (“[N]o matter how sophisticated,” a juvenile subject of police interrogation “cannot be compared” to an adult subject).

<sup>3</sup> *Roper v. Simmons*, 543 U. S. 551, 569 (2005).

<sup>4</sup> Brief for American Psychological Assoc. (APA) as Amicus Curiae, p. 4, *Roper v. Simmons*, 543 U.S. 551 (2005). See also, *Miller v. Alabama*, 567 U.S. 460 (2012).

## **Recommendation 1: Prohibit custodial interrogation of children until the child has consulted with an attorney.**

The draft policy conflates access to an attorney with access to a parent/legal guardian, and provides different access to children aged 15 and under from children aged 16 and older. To ensure compliance with constitutional mandates, and limit the likelihood of a false confession, the policy should explicitly require that all children consult with an attorney before any interrogation takes place.

The American Academy of Child and Adolescent Psychiatry (AACAP) has declared “that juveniles should have an attorney present during questioning by police or other law enforcement agencies.”<sup>5</sup> While noting that youth should also be able to consult with a parent, the AACAP recognized that “parental presence alone may not be sufficient to protect juvenile suspects.” Parents generally lack the competency about police interrogation techniques and the risks of providing a statement to advise their child and ensure that any statement is knowing, intelligent and voluntary.

The American Bar Association (ABA) likewise resolved more than 17 years ago that “youth should not be permitted to waive the right to counsel without consultation with a lawyer and without a full inquiry into the youth's comprehension of the right and their capacity to make the choice intelligently, voluntarily and understandingly.”<sup>6</sup> Underlying the ABA's decision are studies which show that, of the Miranda policies in 122 police departments across the country, “[e]ven under the best of circumstances, preteen suspects are likely to find Miranda vocabulary and reading levels are far beyond their understanding.”<sup>7</sup>

BPD's draft policy distinguishes between 15 year olds and 16 year olds, requiring younger children to have a consultation with an attorney but not affording this needed protection to older children. This distinction between children 15 years of age and younger from children 16 years of age and older is not supported by best practices, the law, developmental science or even leading law enforcement entities. The International Association of Chiefs of Police (IACP) has recognized that “juveniles are more vulnerable than adults during interrogation – a vulnerability that is categorically shared by every juvenile, no matter how intelligent or mature.”<sup>8</sup> These concerns are particularly heightened for older youth with learning disabilities, which is

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<sup>5</sup> American Academy of Child and Adolescent Psychiatry (AACAP) Policy Statement: Interviewing and Interrogating Juvenile Suspects (2013). [https://www.aacap.org/AACAP/Policy\\_Statements/2013/Interviewing\\_and\\_Interrogating\\_Juvenile\\_Suspects.aspx](https://www.aacap.org/AACAP/Policy_Statements/2013/Interviewing_and_Interrogating_Juvenile_Suspects.aspx)

<sup>6</sup> American Bar Association, Resolution on Youth in the Criminal Justice System 101D(3).

<sup>7</sup> The Comprehensibility and Content of Juvenile Miranda Warnings. <https://njdc.info/wp-content/uploads/2013/12/The-Comprehensibility-and-Content-of-Juvenile-Miranda-Warnings.pdf>

<sup>8</sup> International Association of Chiefs of Police, Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation 3 (2012), <https://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf>.

disproportionately common among justice-involved youth.<sup>9</sup> The Supreme Court has further held that all children under the age of 18, as a class, are subject to additional protections.<sup>10</sup> Research demonstrates that all children, even 16 and 17 year olds, are highly susceptible to pressure, have poor impulse control, incomplete brain development, and limited understanding of long-term consequences.<sup>11</sup>

BPD's current draft policy language is both confusing and vague. The exact procedures for children to access counsel must be stated in clear, unmitigated terms. Specifically, the policy should explicitly require that all youth consult with an attorney prior to any interrogation, and that this consultation be confidential, outside the presence or hearing of a member, and in-person, by telephone or video conference. OPD stands ready to provide representation for this consultation and avers that access to an attorney will not be a barrier to policy implementation.

*Suggested Action: Create a distinct section on Consultation with an Attorney. Suggested language, which conforms to research and recommendations discussed above, is provided at page 4 of the redlined version of Draft Policy 1207 attached.*

## **Recommendation 2: Prohibit the use of any deceptive interrogation techniques and require breaks in lengthy interrogations.**

The U.S. Supreme Court has recognized that police interrogation tactics “can induce a frighteningly high percentage” of false confessions,<sup>12</sup> and that this risk is multiplied when a child is the subject of an interrogation.<sup>13</sup> Children are two to three times more likely to falsely confess

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<sup>9</sup> U.S. Department of Justice, Office of Juvenile Justice Delinquency and Prevention, Youths with Intellectual and Developmental Disabilities in the Juvenile Justice System (2017). <https://www.ojjdp.gov/mpg/litreviews/Intellectual-Developmental-Disabilities.pdf>

<sup>10</sup> APA Amicus Brief, supra note 3 at 4.

<sup>11</sup> See, e.g., Naomi E. S. Goldstein, Emily Haney-Caron, Marsha Levick & Danielle Whiteman, *Waving Good-Bye To Waiver: A Developmental Argument Against Youths' Waiver Of Miranda Rights*, 21 N.Y. J. LEGIS. & PUB. POL'Y 2 (2018) <https://www.nyujlpp.org/wp-content/uploads/2018/06/Legis-21-1-Article-Goldstein-WavingGoodbyetoWaiver.pdf>; Hayley M. D. Cleary & Todd C. Warner, *Parents' Knowledge And Attitudes About Youths' Interrogation Rights*, 23 PSYCHOL., CRIME & L. 777-793(2017); Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights - An Empirical Analysis*, 68 Cal. L. Rev. 6 (1980); Richard Rogers, et al., *The Comprehensibility and Content of Juvenile Miranda Warnings*, 14 PSYCHOL., PUB. POL'Y & L. 1 (2008); Thomas Grisso, *The Competence of Adolescents as Trial Defendants*, 3 PSYCHOL., PUB. POL'Y & L. 1, 1997; Viljoen, J.L., Zapf, P.A. & R. Roesch, *Adjudicative Competence and Comprehension of Miranda Rights in Adolescent Defendants: A Comparison of Legal Standards*, 25 BEHAV. SCI. L.W 1-19; American Bar Association Criminal Justice Section, Report 102B, Feb. 2010. <sup>11</sup> Megan Crane, Laura Nirider, & Steven A. Drizin, *The Truth About Juvenile False Confessions*, 16 INSIGHTS ON L. & SOC'Y 10, 13 (2016).

<sup>12</sup> *Corley v. United States*, 556 U.S. 303, 320-21 (2009).

<sup>13</sup> *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011).

than are adults.<sup>14</sup> In fact, children account for approximately one-third of all false confessions.<sup>15</sup> In a study that analyzed 340 exonerations, forty-two percent of children were found to have given false confessions, in comparison to thirteen percent of adults.<sup>16</sup>

In recognition of the research establishing the heightened risks of youth interrogations, in 2006, the IACP in conjunction with the U.S. Department of Justice Office of Juvenile Justice Delinquency Prevention (OJJDP) developed a training curriculum for law enforcement and a set of model policies for juvenile interrogation. In their extensive report *Reducing Risks: The Executives Guide to Effective Juvenile Interview and Interrogation*,<sup>17</sup> the IACP acknowledged that standard law enforcement interrogation techniques are unreliable when used with children. The IACP explained “the presentation of false evidence may cause a young person to think that the interrogator is so firmly convinced of his guilt that he will never be able to persuade him otherwise.” As such, IACP’s model policy instructs officers to do four things:

1. Limit interrogations of children to no more than four hours;
2. Give children a “substantial break” at least once an hour.
3. Avoid deception.
4. Avoid Promises of Leniency and Threats of Harm

It is important to note, the IACP model policy is for all children, not just those under the age of 16. As discussed above (Recommendation 1, *supra* 2-3), the IACP recognized that “juveniles are more vulnerable than adults during interrogation – a vulnerability that is categorically shared by every juvenile, no matter how intelligent or mature.” The current proposed policy only prohibits deception for children under the age of 16. It also allows for interrogations of all children to continue for an unspecified length and to include promises of leniency and threats of harm.

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<sup>14</sup> Megan Crane, Laura Nirider, & Steven A. Drizin, *The Truth About Juvenile False Confessions*, 16 INSIGHTS ON L. & SOC’Y 10, 12 (2016) (finding that a “majority of youthful participants complied with a request to sign a false confession without uttering a single word of protest.”). Another study found that individuals ages twelve and thirteen, as well as those ages fifteen and sixteen, were “more likely to confess” than were “young adults,” ages eighteen to twenty-six. *See, e.g.*, Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 6 (2010) (“[T]he single-minded purpose of interrogation is to elicit incriminating statements, admissions, and perhaps a full confession in an effort to secure the conviction of offenders.”); Buffie Brooke Merryman, *Arguments Against Use of the Reid Technique for Juvenile Interrogations*, 10 COMM. L. REV. 16, 20 (2010) (“The priority in every criminal investigation is to acquire a confession because of the evidentiary power inherent in a voluntary, self-incriminating statement.”).

<sup>15</sup> Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the PostDNA World*, 82 N.C. L. REV. 891, 944–45, 963 (2004). Sixty-three percent of these 125 false confessions came from those under age twenty-five, and thirty-two percent from those under age eighteen. *See* Crane et al., *supra* note 9, at 12.

<sup>16</sup> *See* Crane et al., *supra* note 11, at 12.

<sup>17</sup> International Assoc. of Chiefs of Police, *Reducing Risks: An Executive Guide to Effective Juvenile Interviewing and Interrogation* (2012). [www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf](http://www.theiacp.org/sites/default/files/all/p-r/ReducingRisksAnExecutiveGuidetoEffectiveJuvenileInterviewandInterrogation.pdf)

Aspects of interrogation are often manipulative, and the police are permitted to take some manipulative measures in interrogations with adults. However, deception should be completely forbidden with children and the policy should make this distinction clear. In order to ensure that all statements are knowingly, intelligently, and voluntarily given, the risk of false confessions by children must be fully mitigated by prohibiting deception, limiting interrogation length, and specifically prohibiting implicit promises of leniency or allowing a child to believe they will be free to go home if they confess.

*Suggested Action: comply with the LACP's guidance by prohibiting deception for all Child Interrogations, limiting interrogations to four hours, with hourly breaks, and avoiding promises of leniency and threats of harm. Suggested language is provided in the Conducting the Interrogation section of the redline version of Draft Policy 1207 and Required Actin ¶ 2.*

**Recommendation 3: Revise Youth Miranda Warning Form 68 to use simplified language and to require the interrogator to check for understanding.**

The standard Miranda warning requires a tenth grade level of reading comprehension.<sup>18</sup> Adolescents are more likely than their adult peers to assert they understand material, to avoid embarrassment and to appear intelligent. So when a law enforcement officer simply asks “do you understand” many children will respond in the affirmative even if they are completely in the dark. To ensure that a waiver is knowing, intelligent, and voluntary, Miranda warnings for children must be pitched at a third-grade reading level, police officers must read each warning slowly, and the interrogator must stop after each one to ask the child to explain the warning back in his or her own words.<sup>19</sup>

*Suggested action: Revise language as provided in the attached amended version of Form 68. The recommended language provided is derived from the simplified Miranda warnings for youth that were adopted by the Kings County (Washington State) Sheriff's Department.*

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<sup>18</sup> Richard Rogers, et al., *The Language of Miranda Warnings in American Jurisdictions: A Replication and Vocabulary Analysis*, 32 L. & HUM. BEH. 124 (2008).

<sup>19</sup> See, e.g., Juv. Delinquency Act, 18 U.S.C. § 5033 (requiring Miranda warnings for youth to be delivered in “language comprehensive to a juvenile.”); Richard Rogers, et al., *Juvenile Miranda Warnings: Perfunctory Rituals or Procedural Safeguards?*, 39 CRIM. JUST. & BEHAV. 229 (2012), online at <http://cjb.sagepub.com/content/39/3/229>. The King County, Washington, Sheriff's department adopted specialized youth warnings that are particularly well-reasoned and were developed with community input. See King County Sheriff's Office, Press Release, Sept. 27, 2017, online at: <https://www.kingcounty.gov/~media/depts/executive/performance-strategy-budget/documents/pdf/RLSJC/2018/July26/Miranda-Warning-for-Youth.ashx?la=en>.

**Recommendation 4: Make the youth-specific provisions mandatory not permissive.**

Strengthen language to make clear the Department is committed to providing the appropriate protections for youth being interrogated.

*Suggested action: Revise core principle 2 as detailed in redline edits and change “should” to “shall” throughout the document.*

**Recommendation 5: Make the reasonable child standard explicit and provide examples that are relevant to children.**

In *JDB v. North Carolina*, the U.S. Supreme Court recognized that a young person may feel bound to submit to questioning when an adult would not and held that officers must consider a child’s age when determining whether he or she is in custody and, in turn, whether Miranda rights must be read.

*Suggested action: Revise the custody definition as detailed in the redline edits.*

**Recommendation 6: Make clear that a child cannot be interrogated prior to notification to their parent/legal guardian and allow for an alternative adult for when the parent/legal guardian is excluded.**

While the draft policy intends to provide greater protections to youth below the age of 16, as written the provision for notifying a parent/legal guardian for youth 15 and younger is merely a condensed version of the provisions for youth 16 and older, suggesting that they actually have fewer protections. The policy should be explicit for all youth that no interrogation may occur prior to notifying a parent/legal guardian.<sup>20</sup> Moreover, even if a parent/legal guardian meets one of the exceptions to being notified of or included in the interrogation, the youth should still have access to a trusted adult.

*Suggested action: Create one Parental Notification and Access section that applies to all children, relying on the protections included in the current provision for parental notification for youth age 15 years and younger with the revisions detailed in the redline edits. In the exception*

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<sup>20</sup> To the extent that the BPD continues to provide separate requirements for children aged 15 and younger from children aged 16 and older, the draft provisions for children 16 and older should require: (1) detail on what constitutes reasonable efforts to contact a parent/legal guardian; (2) a statement requiring the BPD member to honor a parent/legal guardian’s request to be present or have an attorney present with their child, and to not commence any interrogation until the parent/legal guardian or attorney is present; and (3) clarification on why the member would confer with the parent/legal guardian before/during/after the interrogation and what this discussion may/may not include.

*for when a parent/guardian may not be appropriate to participate, include a provision for the Child to identify a Supportive Adult in lieu of their parent/guardian.*

**Recommendation 7: Make clear that a parent has no legal right to waive a youth's rights.**

The involvement of a parent/legal guardian is intended to help protect their child – and cannot be a means to secure the waiver of any right that a Child invokes. A parental waiver cannot establish that any statement later made by the child is knowing, intelligent and voluntary -- as required for it to pass constitutional muster. In fact, a parent's unilateral waiver may suggest that the child felt coerced into providing a confession – to appease both the police and the parent. Thus, while a parent can invoke additional protections for their child, the policy should make clear that only the person being interrogated can waive their rights.

*Suggested action: Note in the Parental Notification and Access section that the parent may not waive their child's rights*

**Recommendation 8: Revise Policy 1105 so that its references to youth conform to this policy.**

The adult Custodial Interrogations policy was drafted with the expectation that there would be a companion youth policy, but it still included some of the basic protections for youth in its discussion of special populations. It should conform to this policy to require the same base protections, most notably the use of simplified Miranda warnings, access to an attorney and parent/guardian, and limitations on the use of deception.

*Suggested action: In Policy 1105, Conducting the Investigation, Using Deception During the Investigation, add the following provision:*

**The use of any form of deception is strictly prohibited with youth. See Policy 1207, Conducting the Investigation ¶ 3.**

In Policy 1105, Special Circumstances, Interrogations of Youth, revise ¶ 2 as follows:

When advising a youth of their Miranda rights, **the** simplified warnings **provided in Form 68 must** ~~should~~ be used ~~when administering warnings to youth~~. The member must evaluate the youth's age, experience, education, background, and intelligence, to determine whether the youth has the capacity to understand the warnings given to them, the nature of their Fifth Amendment rights, and the consequences of waiving those rights. **In addition, the youth must have a confidential consultation with an attorney and their parent/legal guardian must be notified prior to administering warnings to youth.** For more detailed guidance, see Policy 1207, Youth Interrogations.

## **Draft Policy 1115: Use of Force, Proposed Youth-Specific Provisions**

The youth-specific provisions for Draft Policy 1115 provide little distinction or guidance for interacting with youth than with adult suspects. While the policy overall and the training developed to-date rightly address de-escalation and critical thinking, they do not provide context and examples addressing the unique dynamics of interacting with youth.

The developmental phase of adolescence make police interactions with youth distinct from those with adults. The neurological and psychosocial development of youth make adolescents more prone to risk-taking, dangerousness, peer pressure and poor decision-making. Adolescents are still physiologically and cognitively immature, rendering them less able to anticipate consequences, discern right from wrong, and self-regulate their emotionally charged behaviors in comparison to their adult counterparts.

Police officers must adopt developmentally-informed strategies to account for adolescence. This is particularly important with respect to use of force. For one, the level of force permitted is based on the member's perceived level of danger – which may be heightened by a lack of understanding of developmental responses. Moreover, the likelihood of escalation is particularly dramatic without age-appropriate response strategies. Finally, the long-term consequences of force used is of heightened – in terms of possible physical harm, future justice involvement, and trust in law enforcement.

### **Recommendation 9: Develop a developmentally-informed policy and approach to use of force and youth.**

A use of force policy appropriate for children must include:

- Core values that recognize the developmental distinctions of youth; the relevance of adolescent development considerations in police encounters with youth; and the importance of considering the psychological/emotional limitations of youth regardless of physical size.
- How to factor in age and maturity in assessing a situation with youth
- De-escalation techniques appropriate for youth
- Prohibitions on force instruments likely to result in physical or long-term developmental harm.
- Requirements to contact medical personnel and/or a parent/legal guardian in response to a use of force incident.

### **Recommendation 10: Develop and deliver a dedicated training on police interactions with youth that includes developmentally-informed use of force modules.**



## **BPD – BSP MOU Assessment**

The BPD's assessment of how the Baltimore School Police (BSP) has used the authority bestowed to it in the MOU to exercise law enforcement powers is limited to a records review of BSP reports from February 2016 to February 2019 that specify an incident location off school grounds. With this narrow focus, it gathered data from 290 reports and qualitatively examined only 51 reports from the three year period, despite being provided with reports from more than 1,335 incidents.

By providing such a narrow analysis, the BPD was able to provide some basic statistics but did not delve nearly as deep as needed to truly assess BSP's exercise of law enforcement powers. As a result it is not surprising that, despite concerns with school police raised by the Department of Justice, community members and even among the BPD members reviewing reports for this assessment, the only recommendations provided concern the forwarding of information under existing frameworks.

### **Recommendation 11: Conduct a complete assessment of BSP's exercise of law enforcement powers.**

At a minimum, BPD should have reviewed all of the reports provided, not merely those that it identified as having an incident location off school grounds. While the results section of the report clarifies that off school incidents often result in a report taken on school grounds, it gives no consideration to incidents that may be defined as starting on school grounds, which BSP officers use to exert authority in the community. Without any review of the more-than 1,000 reports that the reviewers designated as having an incident on school grounds, it cannot be assessed (a) how many were misclassified as being located on school grounds; (b) the extent to which incidents beginning at school were inappropriately extended beyond school grounds; and (c) the nature and severity of incidents on school grounds, particularly with respect to school-based incidents resulting in arrest.

Moreover, the deficiencies in current BSP documentation (discussed in Recommendation 2, below) require greater scrutiny than mere data collection from the reports as provided. Notably, the BPD did not review its reports or documentation for incidents that were referred by BSP; nor did it conduct any interviews with BSP leaders, school officials, or other stakeholders; nor did BPD otherwise try to gather information to ensure the sufficiency and reliability of even the very narrow focus of its analysis.

### **Recommendation 12: Require greater documentation, data collection, and information sharing.**

Even within the limited assessment provided here, documentation and recordkeeping was noted: among incidents that BSP is required to forward to BPD, less than 60% included documentation

that they were forwarded in real time and the sworn supervising reviewing these cases critiqued the level of detail. While acknowledging that there currently lacks a sample or level of detail required in the reporting function to BPD in the MOU, the recommendations lack any follow-through on this noted deficiency.

**Recommendation 13: Establish oversight and accountability mechanisms to ensure proper coordination of overlapping investigations.**

The failure to recommend any reporting requirement, despite this deficiency being explicitly noted a sworn supervisor, coupled with the discussion on the following page seeking to rationalize how the BSP may not have been required to forward reports that the BPD identified as required for forwarding underscores the lack of scrutiny provided in this assessment. Improving youth interactions with law enforcement requires an expectation of responsibility and vigor by all law enforcement officers. Although BPD may have limited authority over SPD, it should encourage greater information sharing, require sufficient documentation in incidents of concurrent jurisdiction, and conduct spot checks to ensure that reports which should be forwarded are.

The MOU does not provide for any ongoing communication mechanism between the BPD and BSP – and, aside from the data on reports forwarded to BPD, communication between agencies is not addressed in the assessment. To ensure proper coordination, the agencies should have mechanisms for greater communication both to improve overlapping law enforcement efforts and for BPD to obtain assurance that the BSP is properly exercising the powers authorized by the MOU.

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Draft Policy 1207 and the proposed additions for Policy 1115 are an important first step for the BPD to acknowledge and address the unique needs of youth. However, they are just a first step. Police interactions with youth encompass far more than these two topics. Moreover, specialized training on adolescent development and developmentally-informed policing, improved practices that are consistent with efforts to reduce the incarceration of youth, and greater oversight and accountable of police interactions with youth all need to be considered.

**Recommendation 14: Conduct a comprehensive assessment of efforts to decrease justice involvement of youth.**

The consent decree requires that the City:

*conduct a comprehensive assessment of the City's efforts to decrease Youth involvement with the juvenile and criminal justice systems and obstacles to doing so, including the*

City's diversion programs, community-based alternatives to incarceration, and treatment options for Youth in need of mental health treatment, drug treatment, or other services.

Consent Decree ¶ 219. While a diversion assessment was conducted earlier this year, with a report issued by the Center for Children's Law & Policy in April 2019, the mandate of the consent decree is much broader. Specifically, the BPD still needs to assess the community-based alternatives to incarceration and treatment options for youth in need of services.

The City must make a plan for meeting this full mandate, including recommendations for alternatives to incarceration. In doing so, it must further meet the consent decree's requirements of engaging community organizations with particular expertise and/or insight into issues affecting Youth, academics, and Youth advocates, and issue a report publicizing the results of its assessment and making recommendations to improve the City's supports for Youth and its diversion programs.

**Recommendation 15: Establish youth policies regarding voluntary interviews, stops, searches, and arrests.**

The consent decree further requires the BPD to assess and revise its policies "to ensure that the BPD provides officers with guidance on developmentally appropriate responses to, and interactions with, Youth ... including for appropriate officer conduct during voluntary interactions, stops, searches, arrests, uses of force, and custodial detentions and interrogations." Consent Decree ¶ 220. While addressing use of force and interrogations in this round of policies, the BPD must give attention to, and provide public comment on, similar efforts on the full range of law enforcement activities that involve interaction between BPD members and youth.

**Proposed Form 68 (Page 1 of 2)**  
**EXPLANATION OF RIGHTS FOR YOUTH**

CC# \_\_\_\_\_

NAME: \_\_\_\_\_

DATE/TIME: \_\_\_\_\_

LOCATION: \_\_\_\_\_

**YOU ARE ADVISED THAT:**

1. You have the right to remain silent. This means you do not have to say anything to me or any other police officer.

Please explain to me in your own words what that means.

\_\_\_\_\_  
\_\_\_\_\_

2. It is okay if you do not want to talk to me.

Please explain to me in your own words what that means.

\_\_\_\_\_  
\_\_\_\_\_

3. If you want to talk to me, I will tell a judge and the Probation Office everything you tell me. .

Please explain to me in your own words what that means.

\_\_\_\_\_  
\_\_\_\_\_

4. You have the right to talk to a free lawyer right now. That free lawyer works for you and is available at any time – even late at night. That lawyer does not tell anyone what you tell them. That lawyer helps you decide if it's a good idea to answer questions. That lawyer can be with you if you want to talk with me.

Please explain to me in your own words what that means.

\_\_\_\_\_  
\_\_\_\_\_

5. If you decide to talk to me, you can change your mind and stop at any time. You can stop and ask for a lawyer anytime. If you stay stop, I will not ask you any more questions.

Please explain to me in your own words what that means.

\_\_\_\_\_  
\_\_\_\_\_

**Proposed Form 68 (Page 2 of 2)**  
**WAIVER OF RIGHTS FOR YOUTH**

CC# \_\_\_\_\_

NAME: \_\_\_\_\_

DATE/TIME: \_\_\_\_\_

LOCATION: \_\_\_\_\_

**After hearing these rights:**

1. Do you understand these rights? Circle one: YES or NO

2. Do you want a free lawyer?

Circle one: YES or NO

3. Do you want to talk to me without a lawyer to help you?

Circle one: YES or NO

**I am choosing to freely and voluntarily give up my right to remain silent and I agree to talk with the police without a lawyer.**

\_\_\_\_\_  
Signature of Youth

\_\_\_\_\_  
Signature of Parent/Guardian, if present

\_\_\_\_\_  
Officer's Printed Name

\_\_\_\_\_  
Officer's Signature

\_\_\_\_\_  
Rank

\_\_\_\_\_  
Unit

\_\_\_\_\_  
Seq. #

Witnesses: \_\_\_\_\_

\_\_\_\_\_



## Policy 321

Subject

### EXPEDITED RESOLUTION OF MINOR MISCONDUCT

Date Published

**DRAFT** 15 July 2019

Page **1 of 19**

***By Order of the Police Commissioner***

### **PURPOSE**

Commanding Officers of the Baltimore Police Department (BPD) are required to maintain discipline in a timely and effective manner. Commanding Officers are afforded the opportunity to resolve certain minor allegations and disciplinary matters at the command level. The purpose of this policy is to define the use of the Expedited Resolution of Minor Misconduct process (referred to throughout this policy as “Expedited Resolution” or “ER”) that allows for a more efficient resolution of a Minor Policy Violation without a formal hearing and to apply consistency in the application of corrective action.

The only eligible allegations for this procedure are Minor Policy Violations (see Appendix A) that are neither (1) the subject of a complaint made to the BPD by a member of the public, nor (2) a complaint made by another officer involving members of the public. See Appendix B, Flow Chart of Expedited Resolution Process, for reference.

### **DEFINITIONS**

**Disciplinary Matrix** — A guide to be used by management in determining the appropriate discipline to impose by type of violation committed (See Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*).

**Disciplinary Review Committee** — The Disciplinary Review Committee is selected and appointed by the Police Commissioner and consists of sworn BPD members holding the permanent rank of Captain or above. Its purpose is to review the factual findings of any investigation conducted by the Public Integrity Bureau (PIB) in order to review any Departmental administrative violations and to make a recommendation for punishment.

**Expedited Resolution of Minor Misconduct (Expedited Resolution or ER)** — A formal process available to Commanding Officers to correct deficiencies and maintain discipline within their commands. ERMM is limited to Minor Policy Violations.

**Expedited Resolution of Minor Misconduct Form (Expedited Resolution Form or ER Form)** — Official BPD form used to track the resolution process for violations of the policies, rules or procedures of the Department (Appendix C).

**Explanation of Police Officer’s Rights** — A form utilized to explain and document that a BPD member understands their rights under the Law Enforcement Officers’ Bill of Rights (LEOBR). See Appendix D.

**Minor Policy Violation** — A violation of a Departmental rule, policy, procedure, order, regulation, or verbal/written instructions that a supervisor reasonably believes requires minimal corrective action or discipline to correct the employee’s behavior (e.g., tardiness, uniform requirement failure to appear in

<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 2 of 19</b>
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court, and cleanliness of vehicle). The behavior must be neither the subject of a complaint made by a member of the public, nor potential misconduct that involves a member of the public. The misconduct must be sufficiently minor that it is correctable by minimal supervisory intervention, with the goal that the behavior does not repeat. For purposes of this policy, Minor Policy Violations that are eligible for Expedited Resolution are limited to those in Appendix A.

**Presentation Meeting** — The meeting, held as soon as practical but no more than five (5) calendar days after receipt of the Expedited Resolution Form, where the accused employee's Commanding Officer discusses the allegation and proposed discipline with the accused employee and their representative (if applicable).

**Reflection Period** — A period of reflection during which the employee has up to five (5) calendar days to consider the findings and recommended disposition after being presented with the facts.

**Resolution Agreement** — An agreement between the employee and the Department to resolve the complaint without the need for further investigation, encapsulated in the ER Form.

**Resolution Meeting** — The final meeting, occurring after the Presentation Meeting and a Reflection Period (where applicable), where an employee, having been presented with the ER Form, makes a selection of either the negotiated penalty or a disciplinary investigation.

**Waiver** — A written document wherein an employee voluntarily relinquishes a right or privilege otherwise provided for in established policy, rules or procedure.

## **GENERAL**

1. Minor misconduct allegations do not require extensive investigation and adjudication when the accused employee does not contest the allegations. In such cases, Expedited Resolution can provide a more efficient, timely resolution that uses minimal Departmental resources. It is beneficial to all parties involved to resolve complaints as quickly as possible, without sacrificing the goals of the corrective action or the disciplinary process.
2. ER is not a "right" or "entitlement." At any point prior to the final approval by the Police Commissioner, the matter can be handled through the formal investigation process.
3. In accordance with Section 3-111 of the LEOBR, the Commander of PIB or any Command member holding the rank of Captain or above is designated as the appropriate law enforcement official to bring an act (that gives rise to administrative charges) to the attention of the Department. This notice is accomplished via direct communication to the Command member, the Command member being present during and having knowledge of the act, or entry of the act into BlueTeam/IAPro by any member of the Department.
4. BPD members who serve at the pleasure of the Police Commissioner, civilian employees, Cadets, Police Officer Trainees, and officers on probation (except for allegations of brutality) are not considered "law enforcement" as defined by Title 3, Subtitle 1, Public Safety Article, Maryland Annotated Code, Law Enforcement Officers' Bill of Rights (LEOBR). As such, they are not afforded the process outlined in this policy. The aforementioned employees should look to the Code of Public Local Laws of Baltimore City, Section 16-11 and/or their respective collective bargaining agreements for any processes and protections they may be afforded.

<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 3 of 19</b>
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5. If a serious violation includes a lesser charge(s), or is accompanied by a lesser charge, that may qualify for ER (see Appendix A), PIB will investigate the case and reach a determination on all charges. After concluding the investigation, the entire case will be forwarded to the Disciplinary Review Committee for review.
6. Commanding Officers may not offer, and a member may not accept, ER for allegations that are not listed in Appendix A.
7. Should this process uncover major violations, immediate referral to PIB is mandated.

**NOTE:** A Commander shall only appoint a designee when they are absent. Otherwise, the Commander shall conduct the duties assigned to them herein.

8. **Violations handled by ER shall still be included in IAPro and disclosed in accordance with Policy 1809 to prosecuting authorities in matters in which the member is part of the prosecution team.**

### **EXPEDITED RESOLUTION OF MINOR MISCONDUCT PROCESS**

See Appendix B, Flow Chart of Expedited Resolution Process, for reference.

#### **Complaint Evaluation for ERM**

1. All Minor Policy Violations must be entered into the BlueTeam system by the member's supervisor, just as all misconduct is required to be entered. PIB must receive all allegations, via BlueTeam, in order to classify each allegation. All allegations will be classified within 72 hours, per the PIB Classification Protocol.
2. Upon classification, the PIB Classification Supervisor will determine if the alleged violation fits the criteria to be considered for the ER process. If the alleged violation fits the criteria (see Appendix A - List of Eligible Minor Policy Violations for Expedited Resolution Process), the PIB Classification Supervisor will be responsible for completing Part 1 of the ER Form.

**NOTE:** The criteria that the Classification Supervisor will use to make this determination is that it is both a Minor Policy Violation listed in Appendix A, and it involves no interaction with members of the public.

3. Upon approval of Part 1 of the ER Form by the Commander of PIB or a designee within 2 working days, it will be routed to the accused member's Commanding Officer via BlueTeam, along with the BlueTeam entry, any supporting documentation and the accused employee's PIB discipline summary.

#### **Employee Notification**

1. Within 2 working days of receiving the ER referral, the accused employee's Commanding Officer shall notify the employee about the allegation. This notification shall include:
  - 1.1. A copy of the BlueTeam entry,
  - 1.2. A copy of the ER Form received from PIB,
  - 1.3. Explanation of Officer's Rights Form (Appendix D),



<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 4 of 19</b>
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- 1.4. Any other documentation (including the Department's rules, policies, and procedures) regarding the alleged violation and penalty as categorized within the Disciplinary Matrix,
- 1.5. Informing the employee of their options to either have the allegation investigated by PIB or to engage in the ER process.
2. The Commanding Officer shall schedule a Presentation Meeting with the accused employee within five (5) calendar days from receipt of referral/allegation. The accused employee may, at any point, state that they would like the case to be returned to PIB.

### **Preparation for Presentation Meeting**

1. The Commanding Officer shall complete Part 2, Section A of the ER Form prior to the Presentation Meeting, providing a recommended disciplinary action based on the Disciplinary Matrix, including an explanation. This recommended disciplinary action will be presented to the employee during the Presentation Meeting.
2. The employee may choose to secure the attendance of counsel or an employee representative and shall prepare to discuss the matter at the Presentation Meeting.

### **Presentation Meeting**

1. The employee's Commanding Officer shall be responsible for conducting a Presentation Meeting with the employee to discuss the allegation(s) and a proposed discipline within 5 calendar days from the receipt of the referral/allegation. The employee may choose to have a representative attend with them.
2. During the Presentation Meeting, the alleged violation of Departmental policy, procedure, or order will be reviewed and discussed.
3. The employee will have three options at the Presentation Meeting:
  - 3.1. **Immediate resolution**—The employee may elect to immediately accept the sustained allegation and the Commanding Officer's recommended disposition as categorized within the Disciplinary Matrix (see Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*); or
  - 3.2. **Reflection Period**—The employee may elect to have a period of reflection during which the employee has up to five (5) calendar days to consider the findings and the recommended penalty. When an employee makes this selection, the employee's Commanding Officer shall require the employee's signature acknowledging receipt of ER Form, and their obligations during the 5 day Reflection Period; or
  - 3.3. **Request a case investigation**—The employee may elect to have the case investigated by PIB.

**NOTE:** These negotiations would not be admissible in subsequent proceedings. Nevertheless, any information or evidence discovered during the course of the ER process that leads to additional misconduct could be used for future disciplinary purposes and would be admissible.

<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 5 of 19</b>
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4. Prior to the conclusion of the Presentation Meeting, a follow-up Resolution Meeting will be scheduled for the fifth day from the date of the Presentation Meeting for an employee opting for a Reflection Period (or as close to that date as practical without exceeding five calendar days) for final resolution.
5. For employees opting for a Reflection Period, during the time prior to the scheduled Resolution Meeting the employee shall consider the resolution proposal and be prepared to discuss the recommended penalty. The employee shall be prepared to make a decision at the Resolution Meeting. The employee may also secure the advice or attendance of any employee representative or counsel; however, the availability of an employee representative or counsel shall not be cause to unreasonably delay any meeting (see *Extraordinary Circumstances Extension* below).
6. At any point prior to or at the Resolution Meeting, the matter may be resolved by Resolution Agreement, meaning the employee accepts the recommended disposition proposed at the Presentation Meeting.
7. If any employee does not make a selection at or before the Resolution Meeting, the employer will be deemed to have selected an administrative investigation and the matter shall be referred to PIB.

#### **Resolution Meeting**

1. The Resolution Meeting is the final meeting in the ER process. The accused employee will not be allowed any further opportunities to consider the allegations.
2. At the Resolution Meeting, the accused employee and their representative, if applicable, can negotiate the recommended penalty. They may not negotiate or agree upon other issues, such as the employee's assignment, pay, or the disposition of past discipline or other pending misconduct charges. Every effort should be made by the employee and the accused employee's Commanding Officer to negotiate a resolution, but the resolution must be within Matrix guidelines for the alleged offense. The intention of the penalty is not to punish the employee for behavior, but to correct the behavior so that it does not occur in the future. Cooperation from both parties is essential for the effectiveness of the discipline.
3. At the conclusion of the Resolution Meeting, the possible outcomes are:
  - 3.1. The employee accepts responsibility and the negotiated resolution. The employee and the Commanding Officer sign the ER Form indicating resolution, or
  - 3.2. The employee does not accept responsibility and/or does not agree with the penalty determined through the Disciplinary Matrix. The applicable sections of the ER Form will be completed.
4. If the accused employee does not agree to accept responsibility for the sustained allegation(s) after the Presentation Meeting, Reflection Period and Resolution Meeting (or does not agree with the proposed penalty), the applicable sections on the ER Form will be completed to indicate referral to an administrative investigation consistent with the following section.

#### **Resolution Disagreement**

1. If the accused employee has admitted to an alleged violation but disagrees only with the proposed

Policy 321	EXPEDITED RESOLUTION OF MINOR MISCONDUCT	Page 6 of 19
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discipline, every effort should be undertaken to resolve the disagreement without a formal investigation. Any delay shall not be extended beyond the 10 day extraordinary circumstances extension discussed below.

2. The Commanding Officer or accused employee may request at any point in the process the assistance of Legal Affairs to assist with the negotiations to resolve the matter. However, if an acceptable resolution cannot be agreed upon, the case shall be returned to PIB for administrative investigation.

#### **Minor Policy Violations that Cannot be Resolved through ER**

1. For offenses listed in Appendix A, if the accused member elects an investigation at the Presentation Meeting, **if the Commanding Officer recommends an investigation**, or if a disciplinary outcome within the Matrix guidelines cannot be reached through the ER process, the investigation shall immediately be referred back to PIB for an administrative investigation.
2. If the subject member of a ER is transferred prior to a resolution, the case must be referred back to the PIB intake personnel, along with all relevant records.
3. **More than three minor policy violations in the past month or more than five minor policy violations in the past year shall be referred back to PIB for an administrative investigation.**
4. **Any eligible violation that involves dishonesty by the member.**

#### **Extraordinary Circumstances Extension**

1. If the accused employee's Commanding Officer determines during the ER process that extraordinary circumstances exist that require additional time for review and consideration of new information, or that it is otherwise in the best interest of the Department or accused employee, the employee's Commanding Officer may request an extension of up to 10 additional calendar days. If the reason for the request is that it is in the best interest of the Department or employee, the Commanding Officer must explain why. If an extension is warranted, the Commanding Officer must obtain the approval of the Commander of PIB or their designee.
2. Examples of circumstances where an extension request may be warranted:
  - 2.1. The accused employee is out on medical leave.
  - 2.2. The accused employee had a pre-approved vacation scheduled for the same period.
  - 2.3. The accused employee's counsel is unavailable.
  - 2.4. The accused employee admits to full culpability; however, they have not been able to agree on the appropriate disciplinary outcome.

#### **Confidentiality**

1. ~~To assure the integrity of an ongoing investigation and prior to complaint resolution, the employee is required to maintain the confidentiality of the complaint and/or resolution. Failure to follow such instruction from PIB or any supervisor above the rank of the accused employee shall be grounds for disciplinary action. Nothing herein shall preclude an employee from seeking appropriate representation or legal counsel or exercising rights provided under the CBA.~~

<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 7 of 19</b>
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### **Additional Information**

1. At any time during the ER process, the employee may present exonerating or exculpatory evidence to the Commanding Officer for consideration. This would prompt the case to be returned to PIB.
2. Where the proposed disposition is not already agreed upon, or one or more of the parties involved feels Legal Affairs could offer assistance in reaching an agreement, Legal Affairs shall participate in the resolution negotiations.
3. A Resolution Agreement can occur for any allegation determined to be eligible for the ER process at any point between the receipt of the complaint and before the conclusion of a disciplinary hearing. However, once an investigation has been assigned to a PIB investigator, the ER process will not interrupt an on-going investigation unless there is a complete admission of culpability by the accused officer.
4. Officers who elect to negotiate discipline through the ER process, must waive their rights in writing to a disciplinary hearing under LEOBR once the ER agreement has been finalized.
5. A formal investigation may be conducted if PIB or the employee's supervisor receives any new information regarding the original matter. While an agreement on the minor violation will not be undone, if there are further issues that arise, PIB may conduct a full investigation, which could carry additional penalties. If it is later discovered that any ER outcome was resolved through fraud or false information, the ER agreement will be null and void.
6. The Disciplinary Matrix provides a range of penalties for proven or admitted allegations. The Disciplinary Matrix shall be used whether the employee elects to have an administrative investigation or agrees to a disposition through participation in the ER process.
7. No recommendation or resolution prescribed on the Expedited Resolution Form shall be complete until approved and finalized by the Police Commissioner. The Police Commissioner will review the ER Form within 5 calendar days of receipt.
  - 7.1. If the Police Commissioner does not agree, they will confer with the PIB Commander to determine a resolution within 5 additional calendar days.

### **PIB RESPONSIBILITIES**

1. Upon receipt of a BlueTeam entry/allegation of misconduct, the PIB Intake Member will properly intake the allegation and forward the allegation to the PIB Classification Supervisor for classification. The PIB Classification Supervisor will determine if the alleged violation fits the criteria to be considered for the ER process.
2. Complaints initiated by or involving a member of the public shall not be eligible for ER. If conduct that is the subject of an internally-generated complaint later becomes the subject of a publicly-generated complaint (e.g., resident complains of an officer sleeping on duty several days after a supervisor initiates a complaint regarding the same incident), then the PIB Classification Supervisor will notify the officer's Commanding Officer that the case no longer qualifies for ER and it will be returned to PIB for full investigation.

<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 8 of 19</b>
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3. If the allegation fits the criteria, the PIB Classification Supervisor will complete the Part 1 of ER Form and attach it to the BlueTeam entry, complaint form (if one exists), and the accused member's disciplinary history.
4. The PIB Classification Supervisor will also: (1) Assign a PIB case number, (2) Ensure a copy of the ER referral is uploaded into IAPro under the PIB case number, along with all documents and data; and (3) track progress of all ER referrals.
5. Upon approval of the ER Form by the Commander of PIB, or their designee, it will be routed via BlueTeam to the accused employee's Commanding Officer with the BlueTeam entry, any supporting documentation and the member's PIB discipline summary.
6. Upon completion of the ER process at the Division/District level (with or without a disciplinary agreement), the ER Form, and copies any and all documents or data related to the ER referral, will be returned to PIB for approval and processing.
7. The Commander of PIB or their designee will review any ER agreements received, and will approve or disapprove the ER Form within 2 working days. If approved, the form will be forwarded to the Police Commissioner for final review.
8. Once the ER Form has gone through all levels of approval, the PIB Classification Supervisor will review all materials to ensure the file is complete.
9. The PIB Classification Supervisor will ensure that disciplinary outcomes and dispositions are recorded in IAPro.

#### **DIVISION/DISTRICT COMMANDING OFFICER'S RESPONSIBILITIES**

1. The Commanding Officer shall ensure that all violations or allegations of misconduct, including Minor Policy Violations, are entered into BlueTeam, and forwarded to PIB for intake and classification.
2. Upon receiving notification from PIB of a Minor Policy Violation eligible for the ER process, within 2 working days, the Commanding Officer shall meet with accused member, advise them of the alleged Minor Policy Violation, provide the accused member with a copy of the BlueTeam Entry, and any other documentation including the Department's rules, policies, and procedures regarding the alleged violation and penalty as categorized within the Disciplinary Matrix, and Explanation of Rights, and advise them of their options to either have the Minor Policy Violation investigated by PIB or to engage in the ER process.
3. If the accused member elects to engage in the ER process, the Commanding Officer shall schedule a Presentation Meeting with the accused member.
4. Prior to the Presentation Meeting, the Commanding Officer shall complete Part 2, Section A of the ER Form, providing a recommended disciplinary action based on the Disciplinary Matrix, including an explanation.
5. Within 5 calendar days from the Commanding Officer's receipt of the ER referral, the accused employee's Commanding Officer, the employee and the employee's representative (if applicable) shall conduct the Presentation Meeting.

<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 9 of 19</b>
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6. The Commanding Officer will review with the accused employee the various discipline options available under existing rules, policies and procedures that the accused employee has available to resolve the matter.
7. If the accused employee accepts responsibility for the alleged violation and agrees with the proposed discipline, an immediate resolution is obtained. Part 2, Section C of the ER Form must be completed and forwarded to PIB via BlueTeam.
8. If a Reflection Period is requested by the accused employee, the Commanding Officer will allow the accused employee and their representative a 5 calendar day period to reflect on the matter. Part 2, Section C of the ER Form shall be completed acknowledging the request for a Reflection Period. A Resolution Meeting shall be scheduled before the Presentation Meeting ends.
9. At the Resolution Meeting, the Commanding Officer may negotiate the proposed discipline.
10. If a resolution is reached, Part 3 of the ER Form must be completed and signed by the Commanding Officer and accused employee, indicating a resolution was reached. The form must be routed to PIB via BlueTeam. If a resolution is reached, the Commanding Officer shall also document whether the subject was in compliance with training and legal standards; whether the incident indicates a need for additional training, counseling, or other non-disciplinary corrective measures; and whether the incident suggests that BPD should revise its policies, tactics, or training.
11. If a resolution is not reached, Part 3 of the ER Form must be completed, indicating a resolution was not reached, and the PIB administrative investigation will begin. The form will be forwarded back to PIB where the case will be promptly assigned for investigation.
12. If at any time the Commanding Officer believes the misconduct requires formal investigation by PIB, the Commanding Officer shall confer with the Commander of PIB.

#### **ACCUSED EMPLOYEE'S RESPONSIBILITIES**

1. Upon notification of an alleged violation, the accused employee may identify and secure the attendance of counsel or an employee representative. The employee shall be fully prepared to discuss the allegations and proposed discipline presented at the Presentation Meeting.
2. During the Presentation Meeting, the accused employee shall review with their Commanding Officer the accusation and proposed disciplinary action. This is the time for the accused employee to offer any mitigating and/or exculpatory evidence for consideration by the Commanding Officer.
3. If the accused employee accepts complete responsibility for the alleged violation and the proposed discipline, a Resolution Agreement will have been reached. The accused employee will complete the ER Form. The accused employee shall understand the resolution will not be complete until approved by the Police Commissioner.
4. The accused employee can request a Reflection Period of up to 5 days. The accused employee must complete the ER Form indicating the request for a Reflection Period.
5. Within 5 days of the Presentation Meeting, the accused employee must attend a Resolution Meeting to determine if a final resolution can be reached. The accused employee may attempt to negotiate the recommended penalty.

<b>Policy 321</b>	<b>EXPEDITED RESOLUTION OF MINOR MISCONDUCT</b>	<b>Page 10 of 19</b>
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6. If the accused employee does not accept complete responsibility for the alleged violation and proposed discipline at the Resolution Meeting, the employee must complete the ER Form indicating a resolution has not been reached. The allegations will then be investigated by PIB.
7. The accused employee has the right to request an investigation at any point during the Presentation, Reflection or Resolution Meetings.
8. The accused employee's signature is required on the ER Form in order to complete the process. The employee does have the right to note any disagreements and attach a separate statement if they wish to do so.
9. The accused employee shall maintain confidentiality of the complaint and resolution process.
- 10. The accused is required to disclose minor misconduct violations in accordance with Policy 1809 as if they were fully investigated by the PIB.**

### **AUDITS AND ASSESSMENTS**

1. The Audits and Inspections Division will audit, on at least an annual basis, BPD's disciplinary process to ensure quality control. As part of this audit, BPD will review Expedited Resolution agreements for appropriateness and compliance with Departmental guidelines, including:
  - 1.1. Whether cases were properly classified as ER eligible.
  - 1.2. Whether the timelines outlined in this policy were met.
  - 1.3. Whether dispositions fall within the applicable range outlined in the Disciplinary Matrix.
  - 1.4. Whether there are inconsistencies in the application of discipline for similar violations under similar circumstances.
  - 1.5. Whether there are differences in implementation by district, by rank of the officer being disciplined, by race or gender of the officer being disciplined.
2. BPD will make public any of the audits' findings, to the extent state and federal law permits.

### **APPENDICES**

- A. List of Eligible Minor Policy Violations for Expedited Resolution Process
- B. Flow Chart of Expedited Resolution (ER) Process
- C. Form 249, Expedited Resolution Form
- D. Explanation of Police Officer's Rights

### **ASSOCIATED POLICIES**

Policy 307, *Civilian Review Board Complaint Procedures*  
 Policy 308, *General Disciplinary Process*

Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*

### **COMMUNICATION OF POLICY**

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.



Policy 321	EXPEDITED RESOLUTION OF MINOR MISCONDUCT	Page 11 of 19
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## **APPENDIX A**

### **List of Eligible Minor Policy Violations for Expedited Resolution Process**

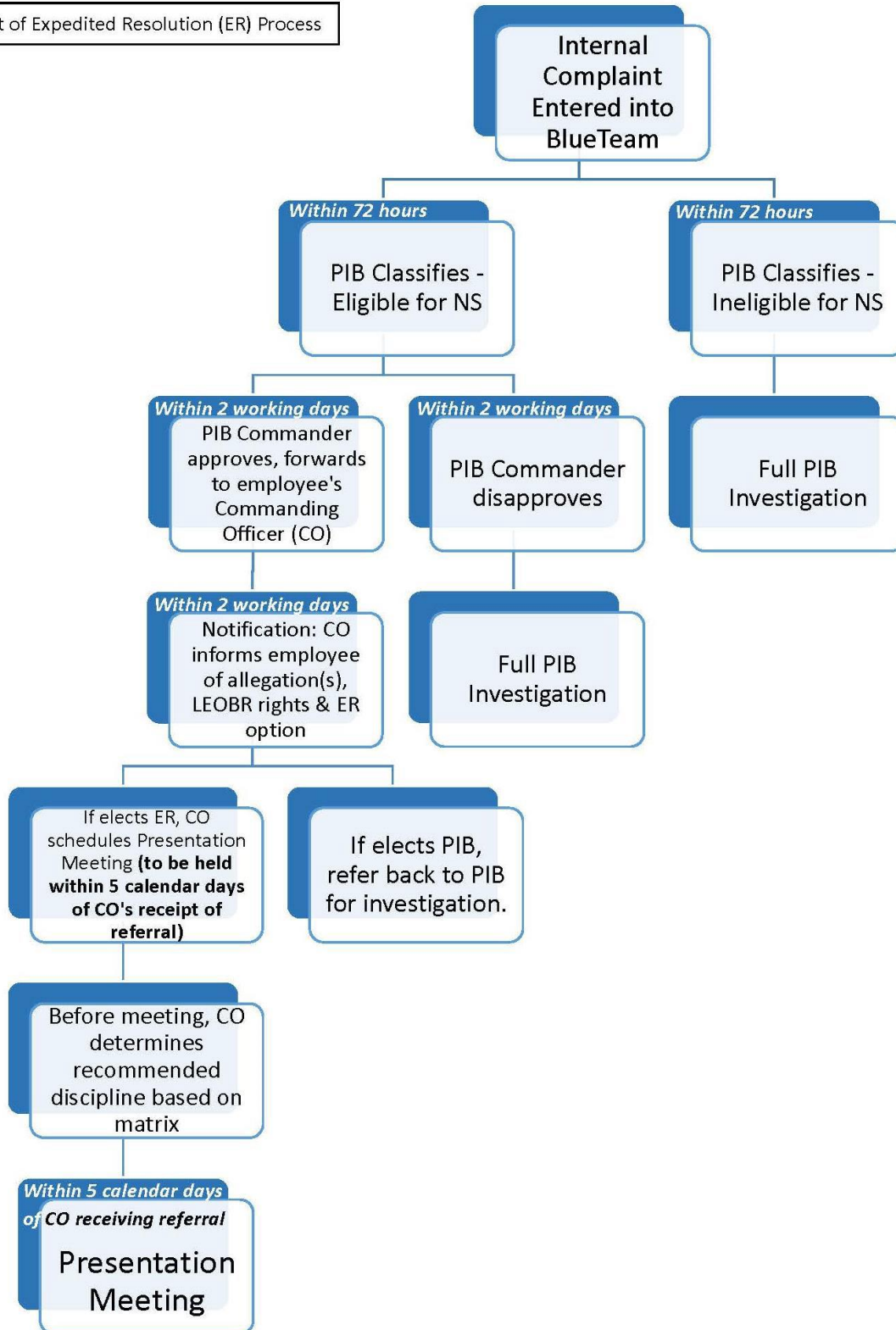
Any of the following violations are Minor Policy Violations eligible for the ER process, provided that the level of discipline is within Category A **or B through D** of the Disciplinary Matrix and the complaint was not made by, nor does it involve, a member of the public:

1. Neglect of Duty - Loss or damage of equipment. (Not to include firearms.)
2. Neglect of Duty - Improper uniform or appearance.
3. Neglect of Duty - Allowing unauthorized persons to use departmental equipment. (Not to include firearms.)
4. Neglect of Duty - Improper maintenance of firearms.
5. Neglect of Duty - Improper inspection of service vehicle.
- ~~6. Neglect of Duty - Off post or leaving assignment without permission.~~
7. Neglect of Duty - Lateness for duty or assignment.
8. Neglect of Duty - Sleeping on duty.
- ~~9. Neglect of Duty - Failure to Appear in Court (FTA)~~
10. Neglect of Duty - Failure to Attend and Complete Required Training
11. Neglect of Duty - Failure to Attend PSI Medical Appointment
- ~~12. Absence without Leave (AWOL).~~
13. Discourtesy (Not to include any allegation involving any member of the public).

**If any supervisor is determined to have minimized the facts in a BlueTeam entry that qualifies an allegation for ER that would otherwise not qualify, that supervisor may be subject to discipline.**

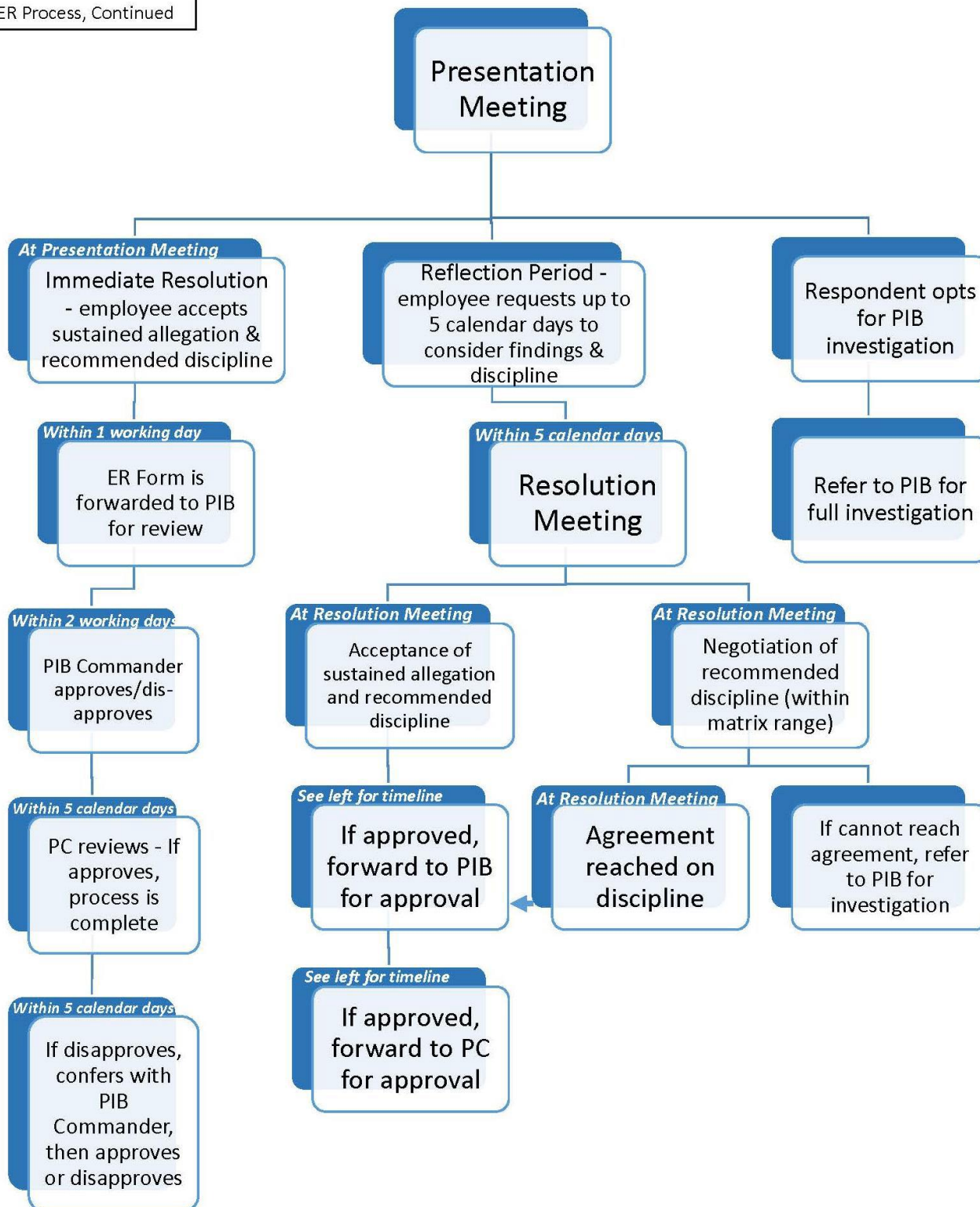
**APPENDIX B**

Flow Chart of Expedited Resolution (ER) Process



**APPENDIX B**

ER Process, Continued



**APPENDIX C**

**Form 249, Expedited Resolution Form, Page 1**

## BALTIMORE POLICE DEPARTMENT

### PUBLIC INTEGRITY BUREAU EXPEDITED RESOLUTION FORM

DEPARTMENT CASE NO: \_\_\_\_\_  
 DATE FORM INITIATED: \_\_\_\_\_

Page 1 of \_\_\_\_

**THIS SECTION TO BE COMPLETED BY THE PUBLIC INTEGRITY BUREAU**

PART 1 INFORMATION CONCERNING THE ACCUSED EMPLOYEE & INCIDENT																		
SECTION A																		
Employee's Name	Rank/Classification	Seq. #	Employee ID#	Assignment														
EOD	Primary Supervisor	Shift Lieutenant	Division/District Commander															
SECTION B																		
<b>THE EMPLOYEE IS BELIEVED TO HAVE VIOLATED THE FOLLOWING BPD RULES AND/OR POLICIES:</b>																		
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Loss or damaged equipment (not including firearms)             </td> <td style="width: 50%; padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Sleeping on duty             </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Improper uniform or appearance             </td> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Failure to appear in court (FTA)             </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Improper maintenance of firearms             </td> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Failure to attend and complete required training             </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Allowing unauthorized persons to use departmental equipment (not including firearms)             </td> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Failure to attend PSI medical appointment             </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Improper inspection of service vehicle             </td> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Discourtesy (not including any allegation involving any member of the public.             </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Off post or leaving assignment without permission             </td> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Absence without leave (AWOL)             </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <input type="checkbox"/> Neglect of Duty – Lateness for duty or assignment             </td> <td style="padding: 5px; vertical-align: top;"></td> </tr> </table>					<input type="checkbox"/> Neglect of Duty – Loss or damaged equipment (not including firearms)	<input type="checkbox"/> Neglect of Duty – Sleeping on duty	<input type="checkbox"/> Neglect of Duty – Improper uniform or appearance	<input type="checkbox"/> Neglect of Duty – Failure to appear in court (FTA)	<input type="checkbox"/> Neglect of Duty – Improper maintenance of firearms	<input type="checkbox"/> Neglect of Duty – Failure to attend and complete required training	<input type="checkbox"/> Neglect of Duty – Allowing unauthorized persons to use departmental equipment (not including firearms)	<input type="checkbox"/> Neglect of Duty – Failure to attend PSI medical appointment	<input type="checkbox"/> Neglect of Duty – Improper inspection of service vehicle	<input type="checkbox"/> Discourtesy (not including any allegation involving any member of the public.	<input type="checkbox"/> Neglect of Duty – Off post or leaving assignment without permission	<input type="checkbox"/> Absence without leave (AWOL)	<input type="checkbox"/> Neglect of Duty – Lateness for duty or assignment	
<input type="checkbox"/> Neglect of Duty – Loss or damaged equipment (not including firearms)	<input type="checkbox"/> Neglect of Duty – Sleeping on duty																	
<input type="checkbox"/> Neglect of Duty – Improper uniform or appearance	<input type="checkbox"/> Neglect of Duty – Failure to appear in court (FTA)																	
<input type="checkbox"/> Neglect of Duty – Improper maintenance of firearms	<input type="checkbox"/> Neglect of Duty – Failure to attend and complete required training																	
<input type="checkbox"/> Neglect of Duty – Allowing unauthorized persons to use departmental equipment (not including firearms)	<input type="checkbox"/> Neglect of Duty – Failure to attend PSI medical appointment																	
<input type="checkbox"/> Neglect of Duty – Improper inspection of service vehicle	<input type="checkbox"/> Discourtesy (not including any allegation involving any member of the public.																	
<input type="checkbox"/> Neglect of Duty – Off post or leaving assignment without permission	<input type="checkbox"/> Absence without leave (AWOL)																	
<input type="checkbox"/> Neglect of Duty – Lateness for duty or assignment																		
Type of Rule(s) of Policy(s) and all applicable section/reference numbers:			<input type="checkbox"/> ON DUTY  <input type="checkbox"/> OFF DUTY															
Continued on Additional Sheet																		
Location of Incident	District (if applicable)	Date	Time															
Completed by (PIB Personnel):			Date:															
Commander of PIB Approval:			Date:															

**APPENDIX C****Form 249, Expedited Resolution Form, Page 2****PUBLIC INTEGRITY BUREAU  
EXPEDITED RESOLUTION FORM**

DEPARTMENT CASE NO: \_\_\_\_\_

DATE FORM INITIATED: \_\_\_\_\_

Page 2 of \_\_\_\_

<b>PART 2 RECOMMENDED PENALTY, PRESENTATION MEETING, EXTENSION AND REQUEST FOR REFLECTION PERIOD</b>			
<b>THIS SECTION TO BE COMPLETED BY DIVISION/DISTRICT LEVEL COMMANDER</b>			
<b>SECTION A</b>	I, the accused member's Division/District Commander, respectfully recommend the following disciplinary action:		
<input type="checkbox"/> Letter of Reprimand	<input type="checkbox"/> Suspension for _____ days	<input type="checkbox"/> Loss of Leave for _____ days	<input type="checkbox"/> Other (please explain)
EXPLAIN:			
ADDITIONAL OFFENSE(S)			
<input type="checkbox"/> Letter of Reprimand	<input type="checkbox"/> Suspension for _____ days	<input type="checkbox"/> Loss of Leave for _____ days	<input type="checkbox"/> Other (please explain)
EXPLAIN:			
<b>THIS SECTION TO BE COMPLETED BY DIVISION/DISTRICT COMMANDER IF EXTENSION REQUESTED</b>			
<b>SECTION B</b>	I, the accused member's Division/District Commander, request an extension of _____ days due to extraordinary circumstances (Max 10 calendar days):		
Division/District Commander	Bureau Chief	<input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur	
Commander of PIB or designee:		<input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur	
<b>THIS SECTION TO BE COMPLETED BY ACCUSED MEMBER</b>			
<b>SECTION C</b>	I, the accused member (check one of the below options):		
<input type="checkbox"/> <b>AGREE</b> with the disciplinary action recommended to resolve this complaint and waive my right to a hearing under LEOBR/Article 16 of the MOU.	<input type="checkbox"/> <b>AGREE</b> to negotiate a resolution to resolve this complaint (Refer to Part 3).	<input type="checkbox"/> Request a <b>Reflection Period</b> (maximum 5 days) to begin on _____.	
<input type="checkbox"/> <b>DO NOT WISH</b> to participate in the Expedited Resolution process and request a PIB investigation.			
By accepting this agreement, I, the accused member, am affirming that there is no additional misconduct related to this matter. I understand that if additional misconduct is discovered at a later time, the Department may take action to address the additional misconduct discovered.			
<b>ACCUSED MEMBER'S SIGNATURE</b>		<b>DIVISION/DISTRICT COMMANDER SIGNATURE</b>	
<b>DATE</b>		<b>DATE</b>	

**APPENDIX C****Form 249, Expedited Resolution Form, Page 3****PUBLIC INTEGRITY BUREAU  
EXPEDITED RESOLUTION FORM**

DEPARTMENT CASE NO: \_\_\_\_\_  
 DATE FORM INITIATED: \_\_\_\_\_

Page 3 of \_\_\_\_

<b>PART 3</b>		<b>ACKNOWLEDGEMENT OF RESOLUTION AND NEGOTIATED DISCIPLINARY ACTION</b>	
<b>THIS SECTION TO BE COMPLETED BY DIVISION/DISTRICT COMMANDER</b>			
<b>SECTION A</b>	I, the accused member's Division/District Commander, have negotiated the following penalty with the accused member:		
<input type="checkbox"/> Letter of Reprimand	<input type="checkbox"/> Suspension for _____ days	<input type="checkbox"/> Loss of Leave for _____ days	<input type="checkbox"/> Other (please explain)
EXPLAIN:			
WERE <input type="checkbox"/> AGGRAVATING FACTORS OR <input type="checkbox"/> MITIGATING FACTORS applied when using the penalty schedule? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, document specific factors in an attachment.			
ADDITIONAL OFFENSE(S)			
<input type="checkbox"/> Letter of Reprimand	<input type="checkbox"/> Suspension for _____ days	<input type="checkbox"/> Loss of Leave for _____ days	<input type="checkbox"/> Other (please explain)
EXPLAIN:			
WERE <input type="checkbox"/> AGGRAVATING FACTORS OR <input type="checkbox"/> MITIGATING FACTORS applied when using the penalty schedule? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, document specific factors in an attachment.			
Division/District Commander (Signature)		Date	
<b>THIS SECTION TO BE COMPLETED BY ACCUSED MEMBER</b>			
<b>SECTION B</b>	I, the accused member:		
<input type="checkbox"/> <b>AGREE</b> with the disciplinary action recommended to resolve this complaint and waive my right to a hearing under LEOBR/Article 16 of the MOU.		<input type="checkbox"/> <b>DISAGREE</b> with the disciplinary action recommended to resolve this complaint and understand that an investigation will be conducted into the allegations.	
<b>ACCUSED MEMBER'S SIGNATURE</b>		<b>DATE</b>	



**APPENDIX C****Form 249, Expedited Resolution Form, Page 4****PUBLIC INTEGRITY BUREAU  
EXPEDITED RESOLUTION FORM**

DEPARTMENT CASE NO: \_\_\_\_\_

DATE FORM INITIATED: \_\_\_\_\_

Page 4 of \_\_\_\_

**PART 4 PUBLIC INTEGRITY BUREAU'S REVIEW AND APPROVAL****THIS SECTION TO BE COMPLETED BY COMMANDER OF PIB OR DESIGNEE****SECTION A** I, the Deputy Commissioner of the Public Integrity Bureau (or designee), have reviewed the disciplinary action recommended and I hereby:☐ **CONCUR** with the disciplinary action recommended by the Division/District Commander and accepted by the accused member (forward to Police Commissioner).☐ **DO NOT CONCUR** with the disciplinary action recommended by the Division/District Level Commander (assign to PIB investigator).

COMMANDER OF PIB'S SIGNATURE (Name &amp; Signature, if Designee)

DATE

**PART 5 POLICE COMMISSIONER'S ACKNOWLEDGEMENT AND APPROVAL****THIS SECTION TO BE COMPLETED BY POLICE COMMISSIONER WHEN AGREEMENT HAS BEEN REACHED****SECTION A POLICE COMMISSIONER'S REVIEW**

I, the Police Commissioner, have reviewed the disciplinary action recommended and I hereby:

☐ **CONCUR** with the disciplinary action recommended by the Division/District Commander and accepted by the accused member.☐ **DO NOT CONCUR** with the disciplinary action recommended by the Division/District Level Commander, and will confer with the PIB Commander.

POLICE COMMISSIONER'S SIGNATURE

DATE

**SECTION B POLICE COMMISSIONER'S FINAL DECISION (IF NOT RESOLVED ABOVE)**

I, the Police Commissioner, have reviewed the disciplinary action recommended and I hereby:

☐ **CONCUR** with the disciplinary action recommended by the Division/District Commander and accepted by the accused member.☐ **DO NOT CONCUR** with the disciplinary action recommended by the Division/District Level Commander (to be sent to PIB for investigation).

POLICE COMMISSIONER'S SIGNATURE

DATE

**APPENDIX D**  
**Explanation of Police Officer's Rights**

POLICE DEPARTMENT  
BALTIMORE, MARYLAND

**EXPLANATION OF POLICE OFFICER'S RIGHTS**

Pursuant to the Law Enforcement Officers' Bill of Rights, Maryland Annotated Code, Public Safety Article, § 3-104, *et seq.*, you are being advised of the following:

1. 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:

- a) The interrogation shall be at a reasonable hour, preferably while you are on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

\_\_\_\_\_

- b) The interrogation shall take place either at the Internal Affairs Division, or the District or Division where the alleged incident occurred, or any other reasonable and appropriate place.

\_\_\_\_\_

- c) You 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 you shall be asked by and through one interrogator during any one interrogating session consistent with the provisions of subsection (1) (d) of this notice.

\_\_\_\_\_

- d) Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

\_\_\_\_\_

- e) You may not be threatened with transfer, dismissal, or disciplinary action.

\_\_\_\_\_

- f) You have the right to be represented by counsel or any other responsible representative of your choice during your interrogation unless waived by you. The interrogation shall be suspended for a period of time not to exceed 5 days until representation is obtained.

\_\_\_\_\_



**APPENDIX D**  
**Explanation of Police Officer's Rights, Continued**

g) A complaint against you, alleging brutality in the execution of your duties, may not be investigated unless the complaint is duly sworn by an official authorized to administer oaths. However, the Maryland Court of Appeals has ruled that a police agency is not prohibited from proceeding on its own with a brutality investigation if it so chooses. *See, Baltimore City Police Dep't v. Andrew*, 318 Md. 3 (1989).

h) You may be ordered 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. Refusal to submit to such a test or adherence to such an order may lead to disciplinary action taken against you. The result of such tests or interrogation is not admissible in any criminal proceeding against you. The results of a polygraph examination may not be used as evidence against you in an administrative hearing, unless both you and the Department agree to the admission of the results.

i) If at the time of the interrogation you are under arrest, or are likely to be placed under arrest as a result of the interrogation, you shall be informed of all your rights prior to the commencement of this interrogation.

Any Officer may waive in writing any or all rights provided in this subtitle.

Do you understand your rights? ☐ YES ☐ NO

Do you want a Lawyer or representative present at this time? ☐ YES ☐ NO

Officer's Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Witness Signature: \_\_\_\_\_