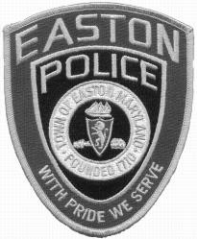


**EASTON POLICE DEPARTMENT
ADMINISTRATIVE ORDER
CHAPTER 5: COUNSELING AND DISCIPLINE**

	Title: Hearing Boards		Number: 05-13
	Effective: December 29, 2011	Revised: Oct. 1, 2016	General Order #16-008
	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amends	Notes: Replaces Administrative Manual Chapter 5-13 (12-11)	
Authority: _____ <div style="text-align: center;">Chief of Police</div>			Total Pages: 5

5-13.0 PURPOSE

The purpose of this General Order is to establish guidelines for the use of Hearing Boards for members accused of violations of the Department’s Rules, Regulations, Policies or Procedures.

5-13.1 DEFINITIONS/ABBREVIATIONS

LEOBR Law Enforcement Officers’ Bill of Rights

5-13.2 FORMS

Form 30	Reprimand and Disciplinary Action Report
Form 32	Notification of Hearing
Form 32C	Notification of Evidence/Document Receipt Form/Confidentiality Agreement - Prosecution
Form 32D	Notification of Evidence/Document Receipt Form/Confidentiality Agreement - Defense
Form 34	Internal Affairs Record Expungement Request

5-13.3 POLICY

1. Cases referred to a Hearing Board result from the:
 - a. Refusal of a member to accept summary punishment.
 - b. Failure of a member to acknowledge an offer of summary punishment within ten days after receiving the Form 30, Reprimand and Disciplinary Action Report.
 - c. Referral of charges.
2. In general, no departmental hearing, except a suspension review hearing, shall be held on any charges that relate to conduct which is also subject of a criminal proceeding, until such time as all criminal charges are disposed of. However, the Department retains the discretion (non-grievable) to make an exception to the general rule if it determines that the morale, operation or best interests of the department would be adversely affected by the failure to hold a hearing.
3. Administrative Hearing Boards are not judicial proceedings.

4. A guilty verdict merely requires a preponderance of the evidence.
5. The Town Attorney, or a person so designated by the Chief of Police, will present circumstances of the alleged offense to the Board.
6. The admission of evidentiary materials and statements will be governed by the LEOBR.
7. Members have the right to be represented by counsel of their choice.
8. The accused, counsel for the accused, and members of the hearing board will be notified of an administrative hearing by memorandum from the Deputy Chief of Police.
9. Officers who have been charged according to this Article and are notified that an administrative hearing board will take place and they refuse to appear, resign, or otherwise fail to appear, the Administrative Hearing Board may proceed in his/her absence. The results of the board will be placed in the member's personnel folder.

5-13.4 TYPE OF HEARING BOARD

1. The Deputy Chief of Police will coordinate and direct Departmental Administrative Hearing Boards.
2. The Deputy Chief of Police, with final approval from the Chief of Police, will:
 - a. Appoint a three-member hearing board.
 - b. Assign a hearing officer as chairperson who has not participated in the investigation or interrogation of the member.
 - c. Assign the board members of a three member hearing board, none of whom will have participated in the investigation of the member who is the subject of the hearing.
 - d. Assign at least one board member who is the same rank as the member who is subject of the hearing.
 - e. Issue a special order to appoint a hearing board.
 - f. Forward copies of the Special Order and Form 30 to the member's commander, the Hearing Board Members and the member.

5-13.5 ADMINISTRATIVE PROCEDURES PRIOR TO HEARING

1. Hearing Board Members may not review the case file and may only review the information contained in the Form 30.
2. The member is entitled to a copy of the investigative file, at no cost, not less than 10 days before the hearing date.
3. Identity of confidential sources and non-exculpatory information will be excluded from this case file.
4. The member will sign the Form 32D, Confidentiality Agreement, regarding use and disclosure of information from the case file.

5-13.6 PRE-HEARING PROCEDURES

1. The Hearing Board Chairperson will:
 - a. Contact the member's attorney or representative, the prosecutor and the board members to arrange a mutually convenient date for the hearing. The hearing date will not be scheduled before thirty days from the date that counsel for the accused received a copy of all charges and the internal investigation material, unless a shorter period is mutually agreed upon by counsel and the department.
 - b. Prepare a Form 32, Notification of Hearing.
 - c. Prepare a Form 32C, Notification of Evidence/Document Receipt for the Prosecution and a Form 32D, Notification of Evidence/Document Receipt for the Defense, and forward these to the Deputy Chief of Police.

2. The Deputy Chief will serve the Form 32 on the member and return a signed copy to the Hearing Board Chairperson.
3. The Hearing Board Chairperson will provide a copy of the Form 32 to the Prosecutor and Hearing Board Members.
4. Members will give their counsel or representative a copy of the Form 32 and Form 32D.
5. If either the Prosecutor or the member's counsel requires summonses or if evidence will be presented, they will return the Form 32C, or Form 32D, to the Hearing Board Chairperson not less than 10 days prior to the scheduled hearing date.
6. Requests for postponements will be directed to the Hearing Board Chairperson and granted only for good cause.
7. Requests to amend charges will be directed to the Hearing Board Chairperson. An amended charge could result in a postponement of the hearing.
8. If a penalty which differs from the matrix category is sought by the prosecutor, notice will be given to the member no less than ten days prior to the hearing.
9. A member may elect to waive all rights afforded by the LEOBR after the member is charged with violations of EPD regulations and accept the punishment offered by the Department.

5-13.7 CONDUCTING THE HEARING BOARD

1. All hearings will be conducted under the direction of the Hearing Board Chairperson unless otherwise designated.
2. All weapons will be secured outside the hearing room.
3. Hearings will be recorded and a record maintained anytime the recording is stopped and restarted.
4. Written requests for open hearings will be considered by the Chief of Police.
5. All documents accepted into evidence will be marked for identification and retained as part of the record.
6. Motions and stipulations may be heard. The Chairperson may rule or recess the Board to discuss matters with the Board Members.
7. The Hearing Board Chairperson will administer oaths or affirmations and examine any individual under oath.
8. The Chairperson shall inquire if a copy of the charges and specifications to be heard have been received by the accused member.
9. Each charge and specification shall be read, unless waived, and the accused shall enter a plea to each.
10. Brief opening statements, by the prosecutor and the defense counsel may be made.
11. The prosecutor will present its case in chief and bears the burden of proof.
12. The defense may, but is not required, to present its case.
13. Each party has a right to cross examine each witness who testifies for the other party. Redirect and re-cross examination is limited to matters covered in a preceding examination. The Board may question each witness.
14. Rebuttal evidence by both parties may be presented.
15. Closing arguments include:
 - a. A summation presented by the prosecutor.
 - b. A summation presented by the defense.
 - c. A rebuttal may be presented by the prosecutor.
16. The Hearing Board Members will clear the hearing room to decide guilt or innocence on each charge.

5-13.8 DECISION OF THE HEARING BOARD

1. A majority shall reach a verdict on each charge.
2. Guilty Verdict – A finding of guilt must be based on a preponderance of the evidence.
3. Not Guilty Verdict – A finding of not guilty on all charges concludes the hearing.
4. Dissenting Opinion – A board member may submit a written report outlining his objection to the verdict.

5-13.9 NOTIFICATIONS OF FINDINGS

1. The Hearing Board Chairperson will reconvene the hearing. The exact time of the clearing and recalling of all parties shall be noted in the record.
2. The member will be advised of the Board's findings on each charge.
3. For a finding of "Not Guilty" on all charges, the Chairperson will announce the conclusion of the case and adjourn the hearing.
4. For a finding of "Guilty" on any charge, the Chairperson shall request recommendations for penalty from the Prosecutor and Defense. The member's personnel file and disciplinary record will be introduced at this time.
5. Either prosecution or defense may present testimony or other evidence in support of recommendations for penalty.
6. The Hearing Board will clear the hearing room for deliberation of penalty phase.

5-13.10 PENALTY DELIBERATIONS

1. If the penalty recommended by the board differs from the matrix category, the hearing board shall state the mitigating/aggravating factors considered in support of the penalty.
2. The member's personnel file and/or disciplinary record will be considered in the deliberation.
3. All evidence presented during the hearing, along with other personnel related material, must be considered during this phase.
4. The disciplinary recommendation can include one or more of the following: demotion, dismissal, transfer, loss of pay, fine, reassignment, remedial training or other punitive measures.
5. Remedial training is required on guilty findings concerning illegal discrimination or harassment incidents, except in cases of termination.
6. The Chairperson will cause another vote to be taken as to punishment. Voting will be finished when a majority is reached.

5-13.11 NOTIFICATION OF PENALTY

1. The Hearing Board Chairperson will reconvene the hearing. The exact time of clearing and recalling of all parties will be noted in the record.
2. The Chairperson will notify all interested parties of the penalty for each charge and that the penalty will be recommended to the Chief of Police.
3. Should termination be the recommendation of the Hearing Board, the Chairperson will contact the Chief of Police immediately. The Deputy Chief of Police will then notify the following that the accused is immediately suspended with pay until the Chief of Police makes a final determination:
 - a. The accused.
 - b. The accused's Supervisor.
 - c. The accused's Division Commander.

5-13.12 HEARING BOARD REPORT

1. The Chairperson will explain the conclusions made by the Hearing Board in a concise written statement, supported by findings of fact.
2. The written report will be forwarded to the other Board Members for review and approval.
3. The final report will be submitted to the Chief of Police within thirty days of the conclusion of the hearing.
4. In the case of a split decision by the Hearing Board in the rendering of a guilty verdict, the reasons for the dissenting opinion will be noted in the report.
5. A copy of the report will be provided to the accused member or his/her defense counsel.

5-13.13 CHIEF'S REVIEW

1. Within thirty days of receipt of the Hearing Board Report, the Chief of Police may:
 - a. Increase or decrease a recommended penalty and will state the reasons therefore.
 - b. Permit the member to be heard only if the Chief is increasing the penalty.
2. The decision made by the Chief of Police is final.

5-13.14 RECORD KEEPING

1. The Deputy Chief of Police will maintain the Hearing Board report, related documents and the tape recordings of the proceedings.
2. The prosecutor will return the case file to the Deputy Chief of Police.

5-13.15 APPEAL PROCESS

1. A member may appeal the decision of the Chief of Police to the Circuit Court, pursuant to Maryland Rules and the Law Enforcement Officers' Bill of Rights.
2. A secondary appeal to the Court of Special Appeals may be made by any party.

5-13.16 CASE EXPUNGEMENT

1. The Expungement of complaints against department members, through the Deputy Chief shall be in accordance with the LEOBR.
2. Requesting officers shall submit a Form 34 Internal Affairs Record Expungement Request, to the Deputy Chief requesting Expungement of eligible case records.
3. The Deputy Chief shall notify the requesting officer when eligible cases are expunged.