

SENATE BILL 216

E4

3lr1145
CF 3lr1849

By: **Senators Glassman, Jacobs, and Jennings**

Introduced and read first time: January 18, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Harford County – Correctional Officers’ Bill of Rights**

3 FOR the purpose of adding Harford County to the provisions of law relating to the
4 Cecil County, Garrett County, and St. Mary’s County Correctional Officers’ Bill
5 of Rights; providing that certain provisions of law relating to hearing board
6 procedures and the finality of certain hearing board decisions do not apply in
7 Harford County; defining certain terms; and generally relating to the
8 Correctional Officers’ Bill of Rights.

9 BY repealing and reenacting, with amendments,
10 Article – Correctional Services
11 Section 11–1001, 11–1002, 11–1008, and 11–1009
12 Annotated Code of Maryland
13 (2008 Replacement Volume and 2012 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – Correctional Services**

17 11–1001.

18 (a) In this subtitle the following words have the meanings indicated.

19 (b) **IN HARFORD COUNTY, “AGENCY” MEANS THE OFFICE OF THE**
20 **SHERIFF OF HARFORD COUNTY.**

21 (c) (1) “Correctional officer” has the meaning stated in § 8–201 of this
22 article.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) “Correctional officer” does not include an officer who is in
2 probationary status on initial entry into the correctional agency except if an allegation
3 of brutality in the execution of the officer’s duties is made against the officer.

4 [(c)] (D) (1) “Hearing” means a proceeding during an investigation
5 conducted by a hearing board to take testimony or receive other evidence.

6 (2) “Hearing” does not include an interrogation at which no testimony
7 is taken under oath.

8 [(d)] (E) “Hearing board” means a board that is authorized by the managing
9 official to hold a hearing on a complaint against a correctional officer.

10 [(e)] (F) “Internal investigation unit” means the internal investigation unit
11 of a correctional facility charged with the investigation of complaints within a
12 correctional facility.

13 (G) IN HARFORD COUNTY, “MANAGING OFFICIAL” MEANS THE SHERIFF
14 OF HARFORD COUNTY.

15 11–1002.

16 This subtitle applies only in Cecil County, Garrett County, **HARFORD**
17 **COUNTY**, and St. Mary’s County.

18 11–1008.

19 (a) (1) Except as provided in paragraph (2) of this subsection and §
20 11–1012 of this subtitle, if the investigation or interrogation of a correctional officer
21 results in a recommendation of demotion, dismissal, transfer, loss of pay,
22 reassignment, or similar action that is considered punitive, the correctional officer is
23 entitled to a hearing on the issues by a hearing board before the managing official
24 takes that action.

25 (2) A correctional officer who has been convicted of a felony is not
26 entitled to a hearing under this section.

27 (b) (1) The internal investigation unit shall give notice to the correctional
28 officer of the right to a hearing by a hearing board under this section.

29 (2) The notice required under this subsection shall state the time and
30 place of the hearing and the issues involved.

31 (c) (1) Except as provided in paragraph (4) of this subsection and in §
32 11–1012 of this subtitle, the hearing board authorized under this section shall consist
33 of at least three members who:

1 (i) are appointed by the managing official and chosen from
2 correctional officers within that correctional facility, or from correctional officers of
3 another correctional facility with the approval of the managing official of the other
4 facility; and

5 (ii) have had no part in the investigation or interrogation of the
6 correctional officer.

7 (2) At least one member of the hearing board shall be of the same rank
8 as the correctional officer against whom the complaint is filed.

9 (3) (i) **THIS PARAGRAPH DOES NOT APPLY IN HARFORD**
10 **COUNTY.**

11 **(II)** If the managing official is the correctional officer under
12 investigation, the managing official of another correctional facility in the State shall
13 function as the correctional officer of the same rank on the hearing board.

14 **[(ii)] (III)** If the managing official of a correctional facility of a
15 county or municipal corporation is under investigation, the official authorized to
16 appoint the managing official's successor shall select the managing official of another
17 correctional facility to function as the correctional officer of the same rank on the
18 hearing board.

19 (4) (i) **THIS PARAGRAPH DOES NOT APPLY IN HARFORD**
20 **COUNTY.**

21 **(II)** A correctional facility or the facility's superior governmental
22 authority that has recognized and certified an exclusive collective bargaining
23 representative may negotiate with the representative an alternative method of
24 forming a hearing board.

25 **[(ii)] (III)** A correctional officer may elect the alternative
26 method of forming a hearing board if:

27 1. the correctional officer works in a correctional facility
28 described in subparagraph **[(i)] (II)** of this paragraph; and

29 2. the correctional officer is included in the collective
30 bargaining unit.

31 **[(iii)] (IV)** The internal investigation unit shall notify the
32 correctional officer in writing before a hearing board is formed that the correctional
33 officer may elect an alternative method of forming a hearing board if one has been
34 negotiated under this paragraph.

1 ~~[(iv)]~~ **(v)** If the correctional officer elects the alternative
2 method, that method shall be used to form the hearing board.

3 ~~[(v)]~~ **(VI)** A correctional facility or exclusive collective
4 bargaining representative may not require a correctional officer to elect an alternative
5 method of forming a hearing board.

6 ~~[(vi)]~~ **(VII)** If the correctional officer has been offered summary
7 punishment, an alternative method of forming a hearing board may not be used.

8 ~~[(vii)]~~ **(VIII)** This paragraph is not subject to binding arbitration.

9 (d) (1) In connection with a disciplinary hearing, the managing official or
10 hearing board may issue subpoenas to compel the attendance and testimony of
11 witnesses and the production of books, papers, records, and documents as relevant or
12 necessary.

13 (2) The subpoenas may be served without cost in accordance with the
14 Maryland Rules that relate to service of process issued by a court.

15 (3) Each party may request the managing official or hearing board to
16 issue a subpoena or order under this subtitle.

17 (4) In case of disobedience or refusal to obey a subpoena served under
18 this subsection, the managing official may apply without cost to the circuit court of a
19 county where the subpoenaed party resides or conducts business, for an order to
20 compel the attendance and testimony of the witness or the production of the books,
21 papers, records, and documents.

22 (5) On a finding that the attendance and testimony of the witness or
23 the production of the books, papers, records, and documents is relevant or necessary:

24 (i) the court may issue without cost an order that requires the
25 attendance and testimony of witnesses or the production of books, papers, records, and
26 documents; and

27 (ii) failure to obey the order may be punished by the court as
28 contempt.

29 (e) (1) The hearing shall be conducted by a hearing board.

30 (2) The hearing board shall give the internal investigation unit and
31 correctional officer ample opportunity to present evidence and argument about the
32 issues involved.

1 (3) The correctional facility and correctional officer may be
2 represented by counsel.

3 (4) Each party has the right to cross-examine witnesses who testify
4 and each party may submit rebuttal evidence.

5 (f) (1) Evidence with probative value that is commonly accepted by
6 reasonable and prudent individuals in the conduct of their affairs is admissible and
7 shall be given probative effect.

8 (2) The hearing board shall give effect to the rules of privilege
9 recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly
10 repetitious evidence.

11 (3) Each record or document that a party desires to use shall be
12 offered and made a part of the record.

13 (4) Documentary evidence may be received in the form of copies or
14 excerpts, or by incorporation by reference.

15 (g) (1) The hearing board may take notice of:

16 (i) judicially cognizable facts; and

17 (ii) general, technical, or scientific facts within its specialized
18 knowledge.

19 (2) The hearing board shall:

20 (i) notify each party of the facts so noticed either before or
21 during the hearing, or by reference in preliminary reports or otherwise; and

22 (ii) give each party an opportunity and reasonable time to
23 contest the facts so noticed.

24 (3) The hearing board may utilize its experience, technical
25 competence, and specialized knowledge in the evaluation of the evidence presented.

26 (h) (1) With respect to the subject of a hearing conducted under this
27 subtitle, the managing official shall administer oaths or affirmations and examine
28 individuals under oath.

29 (2) In connection with a disciplinary hearing, the managing official or
30 a hearing board may administer oaths.

31 (i) (1) Witness fees and mileage, if claimed, shall be allowed the same as
32 for testimony in a circuit court.

1 (2) Witness fees, mileage, and the actual expenses necessarily
2 incurred in securing the attendance of witnesses and their testimony shall be itemized
3 and paid by the correctional facility.

4 (j) An official record, including testimony and exhibits, shall be kept of the
5 hearing.

6 11-1009.

7 (a) (1) A decision, order, or action taken as a result of a hearing under §
8 11-1008 of this subtitle shall be in writing and accompanied by findings of fact.

9 (2) The findings of fact shall consist of a concise statement on each
10 issue in the case.

11 (3) A finding of not guilty terminates the action.

12 (4) If the hearing board makes a finding of guilt, the hearing board
13 shall:

14 (i) reconvene the hearing;

15 (ii) receive evidence; and

16 (iii) consider the correctional officer's past job performance and
17 other relevant information as factors before making recommendations to the
18 managing official.

19 (5) A copy of the decision or order, findings of fact, conclusions, and
20 written recommendations for action shall be delivered or mailed promptly to:

21 (i) the correctional officer or the correctional officer's counsel or
22 representative of record; and

23 (ii) the managing official.

24 (b) (1) After a disciplinary hearing and a finding of guilt, the hearing
25 board may recommend the penalty it considers appropriate under the circumstances,
26 including demotion, dismissal, transfer, loss of pay, reassignment, or other similar
27 action that is considered punitive.

28 (2) The recommendation of a penalty shall be in writing.

29 (c) (1) Notwithstanding any other provision of this subtitle, the decision
30 of the hearing board as to findings of fact and any penalty is final if:

1 (i) a managing official is an eyewitness to the incident under
2 investigation; or

3 (ii) **EXCEPT IN HARFORD COUNTY**, a managing official has
4 agreed with an exclusive collective bargaining representative recognized or certified
5 under applicable law that the decision is final.

6 (2) The decision of the hearing board then may be appealed in
7 accordance with § 11–1010 of this subtitle.

8 (3) Paragraph (1)(ii) of this subsection is not subject to binding
9 arbitration.

10 (d) (1) Within 30 days after receipt of the recommendations of the hearing
11 board, the managing official shall:

12 (i) review the findings, conclusions, and recommendations of
13 the hearing board; and

14 (ii) issue a final order.

15 (2) The final order and decision of the managing official is binding and
16 then may be appealed in accordance with § 11–1010 of this subtitle.

17 (3) The recommendation of a penalty by the hearing board is not
18 binding on the managing official.

19 (4) The managing official shall consider the correctional officer's past
20 job performance as a factor before imposing a penalty.

21 (5) The managing official may increase the recommended penalty of
22 the hearing board only if the managing official personally:

23 (i) reviews the entire record of the proceedings of the hearing
24 board;

25 (ii) meets with the correctional officer and allows the
26 correctional officer to be heard on the record;

27 (iii) discloses and provides in writing to the correctional officer,
28 at least 10 days before the meeting, any oral or written communication not included in
29 the record of the hearing board on which the decision to consider increasing the
30 penalty is wholly or partly based; and

31 (iv) states on the record the substantial evidence relied on to
32 support the increase of the recommended penalty.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2013.