Department of Legislative Services

Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1037 (Senator Carter)
Judicial Proceedings

Maryland Police Training and Standards Commission - Uniform Citizen Complaint Process (Anton's Law)

This bill requires that the uniform citizen complaint process developed by the Maryland Police Training and Standards Commission (MPTSC) require that a complainant be provided with a copy of the investigatory file relating to the complaint and copies of any prior complaints filed against the police officer in question.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for State law enforcement agencies to comply with the bill's requirements. Revenues are not affected.

Local Effect: Potential minimal increase in law enforcement expenditures for most counties and municipalities; however, Montgomery County advises that the bill results in a potentially significant increase in county expenditures. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Maryland Police Training and Standards Commission

Chapter 519 of 2016 reconstituted the former Police Training Commission as MPTSC, an independent commission within the Department of Public Safety and Correctional Services. MPTSC operates approved police training schools and prescribes standards for

and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

MPTSC must develop a uniform citizen complaint process to be followed by each law enforcement agency. The uniform complaint process must be simple, require that a complainant be informed of the final disposition of the complainant's complaint and any discipline imposed as a result, and be posted on the websites of MPTSC and each law enforcement agency.

Maryland Public Information Act

Maryland's Public Information Act (PIA) establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Generally, however, a custodian must deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information. A custodian must allow inspection of a personnel record by:

- the "person in interest";
- an elected or appointed official who supervises the work of the custodian; or
- a specified employee organization (of specified portions of the personnel record).

A "person in interest" is defined as (1) a person or governmental unit that is the subject of a public record or a designee of the person or governmental unit; (2) if the person has a legal disability, the parent or legal representative of the person; or (3) as to requests for correction of certificates of death under State law, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased, as specified.

Generally, a custodian of a public record must permit inspection of the record at a reasonable time and within 10 working days of receiving a request.

Required Denials

A custodian must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. In general, denial of inspection is also mandatory for public records relating to adoption, welfare records, letters of reference, specified information about an individual maintained by a library, retirement records, certain police records, criminal charging documents, arrest warrants, *personnel records*, certain hospital and school records, records of certain State agencies, certain recorded and surveillance images, and captured plate data

collected by automatic license plate reader systems. In general, denial of inspection is also required for that part of a public record relating to certain medical, psychological, sociological, and financial information; trade secrets; certain personal information about public employees; and other specified information and records.

Discretionary Denials

Unless otherwise specified, if a custodian believes that inspection of a record or part of a public record by an applicant would be contrary to the public interest, the custodian may deny inspection to the applicant of the record or part of the record. PIA specifies the types of records that are eligible for discretionary denials, including documents that would not be available through discovery in a lawsuit.

A custodian that denies inspection of a public record on this basis must provide (1) a written statement to the applicant giving the reason for denial; (2) the legal authority on which it is based; (3) a brief description of the undisclosed record (without disclosing the protected information), including an explanation of why redacting information would not address the reason for the denial; and (4) a notice of the statutory remedies available.

A custodian may deny inspection by a person in interest only to the extent that the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose an investigative technique or procedure; (6) prejudice an investigation; or (7) endanger the life or physical safety of an individual.

Denial of Personnel Records Relating to Disciplinary Actions

Formal complaints of job-related misconduct, including investigation records, related hearing records, or disciplinary decisions, qualify as components of a personnel record as determined in *Maryland Department of State Police v. Teleta S. Dashiell*, 443 Md. 435, 117 A.3d 1 (2015). In addition, the Court of Appeals found in *Dashiell* that a person making a complaint against a government employee is not a "person in interest" in regard to mandated inspections of personnel records under PIA.

Law Enforcement Officer Bill of Rights

The Law Enforcement Officers Bill of Rights (LEOBR) was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies. The investigation or interrogation by a law enforcement agency of a law enforcement

officer for a reason that may lead to disciplinary action, demotion, or dismissal must be conducted in accordance with LEOBR.

Before an interrogation, the law enforcement officer under investigation must be informed in writing of the nature of the investigation. A complete record must be kept of the entire interrogation, including all recess periods, of the law enforcement officer. The record may be written, taped, or transcribed. If the law enforcement agency orders the officer to submit to a test, examination, or interrogation, the results are not admissible or discoverable in a criminal proceeding against the law enforcement officer. On written request, a law enforcement officer may have expunged from any file the record of a formal complaint under specified conditions.

Background: Anton Black, a 19-year-old resident of Greensboro, Maryland, died while in police custody in September 2018. After his death, investigations revealed that the officer in the case, Thomas Webster, had been indicted on second-degree assault charges while working in Delaware. The officer was found not guilty of the charges and resigned. He received his MPTSC certification in May 2018. The investigation into Mr. Black's death continues.

Local Expenditures: Several counties and municipalities, as well as the Maryland Municipal League, report that the bill's requirements can be met with existing local resources; however, Montgomery County advises that county expenditures increase potentially significantly for the Internal Affairs Division of the county's police department. The investigatory file related to a complaint against a police officer can be large and requires redaction of information not authorized to be disseminated under PIA. The county advises that redaction, along with compiling the copy of the file, is time consuming for a small investigative unit, which operates under LEOBR time constraints. Additionally, the requirement to include copies of any prior complaints filed against a police officer further increases expenditures. The county advises, however, that specific costs cannot be determined at this time as it depends on the number of complaints (which varies from year to year) as well as the complexity of each case.

Additional Information

Prior Introductions: None.

Cross File: HB 1011 (Delegate Acevero, *et al.*) - Judiciary.

Information Source(s): Harford, Montgomery, and Talbot counties; City of College Park; Maryland Municipal League; Department of Public Safety and Correctional Services; Associated Press; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510