

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 260 (Senator Ellis)
 Judicial Proceedings

Public Safety - Police Officers' Performance Review Board

This bill establishes a Police Officers’ Performance Review Board as an independent board within the Department of Public Safety and Correctional Services (DPSCS). The bill establishes provisions governing the membership of the board, the terms of members, the designation of the chair, the duties of the board, and meeting requirements. Among other duties, the board must require each law enforcement agency in the State to collect demographic data on all citizen encounters with police officers that is traceable to each individual police officer.

Fiscal Summary

State Effect: General fund expenditures increase by \$717,700 in FY 2022, which only reflects costs to DPSCS and the Department of State Police (DSP); future years reflect annualization. Potential significant increase in State expenditures (multiple fund types) for other State law enforcement agencies beginning in FY 2022. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	717,700	299,800	308,700	319,700	331,000
GF/SF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential significant increase in local expenditures for local law enforcement agencies. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The board must:

- require each law enforcement agency in the State to collect demographic data on all citizen encounters with police officers that is traceable to each individual police officer;
- establish standards for appropriate race neutral behaviors for police interactions with citizens;
- conduct annual reviews of police officer performance; and
- impose sanctions for racially discriminatory behavior by police officers, which may include warnings, placement on probationary status, termination from employment, and decertification of police powers.

The board must (1) maintain minutes of its meetings and any other records that it considers necessary and (2) provide information, on request, regarding the budget, activities, and programs of the board.

In conducting annual reviews of police officer performance, the board may hold hearings, administer oaths, and hear testimony of witnesses. A police officer bears the burden of proof in a hearing before the board. The chief of a law enforcement agency is prohibited from overriding the actions of the board.

Board members are not entitled to receive compensation but may receive reimbursement for expenses under standard State travel regulations, as provided in the State budget.

Current Law:

Maryland Police Training and Standards Commission

Chapter 519 of 2016 reconstituted the former Police Training Commission as the Maryland Police Training and Standards Commission (MPTSC), an independent commission within DPSCS. 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 certifies persons as police officers who have met commission standards, including submission to a criminal history records check and a specified psychological consultation. An individual who is not satisfactorily trained in the 12-month probationary period may

not be employed as a police officer, and a police officer may not serve after certification has been revoked, suspended, or allowed to lapse.

MPTSC requirements include, among other things, that the curriculum and minimum courses of study include special training, attention to, and study of the application of (1) the contact with and treatment of victims of crimes and delinquent acts and (2) the notices, services, support, and rights available to victims and victims' representatives under State law. These requirements apply to in-service level police training every three years and entrance-level training conducted by the State and each county and municipal police training school.

Law Enforcement Officers' 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 specified State and local agencies but does not extend to any correctional officers in the State. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. LEOBR requirements are much more restrictive and time consuming than general State personnel requirements under Title 11 of the State Personnel and Pensions Article. For additional information on LEOBR, see the **Appendix – Law Enforcement Officers' Bill of Rights – Current Law/Background**.

State Expenditures: General fund expenditures increase by \$717,748 in fiscal 2022, which accounts for the bill's October 1, 2021 effective date. Future year estimates reflect annualization and ongoing costs. This estimate only addresses costs associated with DPSCS and DSP. Other State law enforcement agencies may also incur significant increases in State expenditures (multiple fund types), as noted below.

Relevant Background

Since 2001, various laws have required law enforcement agencies in the State to (1) adopt policies against race-based traffic stops to be used as a management tool to promote nondiscriminatory law enforcement practices and (2) collect and report data related to race-based traffic stops. Chapter 625 of 2019 made permanent the data collection and reporting program related to race-based traffic stops.

In August 2011, the Governor's Office of Crime Prevention, Youth, and Victim's Services provided funding to DSP to distribute to law enforcement agencies the technology to

electronically submit data on traffic stop records. “E-Tix” and Race-Based Reporting Modules were developed as part of an overhaul of DSP’s Delta+ software. As a result, any agency with access to the software and these modules can submit data on individual traffic stops. Approximately 135 law enforcement agencies use E-Tix.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by \$191,419 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one program manager, one program administrator, and one management associate to manage and provide support to the board in its required duties. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including estimated reimbursements to board members.

Positions	3
Salaries and Fringe Benefits	\$172,800
Operating Expenses	18,619
Total FY 2022 DPSCS Expenditures	\$191,419

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Department of State Police

General fund expenditures for DSP increase by \$526,329 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects computer programming costs as well as the cost of hiring one help desk clerk to monitor and track citizen encounters with DSP troopers. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- DSP does not currently collect data on every encounter with citizens by police officers. In order to collect such data that is traceable to each individual police officer, DSP needs to upgrade the Delta+ software; and
- in order to track, monitor, and document the required information, DSP needs to hire one help desk clerk.

Position	1
Salary and Fringe Benefits	\$58,748
Delta+ Software Upgrades	462,000
Other Operating Expenses	5,581
Total FY 2022 DSP Expenditures	\$526,329

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses

Natural Resources Police

The bill may also result in a significant increase in State expenditures for the Natural Resources Police (NRP) within the Department of Natural Resources beginning in fiscal 2022. NRP currently utilizes E-Tix to track demographic information for individuals who are issued citations and warnings. In order to track such information for every other type of encounter by every NRP police officer, NRP likely needs additional personnel and technology; however, a reliable estimate of the anticipated increase in costs cannot be made at this time.

Other State Law Enforcement Agencies

Other State law enforcement agencies may also incur potentially significant increases in costs beginning in fiscal 2022 to upgrade or acquire technology and to hire personnel to collect demographic data on *all* citizen encounters with police officers that is traceable to each individual police officer. The effect likely varies by agency. For example, the Maryland Department of Transportation advises that while the bill has an operational effect, it can likely implement the bill with existing resources. Other State law enforcement agencies report the potential for the bill to have a fiscal effect.

Local Expenditures: Similar to the effect on State law enforcement agencies, there is a potential significant increase in local expenditures for local law enforcement agencies to collect demographic data on all citizen encounters with police officers that is traceable to each individual police officer. Some local law enforcement can likely implement the bill with existing resources, however.

Additional Comments: It is unclear how the bill’s requirement for the board to impose sanctions for racially discriminatory behavior by police officers can be implemented in conjunction with the requirements of LEOBR, which supersede any other law of the State; LEOBR guarantees police officers specified procedural safeguards in any investigation that could lead to disciplinary action.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Morgan State University; Baltimore City Community College; Department of Budget and Management; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - January 20, 2021
rh/lgc

Analysis by: Shirleen M. E. Pilgrim

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

Appendix

Law Enforcement Officers' Bill of Rights – Current Law/Background

The Law Enforcement Officers' Bill of Rights (LEOBR), Title 3, Subtitle 1 of the Public Safety Article, 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 specified State and local agencies.

Investigation of a Complaint

Statute of Limitations: Except for charges that relate to criminal activity or excessive force, the statute of limitations for a law enforcement agency to bring administrative charges against a law enforcement officer is one year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.

Procedures: A complaint against a law enforcement officer alleging brutality in the execution of the officer's duties may not be investigated unless the complaint is signed and sworn to, under penalty of perjury.

If an individual files a complaint alleging brutality within 366 days after the alleged brutality occurred, a law enforcement agency must investigate the matter. There is no time limitation on a law enforcement agency to launch an investigation on its own initiative. The law enforcement officer under investigation must be informed of the name, rank, and command of the law enforcement officer in charge of the investigation, the interrogating officer, and each individual present during an interrogation. Before an interrogation, the law enforcement officer under investigation must be informed in writing of the nature of the investigation. If the officer is under arrest or is likely to be placed under arrest as a result of the interrogation, the officer must be informed completely of all of the officer's rights before the interrogation begins.

Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation must be conducted at a reasonable hour, preferably when the officer is on duty. Unless otherwise authorized by the officer under investigation, the interrogation is required to take place (1) at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, or (2) at another reasonable and appropriate place.

The officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action. On request, the officer has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who must be present and available for consultation at all times during the interrogation. The interrogation must be suspended for a period of up to five business days until representation is obtained. Within that five-business day period, the chief, for good cause shown, may extend the period for obtaining representation. The officer may waive this right to representation.

A complete written, taped, or transcribed record must be kept of the entire interrogation, including all recess periods. Upon completion of the investigation, and on request, a copy of the record of the interrogation must be made available at least 10 days before a hearing.

Testing: The law enforcement agency may order the officer 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. The results are not admissible or discoverable in a criminal proceeding against the law enforcement officer. The results of the polygraph examination may be used as evidence in an administrative hearing if the agency and the officer agree to the admission. If the officer refuses to submit to a test, polygraph examination, or interrogation, the agency may commence an action that may lead to a punitive measure as a result of the refusal.

Investigation File: Upon completion of an investigation and at least 10 days before a hearing, the officer must be (1) notified of the name of each witness and of each charge and specification against the officer and (2) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to execute a specified confidentiality agreement. The law enforcement officer must pay a reasonable charge for the cost of reproducing the material.

The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer (1) the identity of confidential sources; (2) nonexculpatory information; and (3) recommendations as to charges, disposition, or punishment. The agency may not insert adverse material into a file of the officer, except the file of the internal investigation or the intelligence division, unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material. The law enforcement officer may waive this right.

Procedures Following Recommendation for Discipline

Hearing Board Formation: If the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay,

reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board to contest the agency's action. A law enforcement officer who has been convicted of a felony is not entitled to a hearing.

The law enforcement agency must give notice to the officer of the right to a hearing by a hearing board, which includes the time and place of the hearing and the issues involved. The hearing must be open to the public unless the chief finds a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness.

A hearing board must consist of at least three voting members who are appointed by the chief and chosen from law enforcement officers within that law enforcement agency or another law enforcement agency and have had no part in the investigation or interrogation. At least one member of the hearing board must be of the same rank as the law enforcement officer against whom the complaint is filed.

A chief may appoint, as a nonvoting member of the hearing board, one member of the public who has received training administered by the Maryland Police Training and Standards Commission (MPTSC) on LEOBR and matters relating to police procedures. If authorized by local law, the hearing board may include up to two nonvoting or voting members of the public who have received training by MPTSC on LEOBR and matters relating to police procedures. At the Johns Hopkins University, if authorized by local law, a hearing board *must* include two voting members of the public who have received training administered by MPTSC on LEOBR and matters relating to police procedures.

Alternative Hearing Board: A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board. Subject to certain requirements, a law enforcement officer may elect the alternative hearing method of forming a hearing board.

Subpoenas: In connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.

Hearing Board Procedures: The hearing board must give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved. Each party may be represented by counsel, has the right to cross-examine witnesses who testify, and may submit rebuttal evidence. The standard of proof in a hearing before a board is preponderance of the evidence. An official record, including testimony and exhibits, must be kept of the hearing.

Disposition: After a disciplinary hearing and a finding of guilt, the hearing board may recommend the discipline it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar actions that is considered punitive. The decision, order, or action taken as a result of a hearing must be in writing and accompanied by findings of fact, including a concise statement on each issue in the case.

The decision of the hearing board as to finding of fact and any discipline is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The decision of the hearing board may then be appealed.

Within 30 days after receipt of the recommendations of the hearing board, the chief must review the findings, conclusions, and recommendations of the hearing board and issue a final order. If the agency or the agency's superior governmental authority has *not* agreed with an exclusive collective bargaining representative that the hearing board decision is final, the discipline issued by the chief under the final order may, under certain circumstances, diverge from the discipline recommended by the hearing board. The final order may be appealed to the circuit court.

Expungement: On written request, a law enforcement officer may have expunged from any file the record of a formal complaint if at least three years have passed since the final disposition by the law enforcement agency or hearing board and (1) the law enforcement agency that investigated the complaint exonerated the law enforcement officer of all charges in the complaint or determined that the charges were unsustainable or unfounded or (2) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty. Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the officer is eligible for expungement of the formal complaint.

Summary Punishment: Summary punishment may be imposed for minor violations of law enforcement agency rules and regulations if the facts that constitute the minor violation are not in dispute, the law enforcement officer waives the hearing provided under LEOBR, and the law enforcement officer accepts the punishment imposed by the highest ranking law enforcement officer, or individual acting in that capacity, of the unit to which the law enforcement officer is attached. Summary punishment may not exceed suspension of three days without pay or a fine of \$150.

Suspension of Police Powers: The chief may impose emergency suspension with pay if it appears that the action is in the best interest of the public and the law enforcement agency. If the law enforcement officer is suspended with pay, the chief may suspend the police

powers of the law enforcement officer and reassign the law enforcement officer to restricted duties pending a determination by a court, with respect to a criminal violation, or a final determination by a hearing board, with respect to a law enforcement agency violation. If a law enforcement officer is charged with a *felony*, the chief may impose an emergency suspension of police powers without pay. A law enforcement officer who is suspended is entitled to a prompt hearing.

Appeal: A law enforcement officer who is denied a right granted by LEOBR may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause as to why the right should not be granted. The court must grant appropriate relief if the court finds that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by LEOBR. A party aggrieved by a decision of a court may appeal to the Court of Special Appeals.