HB 525

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 525 (Delegate Morgan)
Judiciary

St. Mary's County – Law Enforcement Hearing Board – Civilian Members

This bill authorizes, in St. Mary's County, an administrative hearing board for a matter relating to discipline of a law enforcement officer to include up to two voting or nonvoting members of the public who have received at least 40 hours of training administered by the Maryland Police Training and Standards Commission (MPTSC) on the Law Enforcement Officers' Bill of Rights (LEOBR) and matters relating to police procedures.

Fiscal Summary

State Effect: MPTSC can handle the bill's changes with existing budgeted resources. Revenues are not affected.

Local Effect: St. Mary's County can handle the bill's changes with existing budgeted resources. Local revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: 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. For additional information on

LEOBR, see the **Appendix – Law Enforcement Officers' Bill of Rights – Current Law/Background**.

Pursuant to Chapter 519 of 2016, if authorized by local law or collectively bargained, an administrative 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. Further, the Act requires MPTSC to develop and administer a training program on LEOBR and matters relating to police procedures for citizens who intend to qualify to participate as a member of a hearing board.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): St. Mary's County; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 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 unsustained 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.