

**Maryland General Assembly
Public Safety and Policing Workgroup**

AGENDA

Monday, August 24, 2015

1:00 p.m.

**Joint Hearing Room
Legislative Services Building
Annapolis, Maryland**

I. Call to Order

II. Presentations

**OVERVIEW OF THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS
(LEOBR):**

Karen J. Kruger, Esq., Funk & Bolton, P.A.

FRATERNAL ORDER OF POLICE:

Panel One:

Frank D. Boston, III, Esq., Legislative Counsel
Ismael Vince Canales, Maryland State President
O'Brien Atkinson, First Vice President and Anne Arundel County FOP President
Herb Weiner, Esq., General Counsel
Gene Ryan, Baltimore City FOP President
Dean Jones, Prince George's County FOP President

Panel Two:

Mike Young, Second Vice President and Maryland Park Police President
Cole Weston, Baltimore County FOP President
Torre Cooke, Montgomery County FOP President
Patrick J. McAndrew, Esq., McAndrew & Zitver, P.A.
Martin Fisher, Wicomico County FOP President

ACLU, CASA DE MARYLAND, AND NAACP:

Cary Hansel, Esq., Hansel Law PC

Toni Holness, Esq., Public Policy Associate, ACLU

Terrell N. Roberts, III, Esq., Roberts & Wood, LLC

J. Wyndal Gordon, Esq., Franklin Bourne Bar Association

William H. "Billy" Murphy, Jr., Esq., Murphy, Falcon & Murphy

Rev. Todd Yeary, Senior Pastor, Douglas Memorial Community Church; Legislative Chair,
Maryland State Conference of the NAACP

MARYLAND CHIEFS' AND SHERIFFS' ASSOCIATION:

Phil Hinkle, Attorney and Chief of Staff, Charles County Sheriff's Office

Sheriff Troy Berry, Charles County

Assistant Sheriff Bruce Sherman, Montgomery County Sheriff's Office

Chief Michael Pristoop, City of Annapolis Police

III. Discussion of Work Plans for Future Meetings

IV. Adjournment

*Introduction to
the LEOBR*



Presented by

Karen J. Kruger

**General Counsel Maryland Chiefs of Police
Association, Maryland Sheriffs' Association
Funk & Bolton, P.A.**

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United States Supreme Court

- ▶ “The government has a compelling interest in ensuring that front-line interdiction personnel are physically fit, and have unimpeachable integrity and judgment.”

National Treasury Union Employees v. Von Raab, 486 U.S. 656, 671 (1989).

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Constitutional Right to Due Process

- ▶ *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)
- ▶ Public employees have a property interest in their government jobs
- ▶ Entitled to due process before government employer can deprive of that interest
- ▶ Pre-termination notice and a right to be heard

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Maryland Statute

- ▶ The Law Enforcement Officers' Bill of Rights (LEOBR) is based on constitutional concepts and is designed to protect the due process rights of law enforcement officers.
- ▶ A statutory expression of procedures designed to insure fairness to law enforcement employees.

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The LEOBR Provides:

- ▶ *Procedural Rights*: How discipline is imposed on law enforcement officers.
- ▶ Not *Substantive Rights*: Meaning the reasons why discipline may be imposed.
- ▶ Goal: To insure fairness, *not* to diminish management prerogatives, restrict police activity or dilute police accountability.

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Historical Context

- ▶ 1960's era of civil unrest
- ▶ Police unprepared – response sometimes excessive
- ▶ Complaints of police brutality increased – some legitimate and some without merit
- ▶ Negative perception of police

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Reaction to Police Actions

- ▶ Supreme Court expanded due process rights for citizens, especially under 4th amendment
- ▶ Police activity closely scrutinized
- ▶ Employment conditions worsened for police employees

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Resurgence of Police Unions

- ▶ Number of police unions expands and strikes by police occur in large cities
- ▶ Unions won improvements in salaries and benefits as well as protections in disciplinary process
- ▶ Management forced to bargain over terms & conditions of work

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Two Questions Were Asked

- ▶ Shouldn't allegations of police misconduct be investigated before discipline is taken?
- ▶ Shouldn't an officer have a right to dispute the factual findings or to explain his or her actions?

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The Maryland General Assembly Responds

- ▶ 1974--First State to enact Bill of Rights for police officers
- ▶ Covers two components of the disciplinary process: (1) the conduct of an internal investigation and (2) procedures to be followed before an officer may be disciplined as a result of an investigation.

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Threshold Parameters

- ▶ Contemplates the agency receiving a specific complaint
- ▶ Requiring an investigation into the complaint
- ▶ And a due process scheme (notice & hearing) before any punitive action may be imposed

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Amendments

- ▶ Statute has been amended approximately 44 times
- ▶ Some based on appellate case rulings
- ▶ Some in response to requests from FOP – fewer based on management requests
- ▶ And some changes were inadvertently made by code revisers

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Nature of Administrative Law

- ▶ LEOBR is an administrative law process – form of civil law but has similarities to criminal procedure
- ▶ Relating to the internal operation and functions of a government agency
- ▶ Concerning the administration or implementation of particular legislation

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“Quasi-judicial”

- ▶ Judicial-like in procedure but less formal
- ▶ The agency is interpreting and applying its own rules and regulations to its employee
- ▶ The agency is considered to be the expert in this interpretation and its decisions are “presumptively correct”

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LEOBR Applies to Misconduct

- ▶ LEOBR rights do not attach in situations involving:
 - ▶ Good faith mistakes, lack of training, incorrect but reasonable interpretation of law or regulation
 - ▶ Inability to perform the essential functions of the job
 - ▶ Poor performance

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LEOBR – Statutory Structure

- ▶ 3-101 Definitions
- ▶ 3-102 Effect of Subtitle
- ▶ 3-103 Rights Generally
- ▶ 3-104 Rights During Investigation/Interrogation
- ▶ 3-105 Show Cause Application
- ▶ 3-106 Limitations on Charges

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Structure

- ▶ 3-107 Hearing by Hearing Board
- ▶ 3-108 Disposition
- ▶ 3-109 Judicial Review
- ▶ 3-110 Expungement
- ▶ 3-111 Summary Punishment
- ▶ 3-112 Emergency Suspension
- ▶ 3-113 False Statement

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Section 3-101 Definitions

- ▶ Definitions
- ▶ “Law enforcement officer” identifies who is entitled to the rights
- ▶ Authorized to make arrests and member of a listed law enforcement agency
- ▶ Exceptions include chiefs, specially appointed officers and probationary officers (except in excessive force cases)

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Section 3-102 General

- Conflicting laws are superseded and local law is preempted
- Authority of the chief not limited – he/she may “regulate the efficient operation and management of a law enforcement agency by any reasonable means...”

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Section 3-103

- Miscellaneous issues:
 - Protects right to engage in political activity
 - Permits agency to reasonably regulate secondary employment of officers
 - Prohibits agency from requiring officer to disclose financial information
 - Prohibits discrimination against an officer who has asserted his or her LEOBR or constitutional rights

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Section 3-103

- Agency may not adopt any regulations that prohibit an officer's right to bring suit related to the officer's duties
- Officer may waive in writing LEOBR rights

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Section 3-104 Investigations

- ▶ “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 shall be conducted in accordance with this section.”

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Interrogating or Investigating Officer

- ▶ Shall be (1) a sworn law enforcement officer or (2) if requested by the Governor, the Attorney General or the Attorney General's designee

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Complaint Alleging Brutality

- ▶ May not be investigated unless the complaint is sworn to and filed within 90 days of the alleged brutality
- ▶ **But see** *Baltimore City Police v. Andrew*, 318 Md. 3 (1989) and *Maryland State Police v. Resh*, 65 Md. App. 167 (1985) Agency not barred from investigating act of brutality even when sworn complaint not filed; purpose of section is to deter frivolous complaints not restrict agency action.

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Disclosures to Officer Under Investigation

- ▶ *Before an interrogation*, officer shall be informed (1) in writing of the nature of the investigation; (2) of the name, rank and command of the officer in charge of the investigation, the interrogating officer and each person present during an interrogation.

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Time and Place

- ▶ Interrogation must be conducted at a reasonable hour, preferably when the officer is on duty, *unless* "the seriousness of the investigation is of a degree that an immediate interrogation is required."
- ▶ At the police unit where the incident allegedly occurred or at another reasonable and appropriate place.

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Right to Counsel

- ▶ On request, officer under interrogation has a right to be represented by counsel or other responsible representative who shall be present and available for consultation at all times during the interrogation.
- ▶ The interrogation shall be suspended for no more than 10 days until representation is obtained.

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Conduct of Interrogation

- ▶ All questions asked by and through one interrogating officer during any one session.
- ▶ Each session shall be for a reasonable time period and allow for personal necessities and rest periods as reasonably necessary.
- ▶ Officer under interrogation may not be threatened with transfer, dismissal or disciplinary action.

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During the Interrogation

- ▶ Counsel may: (1) request a recess at any time to consult with the officer; (2) object to any question posed; and (3) state on the record outside the presence of the officer the reason for the objection.

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Record of the Interrogation

- ▶ A complete record of the entire interrogation, including all recess periods, must be kept
- ▶ Record may be “written, taped or transcribed”
- ▶ When investigation completed, and on request by the officer, agency must give him a copy of the record of the interrogation at least 10 days before a hearing

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Other Investigative Process

- ▶ Tests and Examinations: Agency may order officer to submit to tests, examinations and interrogations that relate to the subject matter of the investigation
- ▶ If officer refuses, agency may take disciplinary action

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When Agency Compels Officer

- ▶ If agency orders officer to submit to tests, results of tests, examinations or interrogations are not discoverable or admissible in a criminal proceeding against the law enforcement officer

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Polygraph Examinations

- ▶ Agency may order officer to submit to a polygraph examination, but results are not admissible in a hearing unless both parties agree to the admission of the results.
- ▶ Right to have counsel present at polygraph or to review questions beforehand.
- ▶ Officer entitled to copy of report.

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Information Provided Upon Completion of Investigation

- ▶ At least 10 days before a hearing, the agency must provide to the officer: (1) the name of each witness; (2) each charge and specification against the officer; (3) a copy of the investigatory file and any exculpatory information provided that the officer and his lawyer: (1) execute a confidentiality agreement and (2) pay reasonable charge for reproducing the material.

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Exclusions from Disclosure

- ▶ Identity of confidential sources
- ▶ Non-exculpatory information
- ▶ Recommendations as to charges, disposition, or punishment

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Adverse Material

- ▶ May not be placed in the officer's personnel file unless he has an opportunity to review, sign, receive a copy of and comment in writing on the adverse material
- ▶ Adverse material may be maintained in the internal investigation or intelligence division files

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Section 3-105 Show Cause Order

- ▶ Law enforcement officer who is denied a right granted under this subtitle may apply to the circuit court for an order that directs the agency to show cause why the right should not be granted.

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Section 3-106 Charge Limitation

- ▶ Administrative charges must be “filed” within one year after the act that gave rise to the charges “comes to the attention of the appropriate agency official.”
- ▶ The 1 year limitation does not apply to charges that relate to criminal activity or excessive force

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Section 3-106.1 Agency List

- ▶ Allows agency to keep a list of officers who have committed or are alleged to have committed bad acts that reflect on credibility
- ▶ Prohibits agency from disciplining officer solely because his or her name is on the list
- ▶ Requires agency to notify officer that his or her name is on the list

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Section 3-107 Hearing

- ▶ If investigation results in a recommendation of punitive action, the officer is entitled to a hearing on the issues before a hearing board before the agency takes the action
- ▶ But an officer who has been convicted of a felony is not entitled to a hearing.

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Section 3-107 Procedures

- ▶ Agency must give notice of the right to a hearing board and the time and place of the hearing and the issues involved
- ▶ Members of the board are appointed by the chief – one member is the same rank as the accused officer
- ▶ Collective Bargaining Agreement can allow for “alternative method of forming a hearing board”

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Examples of Alternative Methods

- ▶ Allowing officer to “strike” appointed members
- ▶ Agreeing to a third party civilian arbitrator as a member of the board
- ▶ Allowing union representative to select the peer officer
- ▶ Requiring all board members to be from other agencies

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Section 3-107 Procedures

- ▶ Hearing Board chair or chief authorized to issue subpoenas to require witnesses to attend hearing and bring documents, etc.
- ▶ Each party must be given “ample opportunity to present evidence and argument about the issues involved.”
- ▶ Board authorized to administer oaths
- ▶ Each party may be represented by counsel

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Section 3-107 Evidence

- ▶ That information commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible
- ▶ Board members may take notice of known facts and may utilize their experience, technical competence and specialized knowledge to evaluate the evidence

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General Principles

- ▶ The burden of proof is on the agency
- ▶ The standard of proof is a preponderance of the evidence
- ▶ The standards of evidence are administrative law, not criminal law
- ▶ No presumptions of truth are made regarding the facts in dispute, including no presumption of innocence

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General Principles

- ▶ No presumptions are made about witness credibility; fact-based evaluation of the witnesses and evidence is required
- ▶ Board should apply professional expertise and common sense to the facts presented
- ▶ Conclusions must be logically deduced from the evidence

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Section 3-108 Disposition

- ▶ Hearing board decision must be in writing and include findings of fact
- ▶ A finding of not guilty terminates the action
- ▶ If finding of guilt is made, board must accept additional evidence and then make recommendation of penalty to the chief

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Review By Chief

- ▶ Within 30 days, the chief must review the hearing board and issue a final order
- ▶ The penalty recommendation is not binding on the chief
- ▶ To increase the recommended penalty, the chief must go through additional procedures, including a meeting with the officer
- ▶ Chief not authorized to change factual findings or verdicts

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Section 3-109 Appeal

- ▶ Officer has a right to appeal to circuit court
- ▶ Appeal is “on the record” and administrative law principles apply
- ▶ Agency decisions “presumed to be correct” – court authorized to consider errors of law
- ▶ Either party may appeal to the Court of Appeals

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Section 3-110 Expungement

- ▶ Officer may request to have records expunged after 3 years if exonerated by the investigation or found not guilty by a hearing board
- ▶ Evidence of a formal complaint against an officer is not admissible in an administrative or judicial proceeding if the officer was exonerated or found not guilty

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Section 3-111 Summary Punishment

- ▶ Summary punishment may be imposed:
 - For minor violations
 - The facts are not disputed by the officer
 - The officer waives right to a hearing
 - The officer accepts the punishment
 - Punishment does not exceed a 3 day suspension without pay or \$150 fine

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Section 3-112 Suspensions

- ▶ Allows the chief to impose an “emergency suspension” when in the best interest of the public and the law enforcement agency
- ▶ Suspension must be with pay
- ▶ Chief may also suspend the “police powers” of the officer and assign him/her to administrative duties instead
- ▶ Suspension may continue until matter is resolved

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Section 3-112

- ▶ If an officer is charged with a felony, the chief may impose an “emergency suspension of police powers” without pay
- ▶ In either case, (paid or unpaid) the officer is entitled to a “prompt hearing”

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Section 3-113 False Statement

- ▶ A person may not knowingly make a false statement, report, or complaint during an LEOBR investigation or proceeding.
- ▶ A person who violates this section is subject to the penalties of the Criminal Law Article.

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Questions & Discussion

Constitutional Right to Remain Silent

- ▶ 5th amendment to the U.S. Constitution provides to all citizens the right against self-incrimination, also referred to as the right to remain silent
- ▶ The right applies in criminal investigations and prosecutions
- ▶ Government employees do not give up this right by virtue of their employment (*Garrity* case)

LEOBR Related Provision

- ▶ *If* the government employer/law enforcement agency compels an employee to answer incriminating questions, those statements cannot be used against the employee in a criminal prosecution (“use” immunity)
- ▶ Compulsion may even result in immunity from prosecution altogether (“transactional” immunity)
- ▶ *Garrity* and section 3-104 (l)

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Constitutional Right to Counsel

- ▶ 5th amendment right to counsel when a person is in custody and being subjected to questioning related to a criminal investigation
- ▶ If person requests counsel, interrogation must cease until counsel is obtained
- ▶ 6th amendment – when “formal criminal proceedings” have commenced against the person

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LEOBR Related Provision

- › On request, officer under investigation has a right to have counsel present at an interrogation
- › An interrogation may be suspended for up to 10 days to get a lawyer, if needed
- › Law enforcement officer may be represented by counsel at a hearing before a hearing board



BALTIMORE COUNTY LODGE NO. 4
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Over the past year law enforcement agencies across the country have faced intense public scrutiny about officer conduct and the use of force by officers on the citizens they serve. Recent events both nationally and local have gained widespread attention on both traditional and social media. This has created this firestorm of rhetoric that police officers in America are out of control, running rampant throughout the community, with no regard for citizen rights and no mechanism to discipline officers for misconduct. As you can see from the statistics below, this is simply not accurate for the members of the Baltimore County Police Department.

Year	County Population	Calls for Service	Assaults on Officers	Arrests	Uses of Force	Citizen Complaints
2009	789,814	623,520	839	34,447	391	156
2010	801,700	604,706	957	33,898	329	128
2011	805,029	576,017	955	29,959	354	109
2012	817,455	585,112	798	29,439	377	126
2013	817,455	580,416	692	27,982	318	124
2014	824,000	<u>572,289</u>	<u>659</u>	<u>26,989</u>	<u>305</u>	<u>89</u>
		3,542,060	4,900	182,714	2,074	732

County Population

The county population has steadily grown since 2009 with an increase of approximately 34,000 (4%) over the six (6) year period. Demographics available on the county website showed that in 2010 the population was 64% white, 26% African American, 4% Hispanic, 6% other.

Calls for Service

The number of calls for service shown includes all calls to 911, non emergency calls and traffic stops. This does not take into account the numerous undocumented interactions with citizens that officers have every day.

Calls for service for the time period shown have shown a steady decline of 8%. The average number of calls for service was 590,343. Every year since 2011 has been under the average.

Arrests

In Baltimore County between 2009 and 2014 there were a total of 182,714 arrests made. That equates to an average of 30,452 arrests per year in a county where the population has grown to 824,000. The number of arrests has consistently trended downward since 2009 while the population has steadily grown. Every year since 2011 has been under the average



Uses of Force by Officers

In the Baltimore County Police Department a “use of force” report must be completed when an officer uses force involving Department issued equipment, personal equipment, an instrument of necessity (*excluding firearms*) and/or when injuries (visible or non visible) have occurred to an individual that indicate medical treatment may be necessary.

In the six years indicated above Baltimore County officers used force (*excluding firearms*) a total of 2,074 times. From 2009-2014 there has been a 22% decrease in uses of force by officers. Additionally, the statistics show that force was only used in 00.0585534% of all calls for service and 01.1351073% in all arrests.

Internal Affairs statistics show that officers were involved in combat shootings 34 times during the same time period averaging 5.6 per year. This equates to the use of a firearm in 00.0009598% of all calls for service and in 00.0186083% of all arrests.

Assaults on Officers

During the 6 year time period officers reported being assaulted 4,900 times averaging 816.6 assaults per year. (There has been 2 line of duty deaths) While assaults on officers have been trending downward, the numbers show that officers in Baltimore County are 2.3 times more likely to be assaulted by a citizen than use force against a citizen.

Citizen Complaints

According to the Internal Affairs Section in the Baltimore County Police Department from 2009 – 2014 there were 732 complaints from citizens about officer misconduct, including uses of force. That equates to an average of 122 per year. That number has also been steadily trending downward (42.9%). Over the entire time period there was an average of 1 citizen complaint for every 4,838 calls for service. The best year was 2014 with 1 citizen complaint for every 6,430 calls for service.

Discipline Hearing Boards

During the time period of 2009-2014 there have been a total of six (6) L.E.O.B.R. hearing boards. There have only been two (2) since 2011. All were recommendations by the members' commander for termination. Five (5) resulted in a determinations of guilt and termination of employment. One officer was found not guilty by the hearing board members. Most officers in the Baltimore County Police Department faced with a termination recommendation choose to terminate their employment by resignation.



Closing

The style and manner of policing is constantly evolving. Moving forward with the challenges in policing, law enforcement must adapt a style of policing that encourages community partnership. We must still focus on crime because there will always be cases that need to be investigated and violent criminals that need to be arrested. But we need to do both and we need to do them better and together.

There is a select group of citizens in a part of Maryland that has a mistrust of their police department and that is unfortunate. But the underlying cause of that mistrust is not the L.E.O.B.R. and it cannot be resolved by the suggested changes being made to this committee.

David Rose
Second Vice President
Baltimore County
Fraternal Order of Police Lodge #4



REPRESENTING THE PROFESSIONAL POLICE OFFICERS OF BALTIMORE COUNTY



Law Enforcement Officers' Bill of Rights - Text

May 13, 2015

Maryland Annotated Code, Public Safety Article

Title 3 – Law Enforcement

Subtitle 1 – Law Enforcement Officers' Bill of Rights

§3-101. Definitions.

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

(b) (1) “Chief” means the head of a law enforcement agency.

(2) “Chief” includes the officer designated by the head of a law enforcement agency.

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

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

(d) “Hearing board” means a board that is authorized by the chief to hold a hearing on a complaint against a law enforcement officer.

(e) (1) “Law enforcement officer” means an individual who:

(i) in an official capacity is authorized by law to make arrests; and

(ii) is a member of one of the following law enforcement agencies:

1. the Department of State Police;
2. the Police Department of Baltimore City;
3. the Baltimore City School Police Force;
4. the Baltimore City Watershed Police Force;
5. the police department, bureau, or force of a county;
6. the police department, bureau, or force of a municipal corporation;
7. the office of the sheriff of a county;
8. the police department, bureau, or force of a bicounty agency;
9. the Maryland Transportation Authority Police;
10. the police forces of the Department of Transportation;
11. the police forces of the Department of Natural Resources;
12. the Field Enforcement Bureau of the Comptroller's Office;
13. the Housing Authority of Baltimore City Police Force;
14. the Crofton Police Department;
15. the police force of the Department of Health and Mental Hygiene;
16. the police force of the Department of General Services;
17. the police force of the Department of Labor, Licensing, and Regulation;
18. the police forces of the University System of Maryland;
19. the police force of Morgan State University;
20. the office of State Fire Marshal;
21. the Ocean Pines Police Department;

- 22. the police force of the Baltimore City Community College;
 - 23. the police force of the Hagerstown Community College;
 - 24. the Internal Investigation Unit of the Department of Public Safety and Correctional Services;
 - 25. the Warrant Apprehension Unit of the Division of Parole and Probation in the Department of Public Safety and Correctional Services; or
 - 26. the police force of the Anne Arundel Community College.
- (2) "Law enforcement officer" does not include:
- (i) an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
 - (ii) an individual who serves at the pleasure of the appointing authority of a charter county;
 - (iii) the police chief of a municipal corporation;
 - (iv) an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer's duties is made;
 - (v) a Montgomery County fire and explosive investigator as defined in § 2-208.1 of the Criminal Procedure Article;
 - (vi) an Anne Arundel County or City of Annapolis fire and explosive investigator as defined in § 2-208.2 of the Criminal Procedure Article;
 - (vii) a Prince George's County fire and explosive investigator as defined in § 2-208.3 of the Criminal Procedure Article;
 - (viii) a Worcester County fire and explosive investigator as defined in § 2-208.4 of the Criminal Procedure Article; or
 - (ix) a City of Hagerstown fire and explosive investigator as defined in § 2-208.5 of the Criminal Procedure Article.

§3-102. Effect of Subtitle.

- (a) Except for the administrative hearing process under Subtitle 2 of this title that relates to the certification enforcement power of the Police Training Commission, this subtitle supersedes any other law of the State, a county, or a municipal corporation that conflicts with this subtitle.
- (b) Any local law is preempted by the subject and material of this subtitle.
- (c) This subtitle does not limit the authority of the chief to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including transfer and reassignment if:
 - (1) that action is not punitive in nature; and
 - (2) the chief determines that action to be in the best interests of the internal management of the law enforcement agency.

§3-103. Rights of Law Enforcement Officers Generally

- (a) (1) Subject to paragraph (2) of this subsection, a law enforcement officer has the same rights to engage in political activity as a State employee.
- (2) This right to engage in political activity does not apply when the law enforcement officer is on duty or acting in an official capacity.
- (b) A law enforcement agency:
 - (1) may not prohibit secondary employment by law enforcement officers; but

(2) may adopt reasonable regulations that relate to secondary employment by law enforcement officers.

(c) A law enforcement officer may not be required or requested to disclose an item of the law enforcement officer's property, income, assets, source of income, debts, or personal or domestic expenditures, including those of a member of the law enforcement officer's family or household, unless:

(1) the information is necessary to investigate a possible conflict of interest with respect to the performance of the law enforcement officer's official duties; or

(2) the disclosure is required by federal or State law.

(d) A law enforcement officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to the law enforcement officer's employment or be threatened with that treatment because the law enforcement officer:

(1) has exercised or demanded the rights granted by this subtitle; or

(2) has lawfully exercised constitutional rights.

(e) A statute may not abridge and a law enforcement agency may not adopt a regulation that prohibits the right of a law enforcement officer to bring suit that arises out of the law enforcement officer's duties as a law enforcement officer.

(f) A law enforcement officer may waive in writing any or all rights granted by this subtitle.

§3-104. Investigation or Interrogation of Law Enforcement Officer

(a) 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 shall be conducted in accordance with this section.

(b) For purposes of this section, the investigating officer or interrogating officer shall be:

(1) a sworn law enforcement officer; or

(2) if requested by the Governor, the Attorney General or Attorney General's designee.

(c) (1) A complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties may not be investigated unless the complaint is sworn to, before an official authorized to administer oaths, by:

(i) the aggrieved individual;

(ii) a member of the aggrieved individual's immediate family;

(iii) an individual with firsthand knowledge obtained because the individual was present at and observed the alleged incident; or

(iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.

(2) Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken.

(d) (1) The law enforcement officer under investigation shall be informed of the name, rank, and command of:

(i) the law enforcement officer in charge of the investigation;

(ii) the interrogating officer; and

(iii) each individual present during an interrogation.

(2) Before an interrogation, the law enforcement officer under investigation shall be informed in writing of the nature of the investigation.

(e) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall be informed completely of all of the law enforcement officer's rights before the interrogation begins.

(f) Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty.

(g) (1) The interrogation shall take place:

(i) 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

(ii) at another reasonable and appropriate place.

(2) The law enforcement officer under investigation may waive the right described in paragraph (1)(i) of this subsection.

(h) (1) All questions directed to the law enforcement officer under interrogation shall be asked by and through one interrogating officer during any one session of interrogation consistent with paragraph (2) of this subsection.

(2) Each session of interrogation shall:

(i) be for a reasonable period; and

(ii) allow for personal necessities and rest periods as reasonably necessary.

(i) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

(j) (1) (i) On request, the law enforcement officer under interrogation has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation.

(ii) The law enforcement officer may waive the right described in subparagraph (i) of this paragraph.

(2) (i) The interrogation shall be suspended for a period not exceeding 10 days until representation is obtained.

(ii) Within that 10-day period, the chief for good cause shown may extend the period for obtaining representation.

(3) During the interrogation, the law enforcement officer's counsel or representative may:

(i) request a recess at any time to consult with the law enforcement officer;

(ii) object to any question posed; and

(iii) state on the record outside the presence of the law enforcement officer the reason for the objection.

(k) (1) A complete record shall be kept of the entire interrogation, including all recess periods, of the law enforcement officer.

(2) The record may be written, taped, or transcribed.

(3) On completion of the investigation, and on request of the law enforcement officer under investigation or the law enforcement officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.

(l) (1) The law enforcement agency may order the law enforcement officer under investigation 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.

(2) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal.

(3) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the law enforcement officer.

(m) (1) If the law enforcement agency orders the law enforcement officer to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the law enforcement agency and the law enforcement officer agree to the admission of the results.

(2) The law enforcement officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner if:

(i) the questions to be asked are reviewed with the law enforcement officer or the counsel or representative before the administration of the examination;

(ii) the counsel or representative is allowed to observe the administration of the examination; and

(iii) a copy of the final report of the examination by the certified polygraph examiner is made available to the law enforcement officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the examination.

(n) (1) On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be:

(i) notified of the name of each witness and of each charge and specification against the law enforcement officer; and

(ii) 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:

1. execute a confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer; and

2. pay a reasonable charge for the cost of reproducing the material.

(2) The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer under this subsection:

(i) the identity of confidential sources;

(ii) nonexculpatory information; and

(iii) recommendations as to charges, disposition, or punishment.

(o) (1) The law enforcement agency may not insert adverse material into a file of the law enforcement officer, except the file of the internal investigation or the intelligence division,

unless the law enforcement officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.

(2) The law enforcement officer may waive the right described in paragraph (1) of this subsection.

§3-105. Application for Show Cause Order.

(a) A law enforcement officer who is denied a right granted by this subtitle 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 why the right should not be granted.

(b) The law enforcement officer may apply for the show cause order:

(1) either individually or through the law enforcement officer's certified or recognized employee organization; and

(2) at any time prior to the beginning of a hearing by the hearing board.

(c) On a finding that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by this subtitle, the court shall grant appropriate relief.

§3-106. Limitation on Administrative Charges.

(a) Subject to subsection (b) of this section, a law enforcement agency may not bring administrative charges against a law enforcement officer unless the agency files the charges within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.

(b) The 1-year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force.

§3-106.1. Punitive Action.

(a) A law enforcement agency required by law to disclose information for use as impeachment or exculpatory evidence in a criminal case, solely for the purpose of satisfying the disclosure requirement, may maintain a list of law enforcement officers who have been found or alleged to have committed acts which bear on credibility, integrity, honesty, or other characteristics that would constitute exculpatory or impeachment evidence.

(b) A law enforcement agency may not, based solely on the fact that a law enforcement officer is included on the list maintained under subsection (a) of this section, take punitive action against the law enforcement officer, including:

(1) demotion;

(2) dismissal;

(3) suspension without pay; or

(4) reduction in pay.

(c) A law enforcement agency that maintains a list of law enforcement officers under subsection (a) of this section shall provide timely notice to each law enforcement officer whose name has been placed on the list.

(d) A law enforcement officer maintains all rights of appeal provided in this subtitle.

§3-107. Hearing by Hearing Board.

(a) (1) Except as provided in paragraph (2) of this subsection and § 3-111 of this subtitle, 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 before the law enforcement agency takes that action.

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

(b) (1) The law enforcement agency shall give notice to the law enforcement officer of the right to a hearing by a hearing board under this section.

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

(c) (1) Except as provided in paragraph (4) of this subsection and in § 3-111 of this subtitle, the hearing board authorized under this section shall consist of at least three members who:

(i) are appointed by the chief and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency; and

(ii) have had no part in the investigation or interrogation of the law enforcement officer.

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

(3) (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State shall function as the law enforcement officer of the same rank on the hearing board.

(ii) If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iii) If the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iv) If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor, or that official's designee, shall function as the chief for purposes of this subtitle.

(4) (i) 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.

(ii) A law enforcement officer may elect the alternative method of forming a hearing board if:

1. the law enforcement officer works in a law enforcement agency described in subparagraph (i) of this paragraph; and

2. the law enforcement officer is included in the collective bargaining unit.

(iii) The law enforcement agency shall notify the law enforcement officer in writing before a hearing board is formed that the law enforcement officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.

(iv) If the law enforcement officer elects the alternative method, that method shall be used to form the hearing board.

(v) An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing board.

(vi) If the law enforcement officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.

(vii) If authorized by local law, this paragraph is subject to binding arbitration.

(d) (1) 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.

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

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

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

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

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

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

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

(2) The hearing board shall give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved.

(3) The law enforcement agency and law enforcement officer may be represented by counsel.

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

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

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

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

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

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

(i) judicially cognizable facts; and

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

(2) The hearing board shall:

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

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

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

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

(2) In connection with a disciplinary hearing, the chief or a hearing board may administer oaths.

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

(2) Witness fees, mileage, and the actual expenses necessarily incurred in securing the attendance of witnesses and their testimony shall be itemized and paid by the law enforcement agency.

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

§3-108. Disposition of Administrative Action.

(a) (1) A decision, order, or action taken as a result of a hearing under § 3-107 of this subtitle shall be in writing and accompanied by findings of fact.

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

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

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

(i) reconvene the hearing;

(ii) receive evidence; and

(iii) consider the law enforcement officer's past job performance and other relevant information as factors before making recommendations to the chief.

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

(i) the law enforcement officer or the law enforcement officer's counsel or representative of record; and

(ii) the chief.

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

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

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

(i) a chief is an eyewitness to the incident under investigation; or

(ii) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.

(2) The decision of the hearing board then may be appealed in accordance with § 3-109 of this subtitle.

(3) If authorized by local law, paragraph (1)(ii) of this subsection is subject to binding arbitration.

(d) (1) Within 30 days after receipt of the recommendations of the hearing board, the chief shall:

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

(ii) issue a final order.

(2) The final order and decision of the chief is binding and then may be appealed in accordance with § 3-109 of this subtitle.

(3) The recommendation of a penalty by the hearing board is not binding on the chief.

(4) The chief shall consider the law enforcement officer's past job performance as a factor before imposing a penalty.

(5) The chief may increase the recommended penalty of the hearing board only if the chief personally:

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

(ii) meets with the law enforcement officer and allows the law enforcement officer to be heard on the record;

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

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

§3-109. Judicial Review.

(a) An appeal from a decision made under § 3-108 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7-202.

(b) A party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals.

§3-110. Expungement of Record of Formal Complaint.

(a) On written request, a law enforcement officer may have expunged from any file the record of a formal complaint made against the law enforcement officer if:

(1) (i) the law enforcement agency that investigated the complaint:

1. exonerated the law enforcement officer of all charges in the complaint; or

2. determined that the charges were unsustainable or unfounded;

or

(ii) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty; and

(2) at least 3 years have passed since the final disposition by the law enforcement agency or hearing board.

(b) Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the complaint resulted in an outcome listed in subsection (a)(1) of this section.

§3-111. Summary Punishment.

(a) This subtitle does not prohibit summary punishment by higher ranking law enforcement officers as designated by the chief.

(b) (1) Summary punishment may be imposed for minor violations of law enforcement agency rules and regulations if:

(i) the facts that constitute the minor violation are not in dispute;

(ii) the law enforcement officer waives the hearing provided under this subtitle; and

(iii) 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.

(2) Summary punishment imposed under this subsection may not exceed suspension of 3 days without pay or a fine of \$150.

(c) (1) If a law enforcement officer is offered summary punishment in accordance with subsection (b) of this section and refuses:

(i) the chief may convene a hearing board of one or more members; and
(ii) the hearing board has only the authority to recommend the sanctions provided in this section for summary punishment.

(2) If a single member hearing board is convened:

(i) the member need not be of the same rank as the law enforcement officer; but

(ii) all other provisions of this subtitle apply.

§3-112. Emergency Suspension.

(a) This subtitle does not prohibit emergency suspension by higher ranking law enforcement officers as designated by the chief.

(b) (1) 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.

(2) 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:

(i) a determination by a court with respect to a criminal violation; or
(ii) a final determination by a hearing board with respect to a law enforcement agency violation.

(3) A law enforcement officer who is suspended under this subsection is entitled to a prompt hearing.

(c) (1) If a law enforcement officer is charged with a felony, the chief may impose an emergency suspension of police powers without pay.

(2) A law enforcement officer who is suspended under paragraph (1) of this subsection is entitled to a prompt hearing.

§3-113. False Statement, Report, or Complaint.

(a) A person may not knowingly make a false statement, report, or complaint during an investigation or proceeding conducted under this subtitle.

(b) A person who violates this section is subject to the penalties of § 9-501 of the Criminal Law Article.

Summary of Law Enforcement Officers' Bill of Rights

Maryland Annotated Code, Public Safety Article

Title 3, Subtitle 1

July 30, 2015

Definitions (§3-101)

Defines law enforcement officer, and therefore circumscribes the applicability of the subtitle.

Effect of Subtitle (§3-102)

With exception of Police Training Commission's certification enforcement power, the LEOBR supersedes conflicting State, county, or municipal law.

Does not limit the authority of a chief to "regulate the competent and efficient operation and management of a law enforcement agency" including transfer or reassignment if not done punitively and the action is in the best interests of the internal management of the agency.

General Rights (§3-103)

- Same rights as other State employees to engage in political activity so long as it is not while the officer is on duty or acting in an official capacity
- A law enforcement agency
 - May not prohibit secondary employment by a law enforcement officer, but
 - May adopt reasonable regulations to regulate secondary employment.
- Law enforcement officers may not be required or requested to disclose property, income, assets, source of income, debts, personal or domestic expenditures (or that by a family member) unless it is necessary to investigate a possible conflict of interest or it is required by federal or State law
- Prohibits abridgement of law enforcement officer's right to sue for anything arising out of their duties
- A law enforcement officer may waive any of his or her rights under the LEOBR.

Complaint Alleging Brutality (§3-104 (c))

- Must be filed within 90 days after alleged brutality
- Must be sworn to before an officer authorized to administer oaths (i.e. notary public) by
 - Aggrieved individual
 - Member of aggrieved individual's immediate family
 - Individual present at and observed alleged incident
 - Parent or guardian of minor aggrieved individual

Investigation and Interrogation (§3-104)

- Investigation or interrogation that may lead to disciplinary action or termination of a law enforcement officer must be conducted in accordance with section.
- Officer under investigation must be informed of:
 - the name, rank, and command of:
 - officer in charge of investigation
 - interrogating officer

- anyone else present during an interrogation
- Interrogation
 - Before interrogation, law enforcement officer must be informed in writing of the nature of the investigation
 - If officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the officer must be completely informed of his or her rights before the interrogation begins
 - Conducted by:
 - Sworn law enforcement officer, or
 - Attorney General or AG designee if requested by the Governor
 - Location
 - At command office of investigating officer
 - Local precinct or police unit in which incident allegedly occurred, or
 - Another reasonable and appropriate place
 - Time and duration
 - At a “reasonable hour,” preferably when the law enforcement officer is on duty
 - For “reasonable period”
 - Allow for personal necessities
 - Rest periods as necessary
 - Questions may be posed by only one interrogator per interrogation session
 - Officer has right to counsel or other responsible representative present during interrogation
 - 10-day suspension of interrogation until counsel obtained
 - Within 10-day period, possibility of extension of suspension of interrogation for good cause shown as to why counsel could not be obtained
 - Counsel or representative may
 - Request recess at any time
 - Object to questions
 - State reason for objection outside presence of law enforcement officer
 - Record
 - Complete record shall be kept of entire interrogation, including recess periods
 - May be written, taped, or transcribed
 - Must be produced to officer under investigation or counsel/representative at least 10 days before any hearing
- Tests and examinations
 - Law enforcement agency may order law enforcement officer under investigation to submit to the following:
 - Blood alcohol test
 - Blood test
 - Breath test
 - Urine test for CDS
 - Polygraph

- Results may not be used as evidence in administrative hearing unless agreed to by officer
- Counsel/representative does not have to be present if:
 - Questions are pre-screened by officer under investigation or counsel/representative before polygraph administered
 - Counsel/representative allowed to observe
 - Copy of final report provided to officer or counsel/representative not more than 10-days following examination
 - Interrogation
 - Refusal to take test may result in disciplinary action
- Information required to be provided to the officer under investigation at the completion of the investigation and at least 10 days before any administrative hearing:
 - Name of each witness against law enforcement officer
 - Each charge and specification against officer
 - If the officer under investigation executes a confidentiality agreement agreeing not to disclose material for any purpose other than defense of the officer and agrees to pay reproduction costs:
 - A copy of the investigatory file
 - Any exculpatory information
 - The law enforcement agency may exclude from any information provided to an officer under investigation:
 - The identity of confidential sources
 - Non-exculpatory evidence
 - Recommendations on charges, disposition, or punishment
- The law enforcement agency may not insert adverse material into a file of the law enforcement 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

Show Cause Order (§3-105)

- An officer under investigation who is denied any of the rights under the LEOBR may file a show cause order:
 - In the circuit court for the county where the officer is regularly employed
 - Individually or through the officer's certified or recognized employee organization
 - At any time before the start of a hearing by the hearing board
- On a finding that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by the LEOBR, the court is required to grant appropriate relief

Statute of Limitations (§3-106)

- Administrative charges must be filed within one year of the appropriate law enforcement agency official becoming aware of the act that gives rise to the charges
- Exceptions to one-year statute of limitations:
 - Criminal activity

- Excessive force

Records Bearing on Exculpatory or Impeachment Evidence (§3-106.1)

- A law enforcement agency may maintain a list of law enforcement officers found or alleged to have committed acts which bear on credibility, integrity, honesty, or other characteristics that would constitute exculpatory or impeachment evidence
- A law enforcement agency may not take punitive action against a law enforcement officer who appears on such a list including
 - Demotion
 - Dismissal
 - Suspension without pay
 - Reduction in pay

Administrative Hearing (§3-107)

- If investigation or interrogation results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar punitive action, the law enforcement officer is entitled to a hearing
 - Exception – if law enforcement officer has been convicted of a felony
- Notice
 - The law enforcement agency is required to provide notice to the law enforcement officer of his or her right to a hearing by a board.
 - Notice must include:
 - Time of the hearing
 - Location of the hearing
 - Issues to be considered
- Hearing board
 - Must have at least three members
 - Appointed by chief from law enforcement officers within law enforcement agency or from officers of another law enforcement agency with the approval of chief of other law enforcement agency
 - One member of the board must be of the same rank as the law enforcement officer
- Alternatives methods of forming a hearing board
 - Law enforcement agency or agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative for an alternative method of forming a hearing board
 - If a law enforcement officer works at a law enforcement agency with a collective bargaining representative and is a member of the collective bargaining unit, he or she may choose an alternative method of forming a hearing board
 - The law enforcement agency is required to notify the officer in writing before a hearing board is formed so that the officer may elect the alternative method
 - The collective bargaining representative may not require a law enforcement officer to elect an alternative method
 - If authorized by local law, the provisions dealing with alternative formation of may be subject to binding arbitration
- Subpoenas

- Chief of the hearing board may issue subpoenas to compel attendance, testimony, and production of documents
- Subpoena may be served without cost per Maryland Rules
- Either party may request that the chief of the hearing board issue a subpoena
- If the subpoenaed party fails to obey the subpoena, the chief of the hearing board may seek an order to compel from the circuit court where the subpoenaed party resides
- If an order to compel is issued and the subpoenaed party fails to obey the order, the court may hold the subpoenaed party in contempt of court
- Conduct of hearing
 - Conducted by hearing board
 - Law enforcement agency and law enforcement officer given ample time to present evidence and argument on issues
 - Law enforcement agency and law enforcement officer may be represented by counsel
 - Both parties have the right to cross examine witnesses and submit rebuttal evidence
 - Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and must be given probative effect
 - Hearing board must honor rules of privilege
 - Incompetent, irrelevant, immaterial, and unduly repetitious evidence excluded
 - Records and documents used by parties must be offered and made part of the hearing record
 - Evidence may be received as copies or excerpts or incorporated by reference
 - Using its experience, technical competence, and specialized knowledge, the hearing board may evaluate evidence presented and may take judicial notice of:
 - judicially cognizable facts
 - general, technical, or scientific facts
- Witness fees, mileage, and expenses allowed the same as for testimony given in a circuit court.
- An official record of the hearing must be kept including testimony and exhibits.

Disposition of Administrative Action (§ 3-108)

- Decision, order, or action taken as a result of a hearing shall be in writing and accompanied by findings of fact, which must consist of a concise statement on each issue in the case
- On finding of not guilty case terminates
- On finding of guilty, hearing board must
 - Reconvene hearing
 - Receive evidence
 - Consider law enforcement officer's past job performance and other relevant information as factors before making recommendations to the chief of the law enforcement agency.
- A copy of the decision/order, findings of fact, conclusions, and written recommendations for action must be mailed promptly to

- The law enforcement officer or the officer's counsel/representative
- The chief of the law enforcement agency
- The hearing board's decision as to findings of fact and penalty are final if:
 - The chief of the law enforcement agency was an eye witness to the incident under investigation, or
 - The law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final.
 - The final decision in these circumstances may be appealed
- If the hearing board's decision is not final, the chief of the law enforcement agency shall, within 30 days
 - Review the findings
 - Issue a final order
 - In issuing a final order, the chief of the law enforcement agency must consider the law enforcement officer's past performance as a factor
 - The recommendations of the hearing board are not binding on the chief of the law enforcement agency
 - The chief may increase the penalty recommended by the hearing board only if the chief:
 - Personally reviews the record
 - Meets with the law enforcement officer and allows the officer to be heard on the record
 - Provides in writing to the law enforcement officer at least 10 days before the meeting any communications not included in the record of the hearing board on which the decision to increase the penalty was based
 - States on the record the "substantial evidence" relied on to reach the increased penalty
- A final order issued by the chief is binding and may be appealed

Appeal (§ 3-109)

- A law enforcement officer may appeal a final decision from either a hearing board or chief of the law enforcement agency in a circuit court for the county
- Either party may appeal the circuit court's decision in the Court of Special Appeals

Expungement (§3-110)

- A law enforcement officer may make a written request to have the record of a formal complaint expunged from any record if
 - The law enforcement agency exonerated the law enforcement officer or found the charges were unsustainable or unfounded, or a hearing board acquitted the officer, dismissed the action, or found the officer not guilty, and
 - At least three years have passed since the final disposition
- A complaint against an officer is inadmissible in an administrative or judicial proceeding if the officer was exonerated by the law enforcement agency or the agency determined that the charges were unsustainable or unfounded.

Summary Punishment (§ 3-111)

- Summary punishment that does not require a hearing board may be imposed for minor violations of law enforcement rules and regulations if
 - The facts are not in dispute
 - The law enforcement officer waives his or her right to a hearing, 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 officer is attached
 - If the officer is offered, but refuses summary punishment
 - The chief may convene a hearing board of one or more members
 - The hearing board may only recommend sanctions
 - If there is only one member, the member does not have to be the same rank as the law enforcement officer, but all other rules of the LEOBR apply
 - Summary punishment may not exceed
 - 3 days suspension without pay, or
 - \$150 fine

Emergency Suspension (§ 3-112)

- The chief of the law enforcement agency may impose emergency suspension with pay if it appears to be in the best interest of the public and the law enforcement agency.
- If suspended with pay, the chief may suspend the police powers of the officer and reassign to restricted duties pending:
 - A determination by a court regarding a criminal violation, or
 - A final determination by an administrative hearing board with respect to an agency violation
- The chief may suspend a law enforcement officer without pay if the officer is charged with a felony.
- In either instance, a suspended law enforcement officer is entitled to a prompt hearing.

False Statement, Report, or Complaint (§ 3-113)

- A person may not knowingly make a false statement, report, or complaint during an investigation or proceeding conducted pursuant to the LEOBR
- A person who knowingly makes a false statement, report, or complaint is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding \$ 500 or both.



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September 11, 2015

The Honorable Catherine E. Pugh, Senate Co-Chair
The Honorable Curt S. Anderson, House Co-Chair
Maryland General Assembly Public Safety and Policing Workgroup
90 State Circle
Annapolis, Maryland 21401

Re: Response to Workgroup Questions

Dear Senator Pugh, Delegate Anderson, and members of the Workgroup:

Thank you for giving me the opportunity to address the Maryland General Assembly's Public Safety and Policing Workgroup last month on the topic of the Law Enforcement Officers Bill of Rights, PS §3-101 *et seq.* ("LEOBR"). This letter serves as a follow-up to questions that arose during and after my presentation. I hope that the following information brings clarity to the issues.

Right to Counsel Provided by P.S. § 3-104 – Comparative Jurisdictional Research

An inquiry arose as to whether other states have passed legislation that gives a police officer a period of time in which he or she may retain an attorney before being questioned in an internal investigation. Research found that a majority of states that have laws similar to the LEOBR either do not state a specific period of time or make no mention of counsel. Only one other state gives a specific time frame: Louisiana allows 30 days. Please see the chart below for a full overview:

Comparative Jurisdictional Research – Period of time, if any, in which the officer may retain an attorney before being questioned in an internal investigation.

State	Code Citation	Time for Counsel
Arizona	A.R.S. § 38-1104	No time given
Arkansas	A.C.A. § 14-52-303	No time given
California	Cal Gov Code § 3303	No time given
Delaware	11 Del. C. § 9200	"Period of time" if attorney "reasonably available"
Florida	Fla. Stat. § 112.532	No time given
Illinois	50 ILCS § 725/3.8	No time given
Kentucky	KRS § 15.520	Const. due process
Louisiana	La. R.S. § 40.2531	30 days
Maryland	Md. Code Ann. § 3-104	10 days
Minnesota	Minn. Stat. § 626.89	Reasonable opportunity

Nevada	Nev. Rev. Stat. Ann. § 289.080	No time given
New Mexico	N.M. Stat. Ann. § 29-14-4, 8	US & NM const.
Rhode Island	R.I. Gen. Laws § 42-28.6-2	Reasonable time
Tennessee	Tenn. Code Ann. § 38-8-304, 305	No mention of counsel
Texas	Tex. Local Gov't Code § 143.123	No mention of counsel
Virginia	Va. Code Ann. § 9.1-501	No mention of counsel
West Virginia	W. Va. Code § 8-14A-2	No time given
Wisconsin	Wis. Stat. § 164.02	No time given

The Open Meetings Act and Administrative Hearing Board Proceedings

An inquiry arose as to whether the general public could gain access to an Administrative Hearing Board Proceeding (also commonly referred to as an “AHB” or “trial board”). In short, there is no specific statute that allows the general public to be present during AHB proceedings. However, this topic does raise certain privacy concerns to which the Maryland courts, the Maryland Code, and the Attorney General have offered guidance. These guide posts are summarized below:

- Under the Open Meetings Act, GP § 3-101 *et seq.*, an AHB is not a public body and, if deemed so, is considered a quasi-judicial body, and therefore not subject to the Act.
- The Court of Appeals recently ruled in *Maryland Department of State Police v. Dashiell*, 443 Md. 435 (2015) that records of an internal investigation pertaining to the sustained violation of administrative rules were “personnel records” pursuant to § 10-616(i) of the State Government Article of the Maryland Code and, therefore, could not be disclosed under the Maryland Public Information Act.
- The General Assembly has contemplated public inspection of personnel records via the Public Information Act. Section 4-311 of the Act states “a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information” save for certain exceptions that do not apply to the public at large.
- Because (1) internal records were related to employee discipline, (2) the investigation cleared the officers of wrongdoing, therefore triggering a significant public interest in maintaining confidentiality, and (3) the records contained significant personal information related to specific officers that, if disclosed, could be potentially detrimental to the officers and witnesses, the Court of Appeals ruled in *Montgomery County v. Shropshire, et. al.*, 420 Md. 362 (2011), that the records were personnel records and thus exempt from disclosure under the Public Information Act.
- Finally, the Attorney General’s Office has hinted at the intent to keep police internal files confidential. Former Attorney General J. Joseph Curran, Jr., stated that the LEOBR “demonstrates a public interest in the confidentiality of investigations of police officers. ... The clear implication is that the investigatory file is ordinarily kept confidential. Although these provisions protect an accused officer, there is also an obvious intent to



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safeguard the confidentiality that would otherwise apply to investigatory records of a police department....” 86 *Op. Att’y Gen.* 94 (2001).

In short, although not directly on point, administrative hearing boards obviously fall within the purview of a “personnel matter,” and are based on and create personnel records. Additionally, opening hearing boards to the public would offend the clear intent of the legislature and courts to keep personnel matters private. Finally, other concerns regarding general public access to AHBs include space and security concerns, the possibility of packing of the hearing for intimidation purposes by civilian activists, police unions and/or media outlets alike, and the open discussion of personnel records and matters that could be easily disseminated to the general public.

If you have any further questions, comments, or concerns, please feel free to contact me. Thank you.

Sincerely,

Karen J. Kruger

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