Cassilly_ExhibitD1_FAV_SB381.pdf
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Exhibit D
Senate Bill 420
2006

SENATE BILL 420

E4 6lr1439

By: **Senators Frosh, Garagiola, Green, and Jimeno**
Introduced and read first time: February 1, 2006
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Law Enforcement Officers' Bill of Rights – Hearing Boards – Binding Arbitration

FOR the purpose of repealing prohibitions against making certain actions regarding the formation of a law enforcement officers' hearing board and certain decisions by a hearing board the subject of binding arbitration under certain circumstances; and generally relating to hearing boards for complaints against law enforcement officers.

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 3–107 and 3–108
Annotated Code of Maryland
(2003 Volume and 2005 Supplement)

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

Article – Public Safety

3–107.

(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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

(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) [This] IF AUTHORIZED BY LOCAL LAW, THIS paragraph is [not] 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.

(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) [Paragraph] IF AUTHORIZED BY LOCAL LAW, PARAGRAPH (1)(ii) of this subsection is [not] 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006.

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April 28, 2006

The Honorable Robert L. Ehrlich, Jr.
Governor
State of Maryland
State House
100 State Circle
Annapolis, MD 21401

Re: Veto Request - SB 420- Law Enforcement Officers' Bill of Rights- Hearing Boards - Binding Arbitration

Dear Governor Ehrlich:

The Maryland Association of Counties (MACo) respectfully requests that you veto Senate Bill 420. The bill upsets the fair and longstanding balance established by the Law Enforcement Officers' Bill of Rights (LEOBR) between the rights of a law enforcement officer (officer) and the rights of the head of a law enforcement agency (chief) during officer disciplinary proceedings. Its implementation would ultimately erode the authority and accountability of chiefs for officer discipline, denying citizen recourse and citizen confidence in the credibility of law enforcement.

The LEOBR presently requires that claims of officer misconduct be considered by a three person hearing board (board), which is appointed by the chief, with certain qualifications, e.g. appointees must include an officer of the same rank as the charged officer. *Public Safety Article* § 3-107(c)(2). The decision of the hearing board is final as to guilt or innocence, but the chief may, with limited exceptions and qualifications, alter the discipline recommendation of the board. For instance, if the chief chooses to increase the discipline recommendation, the chief must grant the officer an opportunity to be heard and state the evidence upon which the chief relies to increase the recommended discipline. *Id.* at 3-108(d)(5)

The board's composition and whether the board's decision as to discipline is final can be collectively bargained. *Id.* at § 3-107(c)(4)(i) and § 3-108(c)(1)(ii). But, existing law specifically prohibits a dispute during contract negations regarding these two critical components of police discipline from being submitted to binding arbitration. *Id.* at § 3-107(4)(vii) and §4-108(c)(3). This prohibition recognizes the need to ensure the chief and the elected officials who appoint the chief can be held directly accountable for an officer's actions. Citizens expect this accountability as their interest in officer conduct is well recognized, with specific incidents periodically raising great public concern and media attention.

SB 420 rejects this prohibition on binding arbitration of officer discipline related issues. The bill requires that where local law authorizes binding arbitration, binding arbitration must be used when there is a dispute during the collective bargaining process about proposed contract provisions regarding the composition of the hearing board and whether the board's disciplinary recommendation is final. In practice, there will always be binding arbitration since the union will demand finality for the board decision and the chief will reject that demand. Hence, SB 420 would delegate the resolution of this dispute to an arbitrator who has no accountability to citizens.

It is certain that at some point in time an arbitrator will accede to the union demand for board decision finality. This eventuality will occur sooner in those jurisdictions where existing statute requires the arbitrator to consider both the union and management demands as a package, having to accept one or the other in its entirety. In those circumstances, the demand for board finality would be included with unrelated wage and condition of employment demands, with which the arbitrator might agree. But, to accept those demands, the arbitrator would also be acceding to the board finality demand.

This manner of negotiation is now statutorily mandated in the four counties with charter provisions authorizing binding arbitration for officer collective bargaining impasses – Anne Arundel, Baltimore, Montgomery, and Prince George's Counties. *See* Anne Arundel County Code, § 6-4-111(j)(4); Baltimore County Code, § 4-5-505(f)(1); Montgomery County Code, § 33-81(b)(6); and Prince George's County Code, § 13A-111.01. Since the bill's reference to "local law" authorization by definition includes a charter provision, in those four counties SB 420's binding arbitration provisions will apply to collective bargaining after the bill's October 1, 2006 effective date without any further action by those counties.

History establishes the likely success of future efforts to secure similar binding arbitration provisions in the charters of the other charter counties. SB 420's enactment would certainly fuel these efforts. Hence, the bill's enactment could lead to the chiefs who supervise the vast majority of officers in Maryland not having discipline authority over those officers. Even now, SB 420's enactment would mean the chiefs' discipline authority over approximately 5,962 officers, or 56% of all county officers, would be subject to immediate dilution.

Chiefs do not regularly reject the discipline recommendations of boards, applying their discretion judiciously. But, there are circumstances when the penalty recommendation must be rejected. For instance, chiefs have opted to terminate officers, when boards have recommended lesser penalties, when officers have used excessive force, unjustifiably used force, communicated racial slurs, committed perjury, submitted false documents, engaged in substance abuse, or used their officer positions inappropriately for personal gain. *See* Attachment A.

These circumstances document the compelling public policy considerations requiring a chief to retain discipline discretion. Ensuring public confidence in the credibility of law enforcement is a most critical government responsibility. Limitations on a chief's ability to dismiss officers who have lied, used excessive force, or shown racial insensitivity will erode this public confidence. As noted in the attached 1997 *Baltimore Sun* editorial, the "fox guarding the hen house" situation SB 420 furthers would certainly undermine public confidence in government's ability to control police conduct. *See* Attachment B.

Another critical reason for preserving the chief's authority to alter the board's recommendation is to ensure consistent discipline practices. Hearing boards are individually appointed for each incident and do not typically contain the same members. In fact, the required hearing board appointment of an officer of the same rank as the officer before the board ensures appointment variances when multiple officers are charged for the same incident. *Id.* at §3-107(c)(2).

Variances in board composition always make it possible that similar incidents will give rise to different punishment recommendations. The discipline discretion limitation SB 420 proposes would prohibit rectifying these inconsistencies. This prohibition would not only institutionalize a poor management practice but would also pose potential equal protection violations.

SB 420 has a long history, with the General Assembly rejecting provisions seeking to substantively undermine a chief's existing discipline discretion in at least seven bills during the past 14 years. *See* HB 1004 (1992), HB 110 (1993), HB 22 and SB 73 (1994), HB 1296 (1996), HB 1206 (1996), HB 1296 (2000), and HB 1164 (2005). The bills are so familiar that they are typically individually referred to as the "final order bill." No compelling evidence of chief misuse of authority has ever been presented to justify passage of a final order bill.

In written testimony submitted for SB 420, the FOP President erroneously suggests that where binding arbitration is now required the county could enact an ordinance to opt out from SB 420's mandated binding arbitration provisions. FOP representatives emphasized this purported opt out option in oral testimony. As indicated in the attached letters from the Prince George's and Anne Arundel Counties Offices of Law, the suggested opt out is not an option in the four counties where binding arbitration is required by county charter. *See* Attachment C.

The FOP testimony disingenuously understates the bill's implications, stating that it "...is a procedural bill to modernize the LEOBR by simply making it consistent with existing local binding arbitration statutes." This is not the case. The bill is a circuitous and effective mechanism to secure the final order bill that has been consistently rejected. The egregious consequences that would arise from its enactment are certainly clear.

In 1994, you co-sponsored HB 1604, which proposed an enhanced process for an officer when a chief was contemplating increasing the penalty recommended by the board. That same year SB 73 and HB 22 proposed an absolute limit on a chief's ability to increase the board's recommended penalty, i.e. a final order bill. Negotiations between local governments and the Maryland State Lodge of the Fraternal Order of Police (FOP) resulted in the enactment of HB 1604. *See* Chapter 695, Laws of Maryland.

In acknowledging the compromise, the FOP counsel stated in a 1994 letter that "...should this bill be enacted...we do not see the need for any future legislation on this subject, so long as the police chiefs live up to the new language in the law." *See* Attachment D. Subsequent to the 1994 compromise, no evidence has been presented in any bill hearing that the chiefs have not been adhering to their statutory obligations when increasing a board penalty recommendation. So, FOP advocacy for SB 420 should be rejected as inconsistent with the 1994 compromise.

An extensive 1999 University of Maryland Institute for Government Service (IGS) study of Maryland officer disciplinary procedures documents the great protections enjoyed by Maryland's officers. In comparing Maryland's law with other states' laws the study concludes that "....the Maryland law appears to accommodate officers more than any other state law, except possibly that of Rhode Island." *Review of Police Discipline Procedure in Maryland and Other States*; June, 1999 at page v. This conclusion is reached even after acknowledging the LEOBR provisions SB 420 affects, concerning the chief's discretion to appoint the hearing board and increase the discipline recommendation. *See* Attachment E.

MACo recognizes that Maryland's law enforcement officers are dedicated and diligent public servants who are periodically required to risk their lives to protect Maryland citizens. SB 420 is not relevant to these fine officers, but only to the few aberrant officers who need to be appropriately disciplined. Making it more difficult to effectively discipline these aberrant officers certainly demeans the credibility of the decent officers who may be forced to continue to serve with them.

In conclusion, to preserve public confidence in law enforcement MACo joins police chiefs and sheriffs in urging you to veto SB 420. The long-term implications of enacting this bill provide compelling justification for this action.

Thank you for your consideration.

Respectfully yours,

David S. Bliden
Executive Director

Attachments

cc: The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
The Honorable Brian Frosh
Mr. Kenneth H. Masters
Mr. Alan R. Friedman
Mr. Joseph Getty
Mr. Donald Hogan
Mr. Timothy Perry
Ms. Kristin Jones

Attachment A

Examples of Chief's or Sheriff's Decision Terminating Officer After Hearing Board Recommended a Less Severe Penalty

USE OF FORCE

Baltimore City
September 14, 2000

Charge:	Excessive Force-Off duty Officer hit citizen over the head with a broomstick when he did not acknowledge the officer's request to move his car.
Board's Recommendation:	Thirty days suspension without pay and training on civil rights stop and frisk and assault standards

Baltimore City
April 1 – 3, 2003

Charge:	While in uniform and out of officer's assigned district, officer initiated contact with and assaulted the neighbor of the officer's ex-girlfriend.
Board's Recommendation:	Counseling and Seventy Days Suspension Without Pay

RACIAL MISCONDUCT

Baltimore City
December 9, 2005

Charge:	Referred to two commanders as "white niggers", while off-duty but in the presence of other officers
Board's Recommendation:	Severe Letter of Reprimand, Five Days Loss of Leave (Officer retired in lieu of being terminated)

Howard County
November 8, 1990

Charge:	Improper conduct and harassment, including publicly presenting Nazi-type salutes
Board's Recommendation:	Reduction in rank and suspension

FALSE STATEMENTS/PERJURY/LYING

Baltimore County
January 2006

Charge:	Nine instances of submitting false forms with forged supervisor's signature
Board's Recommendation:	30 days suspension without pay.

Baltimore City
October 9, 2002

Charge:	Failure to Obey an Order by Commanding Officer – False Statement
Board's Recommendation:	Fifty Days Suspension Without Pay

Baltimore City
February 27, 2003

Charge:	Perjury when presenting testimony for the State during domestic violence case
Board's Recommendation:	Middle Letter of Reprimand, Two Days Loss of Leave

Garrett County
April 2001

Charge:	Four instances of submitting false meal receipts for reimbursement
Board's Recommendation:	90-day suspension and reduction in rank

CRIMINAL CONDUCT

Prince George's County
May 2, 2003

Charge:	Use of an illegal/banned drug while on duty.
Board's Recommendation:	Demotion of two ranks

Montgomery County
May 2002

Charge:	Driving under the influence, running a red light, causing a motor vehicle accident, with personal injury, and leaving the scene of the accident.
Board's Recommendation::	160 hours of suspension (4 weeks' pay).

St. Mary's County
May 2004

Charge:	Unauthorized release of valuable building materials seized from a criminal investigation to a family member of the officer.
Board's Recommendation:	Reduction in rank and a 30-day suspension.

March 21, 1997

THE SUN

EDITORIALS

Handcuffing police chiefs

■ **Fox guarding henhouse?:** *House bill ignores public stake in misconduct reviews.*

SUPPORTERS OF House Bill 1172, which would reduce Maryland's police chiefs' power to clean up allegations of police misconduct, contend their proposal is about fairness to officers. But they can't make a case about fairness to the public, whom the police officers serve.

This is a bill written by unions, supported by the Fraternal Order of Police, the United Food and Commercial Workers Union and other labor groups. It would dismantle the current checks and balances in police discipline review. Currently, when an officer is charged with misconduct, the chief must convene a hearing board of three members. One must be the same rank as the officer being investigated. The board's decision on guilt or innocence is binding, but its recommended penalty can be adjusted by the chief.

Under the bill the hearing board's penalty would be binding, or perhaps subject it to binding arbitration. Opponents of the legislation, including the Maryland Chiefs of Police Association and the Sheriffs Association, the Maryland Association of Counties and the Maryland Municipal League, contend that even if police brutality had been videotaped — such as in the Rodney King case — a chief would be powerless to fire those involved if a hearing board decreed a lesser penalty, or none at all.

The public, by and large, trusts its police, and should. But several cases of misconduct last year — from police scalping tickets at Camden Yards to sexual crimes — should give legislators pause. Also, a study of racial disparity in discipline within the Baltimore City police department concluded that while black officers typically serve on boards that review cases involving black officers, white officers often lead these boards. If these boards are made all-powerful, city or county councils might as well not bother calling police chiefs on the carpet to explain apparent injustices. The same goes for the legislature. This bill would affect jurisdictions whose police have collective bargaining, including the Maryland State Police, Baltimore City, most large counties and some towns.

Police officers, indeed, have an enormous stake in how internal discipline is meted out. But H.B. 1172 ignores the public's stake.

Cassilly_ExhibitD2_FAV_SB381.pdf
Uploaded by: Cassilly, Senator Bob
Position: FAV

Attachment C

ANNE ARUNDEL COUNTY
MARYLAND

Office of Law

Linda M. Schuett, County Attorney
Lschuett@aacounty.org

County Executive Janet S. Owens

Anne Arundel County Office of Law
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P.O. Box 6675
Annapolis, Maryland 21401
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April 27, 2006

VIA FACSIMILE: 410-268-1775

David Bliden, Executive Director
Maryland Association of Counties
169 Conduit Street
Annapolis, Maryland 21401

Re: Senate Bill 420

Dear Mr. Bliden:

I am writing in response to your request for information regarding the effects of SB 420 on collective bargaining in Anne Arundel County. You asked (1) whether Anne Arundel County law deals with binding arbitration for law enforcement officers, and (2) if SB 420 is enacted into law, would the provisions of Anne Arundel County law dealing with binding arbitration for law enforcement officers be automatically implemented, or require passage of an implementing ordinance. Finally, you asked whether the County can "opt out" of binding arbitration.

If SB 420 becomes law, the amendments to the LEOBR enacted by SB 420 will be subject to binding arbitration, and no implementing ordinance would be required. The Anne Arundel County Charter mandates binding arbitration for law enforcement officers. The County Council could not enact an ordinance that "opted out" of binding arbitration of the provisions of the LEOBR that would be subject to binding arbitration under SB 420.

Sincerely,

Linda M. Schuett

Linda M. Schuett
County Attorney

Attachment D

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CHARLENE L. KESSLER
ADMINISTRATIVE ASSISTANT
JENNIFER A. EDWARDS
ADMINISTRATIVE ASSISTANT
J. T. MOORE
STAFF INVESTIGATOR

March 28, 1994

Via Facsimile (410)268-1775

Mark D. Woodard
Maryland Association of Counties, Inc.
169 Conduit Street
Annapolis, Maryland 21401

Re: SB 73/ HB 1604

Dear Mark:

On behalf of the Maryland State Lodge of the Fraternal Order of Police, thanks so much to you and David Bliden for your help in working out a compromise on the Law Enforcement Officers' Bill of Rights Final Order legislation.

Should this bill be enacted, as we hope it will be, we do not see the need for any future legislation on this subject, so long as the police chiefs live up to the new language in the law.

Based on this experience, the FOP is looking forward to future cooperative ventures to serve our mutual interests.

Sincerely,

Leonard L. Lucchi
Legislative Counsel
Maryland State Fraternal
Order of Police

Attachment E

Review of Police Disciplinary Procedures in Maryland and Other States

IGS
THE INSTITUTE FOR
GOVERNMENTAL SERVICE

statutes are silent as to whether the hearing board's decision is binding, often because the hearing process itself has been left to the discretion of local jurisdictions. In general, an aggrieved officer is entitled to appeal the decision of a hearing board or higher administrative authority to the court system.

Maryland Law Compared to Other States

Maryland law contains many provisions that are more favorable to officers than provisions in other states. However, the Maryland law has two drawbacks from the officers' perspective. The chief selects all members of the hearing board (unless a collective bargaining agreement provides otherwise). Plus, the hearing board's punishment recommendation is not binding on the chief, unless a collective bargaining agreement provides otherwise. Despite these drawbacks, the Maryland law appears to accommodate officers more than any other state law, except possibly that of Rhode Island.

Actual Practice in Maryland

The survey of disciplinary practices in Maryland police agencies solicited detailed information on how police agencies have implemented the provisions of Maryland's LEOBR statute. One hundred and six police agencies, including all of the large police agencies, responded. Ten agencies reported having collective bargaining agreements which address disciplinary procedures. Two of these agreements contain provisions for an alternate method of forming hearing boards. Other agreements provide officers with peremptory challenges of hearing board members.

In addition to the provisions of collective bargaining agreements, agencies have implemented internal policies that enhance the neutrality of hearing boards. Two common mechanisms are random selection of hearing board members and obtaining hearing board members from other police agencies.

The vast majority of disciplinary cases in Maryland police agencies are resolved without a hearing. For the three-year period from January 1995 to early December 1997, responding agencies reported over 10,000 complaints against police officers that required investigation. One-third of all complaints were sustained by internal investigations.

Based on data from 96 agencies, more than 80 percent of the time the officer accepted the discipline that was recommended by the internal investigators. The remaining cases were resolved through a variety of means, including the officer negotiating a lesser punishment, the officer resigning or retiring and the convening of a hearing board.

A total of 381 hearings occurred in the responding agencies during the period. More than half of Maryland police agencies did not convene any hearing boards during 1995, 1996 or 1997. Forty-two agencies conducted at least one hearing during the period; four agencies (Baltimore City, Baltimore County, Maryland State, and Prince George's County) convened 202 hearing boards, or more than half of the total of 381 hearing boards reported.

For the cases reported for the 1995 to 1997 period, about three-quarters of the hearing board decisions were findings of guilt. Suspension was most frequently the most severe penalty recommended by the hearing board.

As discussed above, under Maryland law, the hearing board's decision regarding guilt is

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BILL NO.: Senate Bill 420

TITLE: Law Enforcement Officers' Bill of Rights – Hearing Boards – Binding Arbitration

POSITION: **OPPOSE**

DATE: February 22, 2006

COMMITTEE: Senate Judicial Proceedings

CONTACT: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **OPPOSES** Senate Bill 420 because its passage could unwisely restrict a chief law enforcement officer's disciplinary discretion. Current law recognizes that the accountability of a chief is an important and desired public policy. SB 420 would erode that recognition.

The Law Enforcement Officers' Bill of Rights (LEOBR) (Title 3, Subtitle 1 of the Public Safety Article) establishes police officer discipline procedures. Generally, before a police officer can be disciplined there must be an adversarial hearing before a tribunal known as a hearing board. The chief appoints the hearing board, which consists of at least 3 officers who meet certain criteria. Typically, union agreements limit the chief's appointment discretion.

After conducting a hearing, the board makes a binding determination regarding guilt or innocence. If the board finds an officer innocent, the case proceeds no further. If there is a guilty finding, the board submits a discipline recommendation to the chief. Subject to certain narrow exceptions, the discipline recommendation is advisory. But if the chief wishes to impose sanctions greater than those recommended by the board, the law requires that the chief must, among other things, grant the officer an opportunity to be heard and state the evidence upon which the chief relies to increase the recommended discipline.

While SB 420 merely authorizes a county to subject the negotiation of an alternative hearing board or the finality of the hearing

board's decision to binding arbitration, the bill essentially compromises the existing administrative structure that places accountability with the chief.

Citizens demand that law enforcement officers be held accountable. Police chiefs and sheriffs, whether elected or appointed, ultimately answer to the citizens of their jurisdiction. But if this bill were enacted, counties would likely be subjected to significant pressure to authorize the use of arbitrators whose appointment would likely be restricted by union agreements, who are not accountable, and whose decisions would be final.

In addition, the proposed binding arbitration authorization creates the prospect of inconsistent departmental discipline. Different arbitrators could render different punishment decisions for similar incidents. With the arbitrators' decision being binding, the Police Chief or Sheriff loses the discretion necessary to ensure that discipline for similar incidents is consistent or that desired public policy is implemented.

A 1999 University of Maryland Institute for Governmental Service (IGS) study of Maryland police disciplinary procedures documented the great protections enjoyed by Maryland's law enforcement officers. In comparing Maryland's law with other states' laws the study concluded that "....the Maryland law appears to accommodate officers more than any other state law, except possibly that of Rhode Island." *Review of Police Discipline Procedure in Maryland and Other States*; June 1999 at page v. This conclusion was reached even after acknowledging the provisions about which the unions most often complain, concerning the chief's discretion to appoint the hearing board and increase the discipline recommendation.

In conclusion, the counties believe, and State law recognizes, that accountability should rest solely with the chief and should not be subject to decisions from an unaccountable third party. The existing LEOBR prohibitions on binding arbitration make sense and preserve that belief. Accordingly, MACo urges that SB 420 be given an **UNFAVORABLE** report.

BALTIMORE COUNTY LODGE NO. 4
FRATERNAL ORDER OF POLICE
INCORPORATED
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(410) 668-0004 • (410) 668-0046 • FAX (410) 668-8126
www.foplodge4.org

COLE B. WESTON
LODGE PRESIDENT

DAVID J. FOLDERAUER
LODGE SECRETARY

February 22, 2006

The Honorable Brian E. Frosh, Chairman
Senate Judicial Proceedings Committee
The Senate of Maryland
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, Maryland 21401-1991

Re: Senate Bill 420 – Law Enforcement Officer's Bill of Rights – Hearing Boards – Binding Arbitration

Dear Chairman Frosh:

On behalf of the Baltimore County Fraternal Order of Police, Lodge # 4, I would like to express support for SB 420. This bill contains no mandate. It simply allows local jurisdictions to apply existing law with regard to collective bargaining and binding arbitration. Local jurisdictions that do not provide for collective bargaining and binding arbitration are not affected. Nothing in the bill requires a local jurisdiction to provide for collective bargaining or binding arbitration. Lastly, this bill applies equally to all parties who participate in the collective bargaining process.

Please consider a favorable report on SB 420.

Sincerely,

Cole B. Weston

Cole B Weston
President, Baltimore County
Fraternal Order of Police, Lodge # 4

cc: Members, Senate Judicial Proceedings Committee

State of Maryland
Department of State Police
Government Affairs Division
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: February 22 , 2006

BILL NUMBER: Senate Bill 420 **POSITION: Oppose**

BILL TITLE: Law Enforcement Officers' Bill of Rights - Hearing Boards - Binding Arbitration

REVIEW AND ANALYSIS:

This legislation would allow binding arbitration in the selection and formation of a hearing board, and binding arbitration in the introduction of evidence, the officer's record and prior convictions during the sentencing phase if it was authorized by local law. This would allow local jurisdictions to essentially change the rules which standardize and regulate the hearing board process for law enforcement officers and agencies.

Under current law, when an officer has a right to a hearing board for allegations of misconduct, there is an established process for the selection and formation of the members of the hearing board. The current law requires a three member hearing board, of which one member must be the same rank as the accused officer. Current law also allows for an alternative method of selecting the members of a hearing board. This alternative method may be used under certain circumstances and allows a law enforcement agency that has recognized and certified an exclusive collective bargaining representative to negotiate with the law enforcement agency regarding using an alternative method of forming the board. The current statute regarding the Law Enforcement Officers' Bill of Rights (LEOBR) allows for consistent application and interpretation by all law enforcement agencies throughout the State.

Senate Bill 420 would allow the removal of statewide consistency and fairness in the hearing board process which has been in place since 1974. Under this Bill, local laws and arbitration could take precedence over LEOBR and a different method of selecting, forming and conducting hearing boards could be used in every jurisdiction. Law enforcement agencies such as the

Cassilly_ExhibitD3_FAV_SB381.pdf
Uploaded by: Cassilly, Senator Bob
Position: FAV

State of Maryland
Department of State Police

Government Affairs Division
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

Department of State Police are frequently requested to conduct hearing boards for local agencies. This legislation would require these agencies to try to learn and apply new procedures for the conduct of hearing boards in every jurisdiction that enacts enabling legislation and the standardized rules of LEOBR would not apply.

Additionally, allowing binding arbitration at the local level would establish the opportunity for a wide range of procedures and interpretations on conducting these boards. The application of local negotiations and rules, absent some form of legal or consistent standard of conduct would cause these rules and subsequent procedures to become arbitrary and would go from one extreme to the other depending upon the jurisdictional area and type of representation. These local decisions and potentially wide ranging interpretations could form the basis for appeals. The decisions in these appeals would, in fact, affect every law enforcement agency in the State, not just the local agency. A single local agency through poor decision making or unfair application of these arbitrary standards could have a significant impact on all of the other agencies who conduct these hearings.

The rules of conducting hearing boards have been in place and have worked effectively since 1974. They have been fair and consistently interpreted, applied and understood throughout the State. Changing existing law to allow for binding arbitration would water down the current statewide system and ensure that it was inconsistent in both interpretation, understanding and its application which would have far reaching effects.

For these reasons, the Department of State Police urges the Committee to give Senate Bill 420 an unfavorable report.

BALTIMORE COUNTY POLICE DEPARTMENT

Headquarters:

700 East Joppa Road
Towson, MD 21286-5501
(410) 887-2211 (Voice)
(410) 887-4933 (Fax)

Integrity . . . Fairness . . . Service

Terrence B. Sheridan
Chief of Police

BILL NO.: SB 420

TITLE: Law Enforcement Officers' Bill of Rights
Hearing Boards – Binding Arbitration

SPONSOR: Senator Frosh, et al.

COMMITTEE: Appropriations

POSITION: OPPOSE

The Baltimore County Police Department OPPOSES the passage of Senate Bill 420. This bill amends the Law Enforcement Officers' Bill of Rights by permitting the composition of hearing board to go to binding arbitration and would take away the right of a police chief to make the final decision on the punishment of a police officer found guilty by a hearing board.

This bill strikes at the heart of a police chief's ability to manage a police department by taking away the right to fire police officers who do not deserve to be police officers. Under this bill, the hearing board would have the final authority over punishing a police officer, which would include terminating the officer. Under the current system, the police chief reviews the decision of the hearing board. The police chief can accept the decision, increase or decrease the punishment recommended by the hearing board. SB 420 also takes away the option of a police chief to decease punishment and give a police officer another chance.

The bill would also permit the composition of a hearing board to go to binding arbitration. This could result in the composition of a hearing board that neither side agrees with.

Accordingly, the Baltimore County Police Department requests an UNFAVORABLE report on Senate Bill 420. For more information, please contact Gregory R. Rothwell, Esq., Legislative Liaison at 410-887-2211.

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THE PRINCE GEORGE'S COUNTY GOVERNMENT

LEGISLATIVE POSITION

SB 420: **Law Enforcement Officers' Bill of Rights-Hearing Boards-Binding Arbitration**

Sponsors: Senators Frosh, Garagiola, Green, and Jimeno

Position: OPPOSE

Issue: The current Law Enforcement Officers' Bill of Rights reads that a law enforcement agency or the government authority that has collective bargaining authority for the law enforcement agency may negotiate with the union an alternate hearing board from that provided by the statute. The statute currently gives the Chief of Police the ability to pick the members of the hearing board from the sworn members of the Department. The statute currently states that the information of a hearing board "**is not subject to collective bargaining.**" This bill would change that lanuguage to read, "**If authorized by local law, this paragraph is subject to binding arbitration.**"

Objection: The County opposes this legislation. The bill, if passed, would start police agencies that have collective bargaining on the path to losing control of the disciplinary process within their respective departments. The bill would permit a bargaining agent such as the Fraternal Order of Police (FOP) to raise the makeup of hearing boards and the Chief's authority to discipline in the collective bargaining process. When an agreement cannot be reached on the FOP's request, the matter would go to arbitration and the arbitrator's ruling would be binding on the police department. Experience with at least one department, which has an alternative hearing board, has been negative. The hearing board for that County department is made up of a chief's appointment, an FOP appointment and an arbitrator. Needless to say, that agency's experience has not been conducive to holding officers accountable to the department's rules and regulations. The Maryland Sheriffs' Association and the Maryland Chiefs' Association also oppose this legislation.

Fiscal Impact: The bill's changes would not significantly affect local operations or finances. Any future impacts arising from decisions of arbitration processes, rather than currently constituted hearing boards, cannot be reliably predicted.

Committee: APPROPRIATIONS

Hearing Date: **April 4, 2006; 1:00 PM**

Prepared by: Prince George's County Office of Legislative Affairs

47 State Circle, Suite 102 Annapolis, MD 2140
Tel: (301) 261-1735 Fax: (301) 261-1784

MARYLAND MUNICIPAL LEAGUE
The Association of Cities and Towns

TESTIMONY

April 4, 2006

Committee: House Appropriations

Bill: SB 420 – Law Enforcement Officers' Bill of Rights – Hearing Boards – Binding Arbitration

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes SB 420 – Law Enforcement Officers' Bill of Rights – Hearing Boards – Binding Arbitration. This legislation would repeal prohibitions against making actions regarding the formation of a law enforcement officers' hearing board and decisions by a hearing board the subject of binding arbitration.

The League has consistently opposed binding arbitration as an alternative in both collective bargaining agreements and in regard to determinations of hearing boards created under the Law Enforcement Officers' Bill of Rights. Fourteen of the 85 municipalities with police departments currently have collective bargaining agreements and could potentially be affected by SB 420.

Over 10 years ago, legislation agreed to by MML and enacted by the General Assembly addressed the concerns of the Maryland Fraternal Order of Police (FOP) with regard to the recommendations of hearing boards concerning disciplinary actions to be taken against police officers found guilty of wrongdoing. Yet the FOP periodically generates additional legislation to stretch current law to eventually include mandatory binding arbitration for certain hearing board findings. The League objects to the incremental legislative steps leading to that end and therefore respectfully requests that that this committee report SB 420 unfavorably.

FOR MORE INFORMATION CONTACT:

Scott A. Hancock Executive Director
Candace L. Donoho Director/Government Relations
James P. Peck Director/Research & Information Management

FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY LODGE 35
SENATE BILL 420

Senate Bill 420 **SUPPORT**

February 22, 2006 **Judicial Proceedings Committee**

Law Enforcement Officer's Bill of Rights - Hearing Board - Binding Arbitration

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Six jurisdictions have authorized Binding Arbitration - Anne Arundel County, Baltimore County, Prince George's County, Montgomery County, Ocean City, and Aberdeen, Maryland.

This bill would only apply to those jurisdictions, plus any that would authorize Binding Arbitration in the future.

All jurisdictions that have Collective Bargaining Rights may now negotiate the alternative method of forming a hearing boards. This is current law.

Again, current law does not permit LEOBR issues to be subject to Binding Arbitrations. But does permit them to be subject to negotiation.

How Does The System Work Now?

A. Police organization and management negotiate all items, which include salaries, working conditions, and pensions.
B. If an impasse is declared the matters are referred to neutral arbitrator.
C. If mediation fails, the arbitrator requires, both the FOP (Police Organization) and Management to submit Separate Final Offers. (Typically)
D. These final offers must contain all issues/items that either party wants included in the new contract.
E. The arbitrator holds hearings and at the conclusion of the hearing the arbitrator makes an award in accordance with the law.

Conclusion:

The legislation permits the hearing board and the decision of the hearing board subject to Binding Arbitration in "six jurisdictions where binding arbitration is already authorized." This legislation recognizes the fact that Police Officers risk their lives and personal safety and in turn they should be provided absolute fairness in their process of discipline and a modernization of the LEOBR.

February 16, 2006

Thomas B. Stone, Jr.
Representing Montgomery County FOP 35
301 - 762 - 8800

MARYLAND STATE LODGE
FRATERNAL ORDER OF POLICE®,
LEGISLATIVE COMMITTEE

BILL NO: **SB 420**

TITLE: Law Enforcement Officers' Bill of Rights – Hearing Boards – Binding Arbitration

SPONSORS: Senators Frosh, Garagiola, Green, and Jimeno

COMMITTEE: Judicial Proceedings

POSITION: **Support**

The Maryland Fraternal Order of Police strongly supports Senate Bill 420, which would allow negotiations regarding hearing boards, if authorized by local law, to be subject to binding arbitration. This bill only applies to jurisdictions where voters have elected to grant binding arbitration as part of the collective bargaining process. Therefore this bill only affects Anne Arundel County, Baltimore County, Prince George's County, Montgomery County, Ocean City, and Elkton.

The disciplinary process has always been subject to negotiations at the local level. This bill will allow for local lodges to negotiate that process in jurisdictions that now have the arbitration aspect as part of their negotiations process.

The Maryland State Lodge Fraternal Order of Police requests a **FAVORABLE REPORT** on **SB 420.**

Contacts: Errol Etting
Legislative Chairman
410-404-8335

Officer O'Brien Atkinson, IV
2nd Vice President, MD FOP
410-320-6557

FRATERNAL ORDER OF POLICE
MONTGOMERY COUNTY LODGE 35
SENATE BILL - 420

Senate Bill 420 **SUPPORT**
April 04, 2006 **Appropriations Committee**

Law Enforcement Officer's Bill of Rights - Hearing Board - Binding Arbitration

---

Six jurisdictions have authorized Binding Arbitration - Anne Arundel County, Baltimore County, Prince George's County, Montgomery County, Ocean City and Elton, Maryland.

This bill would only apply to those jurisdictions, plus any that would authorize Binding Arbitration in the future. (Presumably by Referendum)

All jurisdictions that have Collective Bargaining Rights may now negotiate the alternative method of forming a hearing board. This is current law.

Again, current law does not permit LEOBR issues to be subject to Binding Arbitrations. But does not permit them to be subject to negotiation.

How Does the System Work Now?

A. Police organization and management negotiate all items, which include salaries, working conditions, and pensions.
B. If an impasse is declared the matters are referred to neutral arbitrator.
C. If mediation fails, the arbitrator requires, both the FOP (Police Organization) and Management to submit Separate Final Offers. (Typically)
D. These final offers must contain all issues/items that either party wants included in the new contract.
E. The arbitrator holds hearings and at the conclusion of the hearing the arbitrator makes an award in accordance with the law.

Conclusion:

The legislation permits the hearing board and the decision of the hearing board subject to Binding Arbitration in "six jurisdictions where binding arbitration is already authorized." Should local jurisdictions that presently have Binding Arbitration do not wish it to be extended to panel etc. they have local option to do so. This legislation recognizes the fact that Police Officers risk their lives and personal safety and in turn they should be provided absolute fairness in their process of discipline and a modernization of the LEOBR.

April 04, 2006

Thomas B. Stone, Jr.
Representing Montgomery County FOP 35
301- 762 - 8800

Progressive Maryland

State Headquarters
8720 Georgia Avenue
Suite 500
Silver Spring, Maryland 20910

301.495.7004 phone
301.495.9463 fax
ProgressiveMaryland.org
Contact@ProgressiveMaryland.org

SUPPORT

SB420—Law Enforcement Officers' Bill of Rights—Hearing Boards—Binding Arbitration

Mr. Chairman and Members of the Judicial Proceedings Committee, Progressive Maryland strongly supports SB420 and urges a favorable report.

Progressive Maryland is a statewide grassroots advocacy organization that fights for legislation to improve the lives of working families. Our support comes from 25,000 individual dues-paying members, and our partnership with more than 50 of Maryland's largest community, faith-based, labor, and civil rights groups.

While all State police departments are currently covered by collective bargaining agreements, this bill would remove the prohibition against binding arbitration for future contract negotiations. As it stands now, the disciplinary hearing board and/or disciplinary hearing is heavily weighted against an officer. Allowing binding arbitration as an alternative is a basic civil and worker's right, one that adds balance to negotiations that are otherwise tilted toward the employer.

Progressive Maryland urges a favorable report on SB420.

BALTIMORE COUNTY LODGE NO. 4
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COLE B. WESTON
LODGE PRESIDENT

DAVID J. FOLDERAUER
LODGE SECRETARY

April 4, 2006

The Honorable Norman H. Conway
Chairman, House Appropriations Committee
Maryland House of Delegates
House Office Building, Room 121
12 Bladen Street
Annapolis, Maryland 21401-1991

Re: Senate Bill 420 – Law Enforcement Officer's Bill of Rights – Hearing Boards – Binding Arbitration

Dear Chairman Conway:

On behalf of the Baltimore County Fraternal Order of Police, Lodge # 4, I would like to express support for SB 420. This bill contains no mandate. It simply allows local jurisdictions to apply existing law with regard to collective bargaining and binding arbitration. Local jurisdictions that do not provide for collective bargaining and binding arbitration are not affected. Nothing in the bill requires a local jurisdiction to provide for collective bargaining or binding arbitration. Lastly, this bill applies equally to all parties who participate in the collective bargaining process.

Please consider a favorable report on SB 420.

Sincerely,

Cole B. Weston

Cole B Weston
President, Baltimore County
Fraternal Order of Police, Lodge # 4

cc: Members, House Appropriations Committee

Fraternal Order of Police
Maryland State Lodge

Senate Bill 420

Senate Bill 420 **SUPPORT**

April 4, 2006 **Appropriations Committee**

Law Enforcement Officers' Bill of Rights – Hearing Boards – Binding Arbitration

---

Good afternoon. I am Walter E. Bader, President of Fraternal Order of Police, Montgomery County Lodge 35 and am here to testify in support of Senate Bill 420 on behalf of the Fraternal Order of Police.

Under current law, the Law Enforcement Officers' Bill of Rights allows for collective bargaining as to an alternate method of forming a hearing board and also as to whether the decision of that board is final.

Hence, in all jurisdictions with collective bargaining these LEOBR matters are treated the same as all other subjects of collective bargaining and may be referred to impasse procedures for resolution, except that they are not subject to binding arbitration impasse procedures.

SB 420 narrowly addresses the inconsistency between current State law and local laws that authorize binding arbitration as a method of resolving bargaining impasse. Current State law prohibits binding arbitration in LEOBR matters that, were it not for State law, would be authorized subjects of collective bargaining with binding arbitration under local law.

SB 420 is a procedural bill to modernize the LEOBR by simply making it consistent with existing local binding arbitration statutes. **It does not alter the composition of hearing boards, nor does it make decisions of hearing boards final.** It continues to allow collective bargaining in these matters and it allows bargaining disputes to go to arbitration only in those jurisdictions where binding arbitration has been authorized by the voters and elected local legislative bodies.

Where disputes as to composition of hearing boards or finality of board decisions go to impasse under this bill, local officials and police chiefs are free to make proposals, oppose proposals, or support proposals before any impasse neutral before that neutral issues an award in the matter. It is the nature of binding arbitration that all positions be accorded fair and impartial consideration.

Prior legislative attempts to amend the LEOBR, such as HB 1296 introduced in 2000, prompted unwarranted concerns that binding arbitration would be created by passage, that elected official accountability for alleged "police misconduct" would be gone, and that it would violate a 1994 "deal" between the Maryland Association of Counties ["MACo"] and the Maryland State Lodge, FOP.

This bill, SB 420, is more narrowly tailored to allay reasonable concerns and makes it clear that it does not create any right to binding arbitration in any jurisdiction where it otherwise does not exist. **Only the voters and local elected governing bodies may provide that authorization before its provisions relating to binding arbitration would apply.** Further, under this bill, local elected officials could amend local laws to specifically remove the alternate method of forming a hearing board and/or the finality of decision from the scope of bargaining that is subject to binding arbitration.

The 1994 "deal" did not prevent collective bargaining over the composition of hearing boards or finality of decisions, nor did it address binding arbitration or modernization of the LEOBR. That "deal" pertained only to former Article 27 § 731 (c), now § 3-108(d) of the Public Safety Article (Senate Bill 1, 2003). This provision is left fully intact by this bill. Moreover, this twelve-year old "deal" dates back three legislative terms and predates binding arbitration laws in four of six local jurisdictions.

SB 420 is narrowly tailored, local option legislation that modernizes existing collective bargaining provisions of the LEOBR and makes them consistent with local bargaining laws only in those jurisdictions where the voters have authorized binding arbitration.

We urge your favorable consideration.

Thank you.

Walter Bader, President

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Uploaded by: Cassilly, Senator Bob
Position: FAV

Exhibit A
Senate Bill 860
1987

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed only prospectively and may not be applied or interpreted to have any effect upon or application to any adoption or guardianship for which a final decree was entered before July 1, 1987, nor to any adoption or guardianship in which a petition has been filed, but proceedings are pending as of July 1, 1987. However the amendment by this Act of provisions of law in effect prior to the effective date of this Act may not be construed to preclude the application of those provisions of law to any adoption or guardianship for which a final decree was entered before July 1, 1987, nor to any adoption or guardianship proceeding pending as of the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1987.

June 2, 1987

The Honorable Thomas V. Mike Miller
President of the Senate
State House
Annapolis, Maryland 21404

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed Senate Bill 860.

Senate Bill 860 would allow a law enforcement officer to waive the rights in the Law Enforcement Officers' Bill of Rights and elect to be covered by the terms of a collective bargaining agreement. The rights under the Law Enforcement Officers' Bill of Rights could be supplemented or expanded by law or by a provision of a collective bargaining agreement, but could not be diminished or abrogated.

When the Law Enforcement Officers' Bill of Rights was enacted in 1973, its intent was to secure for law enforcement officers minimum guarantees of procedural and substantive due process. Few, if any, police officers were under collective bargaining agreements at that time. Now, most major jurisdictions in the State have collective bargaining with their officers.

Although there is some confusion as to whether collective bargaining may address a subject covered by the Law Enforcement Officers' Bill of Rights, I do not feel that Senate Bill 860 provides the correct solution. Under this legislation, police officers in different jurisdictions would be able to elect to be

covered by the terms of the collective bargaining agreement in effect in that jurisdiction. The result would be an inconsistent application of the Law Enforcement Officers' Bill of Rights and a patchwork of supplemental protections under collective bargaining agreements.

I believe that any effort to clarify the interplay between the Law Enforcement Officers' Bill of Rights and collective bargaining agreements should fall on the side of the Law Enforcement Officers' Bill of Rights.

For this reason, I have today vetoed Senate Bill 860.

Sincerely,
William Donald Schaefer
Governor

Senate Bill No. 860

AN ACT concerning

Law Enforcement Officers' Bill of Rights -
Collective Bargaining Agreements

FOR the purpose of allowing an individual law enforcement officer to elect certain rights under a collective bargaining agreement as an alternative to rights provided by the Law Enforcement Officers' Bill of Rights; specifying that certain rights may not be diminished or abrogated by certain legislative action or by any collective bargaining agreement; specifying that certain rights may be supplemented or expanded by a collective bargaining agreement; specifying that this Act does not create collective bargaining rights unless specifically provided for by certain legislative action; and generally relating to waiver of the Law Enforcement Officers' Bill of Rights and to collective bargaining.

BY repealing and reenacting, with amendments,

Article 27 - Crimes and Punishments
Section 734B and 734D
Annotated Code of Maryland
(1982 Replacement Volume and 1986 Supplement)

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

Article 27 - Crimes and Punishments

734B.

Except for the administrative hearing process provided for in Article 41, § 4-201 concerning the certification enforcement power of the Police Training Commission, AND SUBJECT TO THE PROVISIONS OF § 734D OF THIS SUBTITLE, the provisions of this subtitle shall supercede any State, county or municipal law, ordinance, or regulation that conflicts with the provisions of this subtitle, and any local legislation shall be preempted by the subject and material of this subtitle.

734D.

(A) Any officer may waive in writing ~~any or~~ all rights provided in this subtitle, AND MAY ELECT, IN THE ALTERNATIVE, A ~~PROCEDURAL OR SUBSTANTIVE RIGHT OR GUARANTEE~~ *THE PROCEDURAL OR SUBSTANTIVE RIGHTS OR GUARANTEES* PROVIDED UNDER A COLLECTIVE BARGAINING AGREEMENT.

(B) (1) THE RIGHTS PROVIDED IN THIS SUBTITLE MAY NOT BE DIMINISHED OR ABROGATED BY ANY LAW, ORDINANCE, OR REGULATION OF A MUNICIPAL CORPORATION, COUNTY, *OR* BICOUNTY AGENCY, ~~OR THE STATE,~~ OR BY ANY PROVISION OF ANY COLLECTIVE BARGAINING AGREEMENT.

(2) ALL RIGHTS PROVIDED IN THIS SUBTITLE MAY BE SUPPLEMENTED OR EXPANDED BY A LAW, ORDINANCE, OR REGULATION OF A MUNICIPAL CORPORATION, COUNTY, BICOUNTY AGENCY, OR THE STATE, OR BY ANY PROVISION OF A COLLECTIVE BARGAINING AGREEMENT.

(C) THIS SECTION MAY NOT BE CONSTRUED TO CREATE ANY RIGHT TO COLLECTIVELY BARGAIN IN ANY COUNTY OR ~~CITY~~ MUNICIPAL CORPORATION OF THE STATE UNLESS SPECIFICALLY PROVIDED FOR BY A LAW, ORDINANCE, OR REGULATION OF A MUNICIPAL CORPORATION, COUNTY, BICOUNTY AGENCY, OR THE STATE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1987.

June 2, 1987

The Honorable Thomas V. Mike Miller
President of the Senate
State House
Annapolis, Maryland 21404

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed Senate Bill 895.

Exhibit B
Senate Bill 227/
House Bill 1209
1988

(6) Information that relates to the inability of the principal to obtain adequate bonding on reasonable terms through normal channels;

(7) Information that relates to the financial status of the principal, including:

(i) A current balance sheet;

(ii) A profit and loss statement; and

(iii) Credit references;

(8) A schedule of all existing and pending contracts and the current status of each; and

(9) Any other relevant information that the Authority requests.

(c) After receipt of an application for assistance from the Maryland Small Business Surety Bond Guaranty Program, the Authority may determine that a principal shall provide an audited balance sheet before the Authority makes its decision on the application.

(D) IF A PRINCIPAL HAS EVER DEFAULTED ON ANY LOAN OR GUARANTY PROVIDED BY THE AUTHORITY, THE AUTHORITY MAY NOT APPROVE A GUARANTY UNDER THIS PART VI.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1988.

May 27, 1988

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House
Annapolis, Maryland 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed Senate Bill 227.

This bill is very similar to Senate Bill 860 of 1987, which I vetoed on June 2, 1987.

WILLIAM DONALD SCHAEFER, Governor

The Law Enforcement Officers' Bill of Rights (LEOBR) establishes a uniform system of police discipline throughout the State. As I noted last year, the intent in enacting the LEOBR was to secure for law enforcement officers minimum guarantees of procedural and substantive due process. Although most major jurisdictions now have collective bargaining with their officers, at the time of the enactment of the Bill of Rights, few, if any, police officers had such a status.

Most observers agree that the LEOBR has served its purpose well. The rights of law enforcement officers are clearly defined and, as noted above, are uniform throughout Maryland. The uniformity of the system enhances its effectiveness and the public's confidence in law enforcement. Senate Bill 227 would erode the uniformity of the system by allowing police officers in different jurisdictions to elect to be covered by the terms of the collective bargaining agreement in effect in that jurisdiction. The result would be, as stated in my letter last year, "an inconsistent application of the Law Enforcement Officers' Bill of Rights and a patchwork of supplemental protections under collective bargaining agreements." In addition, these protections could be altered on a yearly basis as various collective bargaining agreements were renegotiated.

In one respect, SB 227 is more problematical than SB 860 of 1987. The legislation last year would have required the officer, in making the election, to chose either the LEOBR or the rights and guarantees of a collective bargaining agreement. SB 227 would allow the officer to waive "any or all rights" provided by the LEOBR in comparing those provisions with the protections of a collective bargaining agreement. Being thus allowed to pick and choose among the various protections of the LEOBR, the resulting confusion and inconsistency could be very damaging.

I am aware of arguments that the legislation only clarifies procedural conflicts between the LEOBR and collective bargaining agreements. However, the actual language of the bill and the concerned arguments of those requesting a veto have convinced me to be cautious. I continue to believe that great weight should be given to the Law Enforcement Officers' Bill of Rights in any interplay between it and collective bargaining agreements.

For these reasons, I have today vetoed SB 227.

Sincerely,
William Donald Schaefer
Governor

Senate Bill No. 227

VETOES

AN ACT concerning

Law Enforcement Officers' Bill of Rights -
Election of Procedures

FOR the purpose of allowing an individual law enforcement officer to elect certain rights under a collective bargaining agreement as an alternative to rights provided by the Law Enforcement Officers' Bill of Rights; specifying that certain rights may not be diminished or abrogated by certain legislative action or by any collective bargaining agreement; specifying that certain rights may be supplemented or expanded by certain legislative action or by a collective bargaining agreement; specifying that this Act does not create collective bargaining rights unless specifically provided for by certain legislative action; and generally relating to waiver of the Law Enforcement Officers' Bill of Rights and to collective bargaining.

BY repealing and reenacting, with amendments,

Article 27 - Crimes and Punishments
Section 734B and 734D
Annotated Code of Maryland
(1982 Replacement Volume and 1987 Supplement)

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

Article 27 - Crimes and Punishments

734B.

Except for the administrative hearing process provided for in Article 41, § 4-201 concerning the certification enforcement power of the Police Training Commission, AND SUBJECT TO THE PROVISIONS OF § 734D OF THIS SUBTITLE, the provisions of this subtitle shall supersede any State, county or municipal law, ordinance, or regulation that conflicts with the provisions of this subtitle, and any local legislation shall be preempted by the subject and material of this subtitle.

734D.

(A) Any officer may waive in writing any or all rights provided in this subtitle, AND MAY ELECT, IN THE ALTERNATIVE, THE PROCEDURAL OR SUBSTANTIVE RIGHTS OR GUARANTEES PROVIDED UNDER A COLLECTIVE BARGAINING AGREEMENT.

(B) (1) THE RIGHTS PROVIDED IN THIS SUBTITLE MAY NOT BE DIMINISHED OR ABROGATED BY ANY LAW, ORDINANCE, OR REGULATION OF A

MUNICIPAL CORPORATION, COUNTY, OR BICOUNTY AGENCY, OR BY ANY PROVISION OF ANY COLLECTIVE BARGAINING AGREEMENT.

(2) ALL RIGHTS PROVIDED IN THIS SUBTITLE MAY BE SUPPLEMENTED OR EXPANDED BY A LAW, ORDINANCE, OR REGULATION OF A MUNICIPAL CORPORATION, COUNTY, OR BICOUNTY AGENCY, OR THE STATE, OR BY ANY PROVISION OF ANY COLLECTIVE BARGAINING AGREEMENT.

(C) THIS SECTION MAY NOT BE CONSTRUED TO CREATE ANY RIGHT TO COLLECTIVELY BARGAIN IN ANY MUNICIPAL CORPORATION, COUNTY, OR BICOUNTY AGENCY, OR THE STATE, UNLESS SPECIFICALLY PROVIDED FOR BY A LAW, ORDINANCE, OR REGULATION OF A MUNICIPAL CORPORATION, COUNTY, BICOUNTY AGENCY, OR THE STATE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1988.

May 27, 1988

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House
Annapolis, Maryland 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed Senate Bill 247.

This bill alters the number of judges in the Circuit Courts and District Court of the State.

House Bill 895, which was passed by the General Assembly and signed by me on May 17, 1988, accomplishes the same purpose. Therefore, it is not necessary for me to sign Senate Bill 247.

Sincerely,
William Donald Schaefer
Governor

Senate Bill No. 247

AN ACT concerning

Judgeships - Circuit and District Courts

Exhibit C
Senate Bill 91/
House Bill 687
1989

SENATE JUDICIAL PROCEEDINGS COMMITTEE
WALTER M. BAKER, CHAIRMAN * COMMITTEE REPORT SYSTEM
Department of Legislative Reference . 1989 General Assembly of Maryland

FLOOR REPORT

HOUSE BILL 687

LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS - ELECTION OF PROCEDURES

SPONSORS:

Delegates Chasnoff, Boergers, Donaldson, Weisengoff, Connelly, Shapiro, DePazzo, Hughes, Genn, and McCaffrey

COMMITTEE RECOMMENDATION: Favorable with 2 amendments.

SUMMARY OF BILL:

This bill permits a law enforcement officer against whom a complaint has been filed to choose between the method for forming a hearing board established by the Law Enforcement Officers' Bill of Rights (LEOBR) and the method for forming a hearing board set forth in a collective bargaining agreement. The officer may choose the alternative method provided in a collective bargaining agreement only if the officer is included in the collective bargaining unit.

The bill requires that the law enforcement agency inform all law enforcement officers in writing of the right to choose between the method for hearing board formation set forth in a collective bargaining agreement and the method established by § 727(a) of Article 27.

The bill prohibits the use of an alternative method for hearing board formation if the officer receives summary punishment under § 734A of Article 27.

The decision by the alternate hearing board, both to findings of fact and punishment, is final if the collective bargaining agreement specifies that it is final. The provisions of the law may not be the subject of binding arbitration.

COMMITTEE AMENDMENTS:

The Committee adopted this bill with 2 amendments.

AMENDMENT NO. 1:

This amendment adds a preamble to the bill to conform it to Senate Bill 91 as passed by the Senate.

AMENDMENT NO. 2:

This amendment makes a technical change to the bill.

BACKGROUND:

Current law provides, with the exception of hearings for officers subject to summary punishment, that a hearing board shall consist of not less than 3 members, to be

appointed by the agency chief and selected from law enforcement officers within the agency, or from another agency with the approval of the chief of the other agency, who have had no part in the investigation or interrogation of the law enforcement officer.

In 1988, a similar bill was introduced as Senate Bill 227. This bill passed both the House and Senate, but was vetoed by the Governor. Senate Bill 227 authorized law enforcement officers to waive any or all of the rights under the LEOBR and to elect, in the alternative, any of the procedural or substantive rights or guarantees under a collective bargaining agreement. The Governor vetoed Senate Bill 227 on the grounds that it would erode the uniformity that the LEOBR gives to the system of police discipline throughout the State. The Governor stressed that Senate Bill 227 was particularly objectionable because it allowed a law enforcement officer to pick and choose between any of the provisions of the LEOBR and any of the provisions of a collective bargaining agreement. Senate Bill 91 addresses this objection because it applies solely to one aspect of the LEOBR, the method by which a hearing board is formed, and does not permit an officer to "pick and choose" between other provisions of the LEOBR and a collective bargaining agreement. According to testimony, this bill represents a compromise effort of a task force set up by the Governor after his 1988 veto. The Governor's Office has issued a statement endorsing this bill because it applies only where a collective bargaining agreement provides for an alternative method of constituting a hearing board and only on the election of an officer.

This bill was crossfiled as Senate Bill 91. Senate Bill 91 was reported favorable by the Judicial Proceedings Committee, and was passed with amendments by the House. House Bill 687 was amended to make the provisions of the bill not subject to binding arbitration.

KMB/eh

Conforms to
SB 91

See P 2 for
explanation

BILL ANALYSIS

HOUSE BILL 687

LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS - ELECTION OF PROCEDURES

SPONSORS:

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BACKGROUND:

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an officer to "pick and choose" between other provisions of the LEOBR and a collective bargaining agreement. According to testimony, this bill represents a compromise effort of a task force set up by the Governor after his 1988 veto. The Governor's Office has issued a statement endorsing this bill because it applies only where a collective bargaining agreement provides for an alternative method of constituting a hearing board and only on the election of an officer.

Ten witnesses testified in support of this bill.

This bill has been crossfiled as Senate Bill 91. The House bill was amended to make the provisions of the bill not subject to binding arbitration.

KMB/sb

Cassilly_FAV_SB381.pdf
Uploaded by: Cassilly, Senator Bob
Position: FAV

ROBERT G. CASSILLY
Legislative District 34
Harford County

Judicial Proceedings Committee

Joint Committee on Administrative, Executive, and Legislative Review

Joint Committee on Federal Relations

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 401
Annapolis, Maryland 21401
410-841-3158 · 301-858-3158
800-492-7122 *Ext.* 3158
Bob.Cassilly@senate.state.md.us

District Office
1015 South Main Street
Bel Air, Maryland 21014
443-502-0583

January 26, 2021

RE: **Senate Bill 381 – Law Enforcement Officers' Bill of Rights – Uniform Disciplinary Procedures**

Dear Committee Members:

This bill is in response to demands for greater public accountability regarding alleged police misconduct. On this topic, the General Assembly has seen proposals to repeal the Law Enforcement Officers Bill of Rights (LEOBR), calls to remove the confidentiality protections afforded police personnel records, calls to establish new citizen boards to remove police officers, and more.

Modern police agencies are powerful, paramilitary organizations that operate 24/7/365 throughout every corner of this state. Officers in the field are generally alone and necessarily operate with great deal of personal discretion as they encounter infinite possibilities of personal and public danger and, at times, overwhelming public demand. Mistakes by law enforcement can be costly in terms of life, health, public safety, and public morale. A good officer is a life saver who builds better lives and better communities. A bad officer is a potential menace to the community.

Given the autonomy and immense power possessed by each individual officer, it is vital that all police agencies in this state operate under a process that provides for effective and timely police discipline in order to identify and quickly remove or discipline offending officers. We have heard a lot of complaints over the past six years that the current processes are not working as well as they should in every jurisdiction and citizens are demanding action. It would appear from the criminal convictions of certain officers that some of those complaints are well founded and that it is time for this body to take action.

As we move forward in this endeavor, it is important that we act with careful deliberation. We have witnessed in our own State the immense damage done to public safety when elected leaders act rashly, imprudently, and even foolishly to attack those sworn to protect and serve. We need the police. We especially need very good police who are smart, dedicated, and honest. We cannot attract police recruits and retain officers with the desired qualifications by belittling and disrespecting them through unfair systems or demeaning processes.

In 1974 this body created the LEOBR "to secure for law enforcement officers minimum guarantees of procedural and substantive due process." (Governor William Donald Schaefer's letter May 27, 1988, supporting his veto of SB 227.) Toward this purpose, LEOBR established a

uniform, statewide process for police disciplinary matters. It established a process that was fair to the officers but also instilled public confidence. Police officers were provided with due process protections and the public had confidence that the final decision in police misconduct matters lay with elected officials who were subject to public removal should they fail to achieve an appropriate balance between public interest and the interests of the police officers.

In Governor Schaefer's evaluation of LEOBR in 1988, 13 years after enactment of LEOBR, he stated: "Most observers agree that LEOBR has served its purpose well. The rights of law enforcement officers are clearly defined and are uniform throughout Maryland. The uniformity of the system enhances its effectiveness and the public's confidence in law enforcement." (Copy of Governor Schafer's letter attached as Exhibit B)

Unfortunately, that balance between the public interest and police rights has eroded over time. Please consider the following brief history of LEOBR which I find revealing and instructive.

In 1987 and 1988, SB860 and SB 227 / HB 1209 would have authorized law enforcement officers to waive any or all of the LEOBR hearing procedures and elect, in the alternative, to proceed under a process established by a locally negotiated collective bargaining agreement (CBA). This bill passed the General Assembly twice and was vetoed by the Governor twice (Veto letters are attached as Exhibit A and B) on the grounds that it would erode the uniformity of police disciplinary process and the public confidence that existed throughout the state.

In Governor Schaefer's 1988 veto letter for SB 227 he stated: "Senate Bill 227 would erode the uniformity of the system by allowing police officers in different jurisdictions to elect to be covered by the terms of the collective bargaining agreement in effect in that jurisdiction. The result would be an inconsistent application of the Law Enforcement Officers' Bill of Rights in a patchwork of supplemental protections under collective bargaining agreements. In addition, these protections could be altered on a yearly basis as various collective bargaining agreements were renegotiated. … I continue to believe that great weight should be given to the Law Enforcement Officers' Bill of Rights in any interplay between it and collective bargaining agreements." (Attached as Exhibit B)

In 1989 , the enactment of HB 687 / SB91 (Copy attached as Exhibit C) made two key changes to LEOBR:

(1.) HB 687 / SB91 allowed law enforcement officers to choose between the method for forming a hearing board in the manner set forth in LEOBR or the method established in a CBA.

(2.) HB 687 / SB91 allowed parties to a CBA to make the hearing board decision final and not subject to the chief's discretion.

These bills were opposed by Baltimore City Police, MACO, and MML and were supported by AFL-CIO.

In 2000, HB 1296 proposed to amend LEOBR such that disputes regarding hearing boards would be subjected to binding arbitration. That bill was rejected by the General

Assembly out of concern that binding arbitration provisions would mean that elected officials accountability for resolving allegations of police misconduct would be removed.

The most impactful changes to LEOBR were made in 2006. Disregarding the cautionary advice in Governor Schaefer's 1988 veto letter, the General Assembly enacted SB 420 which completely removed the prohibition on the use of binding arbitration to determine the procedures to be used in resolving officer discipline related matters. The opposition to this bill are, like Governor Schaefer's earlier veto letter, both instructive and prophetic:

> MACO's Opposition to SB420: "Citizens demand that law enforcement officers be held accountable. Police chiefs and sheriffs ultimately answer to the citizens of their jurisdiction. But if this bill were enacted, counties would likely be subjected to significant pressure to authorize the use of arbitrators whose appointment would likely be restricted by union agreement, who are not accountable, and whose decision would be final.... In addition, the proposed binding arbitration authorization creates the prospect of inconsistent departmental discipline. Different arbitrators cold render different punishment decisions for similar incidents. With the arbitrators' decision being binding, the Police Chief or Sheriff loses the discretion necessary to ensure that discipline for similar incidents is consistent or that desired public policy is implemented. .... Accountability should not be subject to decisions from an unaccountable third party." (Exhibit D)
>
> Prince George's County's Opposition to SB420 – "The Bill, if passed, would start police agencies that have collective bargaining **on the path to losing control of the disciplinary process** within their respective departments. (Exhibit D)
>
> MACO's Veto Request Letter for SB420 - "Implementation of SB 420 would ultimately erode the authority and accountability of chiefs for officer discipline, **denying citizens recourse and citizen confidence in the credibility of law enforcement**. ... The bills enactment could lead to the chiefs who supervise the vast majority of officers in Maryland not having discipline authority over those officers." MACOs letter (attached as Exhibit D) includes a number of attachments. Attachment A to that letter outlines 11 incidences where chiefs elected to terminate officers where hearing boards recommended minimal punishment for misconduct; authority those chiefs no longer have. Attachment B to MACO's letter is a Baltimore Sun editorial warning of the negative impact of a system that amounted to the fox watching the hen house.

Governor Ehrlich declined MACO's requested veto and SB 420 is the current law.

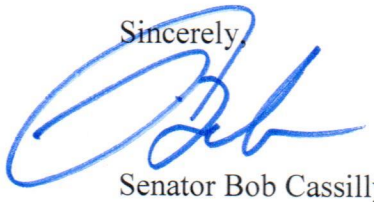
Presently, in all of the major jurisdictions the county law enforcement bodies operate under CBAs. In each, as Governor Schaefer predicted, the CBA provides for different policies and procedures regarding police misconduct investigations and discipline. The one element all of those CBAs have in common is the realization of the concerns as expressed by Governor Schaefer and others who warned of the dangers of the present system:

- citizens have been denied recourse and confidence in the credibility of law enforcement,

- Chiefs & Sheriffs have lost the discretion necessary to ensure that discipline for similar incidents is consistent or that desired public policy is implemented,
- police accountability is subject to decisions from an unaccountable third party, and
- police leaders are well down the path to losing control of the police disciplinary process

My bill is very simple, let us remove the 2006 amendments to LEOBR.

Sincerely,



Senator Bob Cassilly

LoS - LEO Uniform Disciplinary Standards.pdf
Uploaded by: Gillard, Alvin
Position: FAV

State of Maryland
Commission on Civil Rights

"Our vision is to have a State that is free from any trace of unlawful discrimination."

January 28, 2021

Senate Bill 381 – Law Enforcement Officers' Bill of Rights –
Uniform Disciplinary Procedures
POSITION: Support

Dear Chairperson Smith, Vice Chairperson Waldstreicher, and Members of the Senate Judicial Proceedings Committee:

The Maryland Commission on Civil Rights ("MCCR"; "The Commission") is the State agency responsible for the enforcement of laws prohibiting discrimination in employment, housing, public accommodations, and state contracts based upon race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, gender identity, genetic information, physical and mental disability, and source of income.

Senate Bill 381 repeals provisions of the Law Enforcement Officers' Bill of Rights permitting local law enforcement agencies to circumvent state disciplinary standards for law enforcement officers by entering into collective bargaining agreements with their respective local collective bargaining units.

The Maryland Commission on Civil Rights believes that, in the interest of public safety, law enforcement officers throughout Maryland should be held to uniform disciplinary standards. The current system that permits wide variation between law enforcement agencies is unacceptable and fuels public mistrust in the forces sworn to protect them.

Because of this, the Maryland Commission on Civil Rights urges a favorable vote on SB381. Thank you for your time and consideration of the information contained in this letter. The Maryland Commission on Civil Rights looks forward to the continued opportunity to work with you to improve and promote civil rights in Maryland.

SB0381-OpposeLeobrTweak.pdf
Uploaded by: Britt, Adiena
Position: UNF

SB0381-Law Enforcement Officers' Bill of Rights – Uniform Disciplinary Procedures

Stance: Oppose

Testimony: My name is Adiena C. Britt and I reside in the 45th Legislative District of Baltimore City. My District also houses the Northeast Police District where a large number of corrupted Law Enforcement Officers cut their teeth and joined BCPD sanctioned GANGS like the GTTF. A recent report was just published that shed light on the fact that 13,391 reports of misconduct were filed by Civilian residents between 2015-2020. I was one of the residents who had to file a complaint. A complaint that went without proper investigation by the Internal Affairs Division. A complaint that went uninvestigated by the State's Attorney's Office run my Marilyn Mosby. A complaint that received absolutely NO follow through from any law enforcement, State's Attorney, nor elected official that "represents" me and my family. My entire family was terrorized by 11 so called "Police Officers" including as many as four of whom held my then 12-year-old son at gunpoint in my basement, handcuffed my husband for hours on my sofa, made me lie face down on the floor of my living room and screamed at me to "Shut the F*ck Up!" when I asked what was going on. This was a home invasion. We committed no crimes. I merely attempted to have drug activity investigated, that they must have been participants in and they were trying to terrorize us into silence.

So, NO! The LEOBR doesn't need any amendments. It doesn't need any adjustments. It doesn't need any tweaking. The LEOBR doesn't need re-writing. It doesn't need anything more than to be FULLY REPEALED!!! So, there is no need to pass this along any further for anymore readers. It doesn't need to be heard and voted on, because this Bill is a Moot Point!

LEOBR is an abuse of Constitutionally provided rights. It goes above and beyond what any normal person should expect as far as protections. It actually provides protections to such a measure as to make Law Enforcement Officers completely above the law to suffer no repercussions whatsoever. There are currently repeat violent offenders on the BCPD RIGHT NOW who have been elevated to SGT and Commanders!!! People who have committed assaults, wrongful arrest, harassment, and even Murder! One of these monsters was in my home that fateful night in 2015. This is because the Commissioner and State's Attorney's Office are handcuffed (no pun intended) and have no recourse because of the protections that the LEOBR provides officers. The SAO uses the LEOBR as a shield to not perform their duties and properly investigate and prosecute dirty cops. Enough is enough! REPEAL! Not replace, Not rewrite, Not amend, Not tweak. REPEAL. Period.

Adiena C. Britt

6014 Old Harford Rd.

Baltimore, MD 21214

BPD SB 381.pdf
Uploaded by: Wirzberger, Michelle
Position: INFO

BALTIMORE POLICE DEPARTMENT

Brandon M. Scott
Mayor

Michael S. Harrison
Police Commissioner

TO: The Honorable Members of the Senate Judicial Proceedings Committee

FROM: Michelle Wirzberger, Esq., Director of Government Affairs, Baltimore Police Dept.

RE: Senate Bill 381 Law Enforcement Officers' Bill of Rights – Uniform Disciplinary Procedures

DATE: January 28, 2021

POSITION: INFORMATION ONLY

Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee, please be advised that the Baltimore Police Department is **only providing information** on Senate Bill 381.

Senate Bill 381 strives to establish consistency in the application of law across all law enforcement agencies by limiting the types of issues that can be negotiated within collective bargaining. To that end, this bill mandates that a collective bargaining agreement may not in any way be inconsistent with the provisions of the Law Enforcement Officer's Bill of Rights (LEOBR) and establishes the following principles by removing certain provisions from the law:

- ✓ A collective bargaining agreement may not include a provision that takes final disciplinary authority away from the Chief or Sheriff; and

- ✓ A collective bargaining agreement may not provide for alternative hearing boards.

The current legislative efforts to amend and/or repeal the LEOBR are borne out of a desire to ensure that law enforcement officers are treated fairly but not any better than average citizens and this bill gets us closer to achieving that goal.

While we do not know what form the LEOBR will take by the end of session or if the law will be completely repealed, we are clear that there needs to be a uniform model for disciplining law enforcement officers that provides for standardized due process. The tenants included in this provision must be incorporated within that process so that the respective heads of Maryland law enforcement agencies have the authority to enact the swift and steady discipline their constituents want and deserve.

Thank you for allowing us to comment on this important piece of legislation. If you should have any questions, feel free to reach me at michelle.wirzberger@baltimorepolice.org or via telephone at 4430915-3155.