
By: Delegate Hutchins

Introduced and read first time: February 19, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers' Bill of Rights - Interrogation of Officers in Probationary**
3 **Status**

4 FOR the purpose of granting a police officer who is serving in a probationary status the
5 same rights as a law enforcement officer during interrogation by a law enforcement
6 agency; and generally relating to the Law Enforcement Officers' Bill of Rights.

7 BY repealing and reenacting, with amendments,
8 Article 27 - Crimes and Punishments
9 Section 727(c)
10 Annotated Code of Maryland
11 (1992 Replacement Volume and 1995 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article 27 - Crimes and Punishments
14 Section 728
15 Annotated Code of Maryland
16 (1992 Replacement Volume and 1995 Supplement)

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

19 **Article 27 - Crimes and Punishments**

20 727.

21 (c) "Law enforcement officer" does not include an officer serving in a
22 probationary status except when THE OFFICER IS SUBJECTED TO INTERROGATION BY
23 A LAW ENFORCEMENT AGENCY UNDER § 728 OF THIS SUBHEADING OR WHEN
24 allegations of brutality in the execution of his or her duties are made involving an officer
25 who is in a probationary status. The provisions of this subtitle do not apply to persons
26 serving at the pleasure of the Police Commissioner of Baltimore City or the appointing
27 authority of a charter county or to a police chief of any incorporated city or town. The
28 term "probationary status" includes only an officer who is in that status upon initial entry
29 into the Department.

1 728.

2 (a) A law enforcement officer has the same rights to engage in political activity as
3 are afforded to any State employee. This right to engage in political activity shall not
4 apply to any law enforcement officer when he is on duty or when he is acting in his official
5 capacity.

6 (b) Whenever a law enforcement officer is under investigation or subjected to
7 interrogation by a law enforcement agency, for any reason which could lead to
8 disciplinary action, demotion or dismissal, the investigation or interrogation shall be
9 conducted under the following conditions:

10 (1) The interrogation shall be conducted at a reasonable hour, preferably at
11 a time when the law enforcement officer is on duty, unless the seriousness of the
12 investigation is of such a degree that an immediate interrogation is required.

13 (2) The interrogation shall take place either at the office of the command of
14 the investigating officer or at the office of the local precinct or police unit in which the
15 incident allegedly occurred, as designated by the investigating officer, unless otherwise
16 waived by the law enforcement officer, or at any other reasonable and appropriate place.

17 (3) The law enforcement officer under investigation shall be informed of the
18 name, rank, and command of the officer in charge of the investigation, the interrogating
19 officer, and all persons present during the interrogation. All questions directed to the
20 officer under interrogation shall be asked by and through one interrogator during any one
21 interrogating session consistent with the provisions of subsection (b)(6) of this section.

22 (4) A complaint against a law enforcement officer, alleging brutality in the
23 execution of his duties, may not be investigated unless the complaint be duly sworn to by
24 the aggrieved person, a member of the aggrieved person's immediate family, or by any
25 person with firsthand knowledge obtained as a result of the presence at and observation
26 of the alleged incident, or by the parent or guardian in the case of a minor child before an
27 official authorized to administer oaths. An investigation which could lead to disciplinary
28 action under this subtitle for brutality may not be initiated and an action may not be
29 taken unless the complaint is filed within 90 days of the alleged brutality.

30 (5) (i) The law enforcement officer under investigation shall be informed
31 in writing of the nature of the investigation prior to any interrogation.

32 (ii) Upon completion of the investigation, the law enforcement officer
33 shall be notified of the name of any witness and all charges and specifications against the
34 officer not less than 10 days prior to any hearing.

35 (iii) In addition, the law enforcement officer under investigation shall
36 be furnished with a copy of the investigatory file and any exculpatory information, but
37 excluding:

- 38 1. The identity of confidential sources;
- 39 2. Any nonexculpatory information; and
- 40 3. Recommendations as to charges, disposition, or punishment.

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1 (iv) The law enforcement officer under investigation shall be furnished
2 with a copy of the investigatory file and the exculpatory information described under
3 subparagraph (iii) of this paragraph not less than 10 days before any hearing if the officer
4 and the officer's representative agree:

5 1. To execute a confidentiality agreement with the law
6 enforcement agency to not disclose any of the material contained in the record for any
7 purpose other than to defend the officer; and

8 2. To pay any reasonable charge for the cost of reproducing the
9 material involved.

10 (6) Interrogating sessions shall be for reasonable periods and shall be timed
11 to allow for any personal necessities and rest periods as are reasonably necessary.

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

14 (ii) This subtitle does not prevent any law enforcement agency from
15 requiring a law enforcement officer under investigation to submit to blood alcohol tests,
16 blood, breath, or urine tests for controlled dangerous substances, polygraph examinations,
17 or interrogations which specifically relate to the subject matter of the investigation. This
18 subtitle does not prevent a law enforcement agency from commencing any action which
19 may lead to a punitive measure as a result of a law enforcement officer's refusal to submit
20 to a blood alcohol test, blood, breath, or urine tests for controlled dangerous substances,
21 polygraph examination, or interrogation, after having been ordered to do so by the law
22 enforcement agency. The results of any blood alcohol test, blood, breath, or urine test for
23 controlled dangerous substances, polygraph examination, or interrogation, as may be
24 required by the law enforcement agency under this subparagraph are not admissible or
25 discoverable in any criminal proceedings against the law enforcement officer when the
26 law enforcement officer has been ordered to submit thereto. The results of a polygraph
27 examination may not be used as evidence in any administrative hearing when the law
28 enforcement officer has been ordered to submit to a polygraph examination by the law
29 enforcement agency unless the agency and the law enforcement officer agree to the
30 admission of the results at the administrative hearing.

31 (8) A complete record, either written, taped, or transcribed, shall be kept of
32 the complete interrogation of a law enforcement officer, including all recess periods.
33 Upon completion of the investigation, and upon request of the law enforcement officer
34 under investigation or his counsel, a copy of the record of his interrogation shall be made
35 available not less than ten days prior to any hearing.

36 (9) If the law enforcement officer under interrogation is under arrest, or is
37 likely to be placed under arrest as a result of the interrogation, he shall be completely
38 informed of all his rights prior to the commencement of the interrogation.

39 (10) At the request of any law enforcement officer under interrogation, the
40 officer shall have the right to be represented by counsel or any other responsible
41 representative of his choice who shall be present and available for consultation at all
42 times during the interrogation, unless waived by the law enforcement officer. The
43 interrogation shall be suspended for a period of time not to exceed ten days until

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1 representation is obtained. However, the chief may, for good cause shown, within that
2 ten-day period, extend that period of time.

3 (11) A statute may not abridge and a law enforcement agency may not adopt
4 any regulation which prohibits the right of a law enforcement officer to bring suit arising
5 out of his duties as a law enforcement officer.

6 (12) (i) A law enforcement agency may not insert any adverse material into
7 any file of the officer, except the file of the internal investigation or the intelligence
8 division, unless the officer has an opportunity to review, sign, receive a copy of, and
9 comment in writing upon the adverse material, unless the officer waives these rights.

10 (ii) A law enforcement officer, upon written request, may have any
11 record of a formal complaint made against him expunged from any file if:

12 1. The law enforcement agency investigating the complaint has
13 exonerated the officer of all charges in the complaint, or determined that the charges
14 were unsustainable or unfounded, or an administrative hearing board acquits, dismisses, or
15 makes a finding of not guilty; and

16 2. 3 years have passed since the findings by the law enforcement
17 agency or administrative hearing board.

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

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

24 (iii) If the chief of a county or municipal law enforcement agency is
25 under investigation, the official who may appoint the chief's successor shall appoint the
26 chief of another law enforcement agency as the officer of the same rank on the hearing
27 board.

28 (iv) If the chief of a State law enforcement agency or the chief of a
29 county or municipal law enforcement agency is under investigation, the official who may
30 appoint the chief's successor, or that official's designee, shall function as chief for the
31 purposes of this subtitle.

32 (14) The law enforcement officer's representative need not be present during
33 the actual administration of a polygraph examination by a certified polygraph examiner, if
34 the questions to be asked are reviewed with the law enforcement officer or his
35 representative prior to the administration of the examination, the representative is
36 allowed to observe the administration of the polygraph examination, and if a copy of the
37 final report of the examination by the certified polygraph operator is made available to
38 the law enforcement officer or his representative within a reasonable time, not to exceed
39 ten days, after the completion of the examination.

40 (c) This subtitle does not limit the authority of the chief to regulate the
41 competent and efficient operation and management of a law enforcement agency by any

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1 reasonable means including but not limited to, transfer and reassignment where that
2 action is not punitive in nature and where the chief determines that action to be in the
3 best interests of the internal management of the law enforcement agency.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1996.