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**By: Senators Stone and Jimeno**

Introduced and read first time: February 2, 1996

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers' Bill of Rights - Hearings**

3 FOR the purpose of making a written statement by a party or witness inadmissible in an  
4 administrative hearing unless the statement is used for the purpose of contradicting  
5 or impeaching the testimony of the person who made the statement or the hearing  
6 board finds that the witness is dead, that the witness is unable to testify because of  
7 age, mental incapacity, or infirmity, or that the party offering the statement has  
8 been unable to procure the attendance of the witness by subpoena; and generally  
9 relating to hearing procedures under the Law Enforcement Officers' Bill of Rights.

10 BY repealing and reenacting, with amendments,  
11 Article 27 - Crimes and Punishments  
12 Section 730  
13 Annotated Code of Maryland  
14 (1992 Replacement Volume and 1995 Supplement)

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

17 **Article 27 - Crimes and Punishments**

18 730.

19 (a) If the investigation or interrogation of a law enforcement officer results in the  
20 recommendation of some action, such as demotion, dismissal, transfer, loss of pay,  
21 reassignment, or similar action which would be considered a punitive measure, then,  
22 except as provided under subsection (c) of this section and except in the case of summary  
23 punishment or emergency suspension as allowed by § 734A of this subtitle and before  
24 taking that action, the law enforcement agency shall give notice to the law enforcement  
25 officer that he is entitled to a hearing on the issues by a hearing board. The notice shall  
26 state the time and place of the hearing and the issues involved. An official record,  
27 including testimony and exhibits, shall be kept of the hearing.

28 (b) (1) Administrative charges may not be brought against a law enforcement  
29 officer unless filed within 1 year after the act that gives rise to the charges comes to the  
30 attention of the appropriate law enforcement agency official.

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1                   (2) The 1-year limitation of paragraph (1) of this subsection does not apply  
2 to charges related to criminal activity or excessive force.

3                   (c) A law enforcement officer is not entitled to a hearing under this section if the  
4 law enforcement officer has been charged and convicted of a felony.

5                   (d) The hearing shall be conducted by a hearing board. Both the law enforcement  
6 agency and the law enforcement officer shall be given ample opportunity to present  
7 evidence and argument with respect to the issues involved. Both may be represented by  
8 counsel.

9                   (e) (1) [Evidence] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
10 SUBSECTION, EVIDENCE which possesses probative value commonly accepted by  
11 reasonable and prudent men in the conduct of their affairs shall be admissible and shall  
12 be given probative effect. The hearing board conducting the hearing shall give effect to  
13 the rules of privilege recognized by law, and shall exclude incompetent, irrelevant,  
14 immaterial, and unduly repetitious evidence. [All] EXCEPT AS PROVIDED IN  
15 PARAGRAPH (2) OF THIS SUBSECTION, records and documents which any party desires  
16 to use shall be offered and made a part of the record. Documentary evidence may be  
17 received in the form of copies or excerpts, or by incorporation by reference.

18                   (2) A WRITTEN STATEMENT THAT IS MADE BY A PARTY OR WITNESS IS  
19 NOT ADMISSIBLE AT A HEARING UNLESS THE STATEMENT IS SWORN AND USED FOR  
20 THE PURPOSE OF CONTRADICTING OR IMPEACHING THE TESTIMONY OF THE  
21 PERSON WHO MADE THE STATEMENT OR THE HEARING BOARD FINDS:

22                   (I) THAT THE WITNESS IS DEAD;

23                   (II) THAT THE WITNESS IS UNABLE TO TESTIFY BECAUSE OF AGE,  
24 MENTAL INCAPACITY OR INFIRMITY; OR

25                   (III) THAT THE PARTY OFFERING THE STATEMENT HAS BEEN  
26 UNABLE TO PROCURE THE ATTENDANCE OF THE WITNESS BY COURT SUBPOENA.

27                   (f) Every party has the right of cross-examination of the witnesses who testify,  
28 and may submit rebuttal evidence.

29                   (g) The hearing board conducting the hearing may take notice of judicially  
30 cognizable facts and, in addition, may take notice of general, technical, or scientific facts  
31 within its specialized knowledge. Parties shall be notified either before or during the  
32 hearing, or by reference in preliminary reports or otherwise, of the material so noticed,  
33 and they shall be afforded an opportunity and reasonable time to contest the facts so  
34 noticed. A hearing board may utilize its experience, technical competence, and  
35 specialized knowledge in the evaluation of the evidence presented.

36                   (h) With respect to the subject of any hearing conducted pursuant to this subtitle,  
37 the chief or the officer designated by the chief shall administer oaths or affirmations and  
38 examine any individual under oath.

39                   (i) Witness fees and mileage, if claimed, shall be allowed the same as for  
40 testimony in a circuit court. Witness fees, mileage, and the actual expenses necessarily

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1 incurred in securing attendance of witnesses and their testimony shall be itemized, and  
2 shall be paid by the law enforcement agency.

3 (j) (1) The chief, or hearing board, as the case may be, shall in connection with  
4 any disciplinary hearing have the power to administer oaths and to issue summonses to  
5 compel the attendance and testimony of witnesses, and the production of books, papers,  
6 records, and documents as may be relevant or necessary. These summonses may be served  
7 in accordance with the Maryland Rules of Procedure pertaining to service of process  
8 issued by a court, without cost. Any party may request the chief or hearing board to issue  
9 a summons or order under the provisions of this subtitle.

10 (2) In case of disobedience or refusal to obey any of these summonses, the  
11 chief, or hearing board, may apply to the circuit court of any county where the summoned  
12 party resides or conducts business, for an order requiring the attendance and testimony of  
13 the witness and the production of books, papers, records, and documents, without cost.  
14 Upon a finding that the attendance and testimony of the witness, or the production of the  
15 books, papers, records, and documents sought is relevant or necessary, the court may  
16 issue an order requiring the attendance, testimony, or production of books, papers,  
17 records and documents without cost, and any failure to obey an order of the court may be  
18 punished by the court as a contempt thereof.

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