
By: **Senator Baker**

Introduced and read first time: February 2, 1998

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers' Bill of Rights - Right to Consult with Counsel**
3 **During Interrogation**

4 FOR the purpose of authorizing a counsel or other responsible representative of a law
5 enforcement officer who is interrogated by a law enforcement agency to request
6 a recess during interrogation for purposes of consulting with the officer, enter an
7 objection to a question posed during interrogation, or state on the record the
8 reason for an objection; and generally relating to the right to counsel for certain
9 law enforcement officers.

10 BY repealing and reenacting, with amendments,
11 Article 27 - Crimes and Punishments
12 Section 728(b)
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1997 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**

18 728.

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

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

26 (2) The interrogation shall take place either at the office of the command
27 of the investigating officer or at the office of the local precinct or police unit in which
28 the incident allegedly occurred, as designated by the investigating officer, unless

1 otherwise waived by the law enforcement officer, or at any other reasonable and
2 appropriate place.

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

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

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

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

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

- 26 1. The identity of confidential sources;
- 27 2. Any nonexculpatory information; and
- 28 3. Recommendations as to charges, disposition, or
29 punishment.

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

- 34 1. To execute a confidentiality agreement with the law
35 enforcement agency to not disclose any of the material contained in the record for any
36 purpose other than to defend the officer; and
- 37 2. To pay any reasonable charge for the cost of reproducing
38 the material involved.

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

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

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

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

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

32 (10) (I) At the request of any law enforcement officer under
33 interrogation, the officer shall have the right to be represented by counsel or any
34 other responsible representative of his choice who shall be present and available for
35 consultation at all times during the interrogation, unless waived by the law
36 enforcement officer.

37 (II) COUNSEL OR ANY OTHER RESPONSIBLE REPRESENTATIVE OF A
38 LAW ENFORCEMENT OFFICER UNDER INTERROGATION AS PROVIDED UNDER
39 SUBPARAGRAPH (I) OF THIS PARAGRAPH, MAY:

40 1. REQUEST A RECESS AT ANY POINT DURING THE
41 INTERROGATION FOR CONSULTATION WITH THE OFFICER;

1 examiner, if the questions to be asked are reviewed with the law enforcement officer
2 or his representative prior to the administration of the examination, the
3 representative is allowed to observe the administration of the polygraph examination,
4 and if a copy of the final report of the examination by the certified polygraph operator
5 is made available to the law enforcement officer or his representative within a
6 reasonable time, not to exceed ten days, after the completion of the examination.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 1998.