
By: **Senator Baker**

Introduced and read first time: February 2, 1998

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 4, 1998

CHAPTER_____

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 outside the presence of the officer; and generally relating
9 to the right to counsel for certain 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:

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

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

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

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

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

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

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

- 32 1. The identity of confidential sources;
- 33 2. Any nonexculpatory information; and
- 34 3. Recommendations as to charges, disposition, or
35 punishment.

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

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

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

6 2. ENTER AN OBJECTION TO ANY QUESTION POSED DURING
7 THE INTERROGATION; AND

8 3. STATE ON THE RECORD THE REASON FOR AN OBJECTION
9 OUTSIDE THE PRESENCE OF THE OFFICER.

10 (III) The interrogation shall be suspended for a period of time not to
11 exceed ten days until representation is obtained. However, the chief may, for good
12 cause shown, within that ten-day period, extend that period of time.

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

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

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

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

27 2. 3 years have passed since the findings by the law
28 enforcement agency or administrative hearing board.

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

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

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

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

5 (14) The law enforcement officer's representative need not be present
6 during the actual administration of a polygraph examination by a certified polygraph
7 examiner, if the questions to be asked are reviewed with the law enforcement officer
8 or his representative prior to the administration of the examination, the
9 representative is allowed to observe the administration of the polygraph examination,
10 and if a copy of the final report of the examination by the certified polygraph operator
11 is made available to the law enforcement officer or his representative within a
12 reasonable time, not to exceed ten days, after the completion of the examination.

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