

HOUSE BILL 640  
EMERGENCY BILL

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E4

2002 Regular Session  
2lr0525

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By: **Prince George's County Delegation**

Introduced and read first time: February 4, 2002

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Prince George's County - Law Enforcement Reform Act of 2002**  
3 **PG 301-02**

4 FOR the purpose of authorizing in Prince George's County the appointment by the  
5 County Executive of a certain member to a hearing board convened to hear a  
6 complaint involving the use of excessive force by a law enforcement officer;  
7 making certain provisions regarding a certain complaint against a law  
8 enforcement officer inapplicable to law enforcement officers in Prince George's  
9 County; allowing the interrogation of a law enforcement officer who is a member  
10 of the Prince George's County Police Department to be suspended for a certain  
11 period under certain circumstances; prohibiting the expungement of a record of  
12 a formal complaint against a law enforcement officer if the law enforcement  
13 officer is a member of the Prince George's County Police Department; making  
14 the provision that prohibits a law enforcement officer from being required to  
15 disclose certain items of personal property inapplicable to law enforcement  
16 officers of the Prince George's County Police Department; authorizing in Prince  
17 George's County a certain panel for certain purposes to issue a subpoena to  
18 compel the attendance and testimony of a witness or production of items;  
19 authorizing a certain court to issue a certain order; authorizing a certain court  
20 to hold a certain person in contempt of court; authorizing the Police Training  
21 Commission to recall a police officer's certificate if the certificate holder is a  
22 member of the Prince George's County Police Department and has been  
23 disqualified from court testimony under certain circumstances; establishing a  
24 statewide ban against present or former law enforcement officers from filing a  
25 petition for expungement of a police record under certain circumstances;  
26 defining a certain term; making this Act an emergency measure; and generally  
27 relating to the Law Enforcement Officers' Bill of Rights.

28 BY repealing and reenacting, without amendments,  
29 Article 27 - Crimes and Punishments  
30 Section 727(a)  
31 Annotated Code of Maryland  
32 (1996 Replacement Volume and 2001 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article 27 - Crimes and Punishments  
3 Section 727(d) and (h), 728(b), and 729  
4 Annotated Code of Maryland  
5 (1996 Replacement Volume and 2001 Supplement)

6 BY adding to  
7 Article 27 - Crimes and Punishments  
8 Section 730(k)  
9 Annotated Code of Maryland  
10 (1996 Replacement Volume and 2001 Supplement)

11 BY repealing and reenacting, without amendments,  
12 Article 41 - Governor - Executive and Administrative Departments  
13 Section 4-201(d)(6)  
14 Annotated Code of Maryland  
15 (1997 Replacement Volume and 2001 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article 41 - Governor - Executive and Administrative Departments  
18 Section 4-201(l)  
19 Annotated Code of Maryland  
20 (1997 Replacement Volume and 2001 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article - Criminal Procedure  
23 Section 10-105  
24 Annotated Code of Maryland  
25 (2001 Volume)

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

28 **Article 27 - Crimes and Punishments**

29 727.

30 (a) As used in this subtitle, the following words have the meanings indicated.

31 (d) "Hearing board" means:

32 (1) [A] EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A  
33 board which is authorized by the chief to hold a hearing on a complaint against a law  
34 enforcement officer and which consists of not less than three members, [except as  
35 provided in paragraphs (2) and (3) of this subsection,] all to be appointed by the chief

1 and selected from law enforcement officers within that agency, or law enforcement  
2 officers of another agency with the approval of the chief of the other agency, and who  
3 have had no part in the investigation or interrogation of the law enforcement officer.  
4 At least one member of the hearing board shall be of the same rank as the law  
5 enforcement officer against whom the complaint has been filed.

6 (2) (i) The provisions of this paragraph may not be the subject of  
7 binding arbitration.

8 (ii) An agency or an agency's superior governmental authority that  
9 has recognized and certified an exclusive collective bargaining representative may  
10 negotiate with the exclusive collective bargaining representative an alternate method  
11 of forming a hearing board.

12 (iii) A law enforcement officer may elect the alternate method of  
13 forming a hearing board instead of the method described in paragraph (1) of this  
14 subsection if the law enforcement officer works within an agency described in  
15 subparagraph (ii) of this paragraph and the law enforcement officer is included in the  
16 collective bargaining unit.

17 (iv) An agency described in subparagraph (ii) of this paragraph  
18 shall notify the law enforcement officer in writing before the formation of the hearing  
19 board that the law enforcement officer may elect an alternate method of forming a  
20 hearing board if one has been negotiated under this paragraph.

21 (v) If the law enforcement officer elects an alternate method of  
22 forming a hearing board under this paragraph, the alternate method shall be used to  
23 form the hearing board.

24 (vi) An agency or an exclusive collective bargaining representative  
25 may not require a law enforcement officer to elect an alternate method of forming a  
26 hearing board under this paragraph.

27 (vii) If the law enforcement officer has been offered summary  
28 punishment, an alternate method of forming a hearing board may not be used.

29 (3) If a law enforcement officer is offered summary punishment imposed  
30 pursuant to § 734A and refuses, the chief may convene a one-member or more  
31 hearing board and the hearing board shall have only the authority to recommend the  
32 sanctions as provided in this subtitle for summary punishment. If a single member  
33 hearing board is convened, that member need not be of the same rank. However, all  
34 other provisions of this subtitle shall apply.

35 (4) IN PRINCE GEORGE'S COUNTY, TO HEAR A COMPLAINT INVOLVING  
36 THE USE OF EXCESSIVE FORCE BY A LAW ENFORCEMENT OFFICER, THE COUNTY  
37 EXECUTIVE MAY APPOINT A MEMBER WHO IS NOT A LAW ENFORCEMENT OFFICER  
38 TO A HEARING BOARD CONVENED UNDER PARAGRAPH (1) OR (2) OF THIS  
39 SUBSECTION.

1 (h) "Interrogating officer", "investigating officer", and all other forms of those  
2 terms mean:

3 (1) Any sworn law enforcement officer; [or]

4 (2) If requested by the Governor, the Attorney General of Maryland or  
5 the Attorney General's designee; OR

6 (3) WITH REGARD TO INVESTIGATIONS OR INTERROGATIONS OF PRINCE  
7 GEORGE'S COUNTY POLICE OFFICERS, THE PRINCE GEORGE'S COUNTY CIVILIAN  
8 COMPLAINT OVERSIGHT PANEL.

9 728.

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

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

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

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

28 (4) (I) THIS PARAGRAPH DOES NOT APPLY TO LAW ENFORCEMENT  
29 OFFICERS OF THE PRINCE GEORGE'S COUNTY POLICE DEPARTMENT.

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

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

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

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

- 9 1. The identity of confidential sources;
- 10 2. Any nonexculpatory information; and
- 11 3. Recommendations as to charges, disposition, or  
12 punishment.

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

- 17 1. To execute a confidentiality agreement with the law  
18 enforcement agency to not disclose any of the material contained in the record for any  
19 purpose other than to defend the officer; and
- 20 2. To pay any reasonable charge for the cost of reproducing  
21 the material involved.

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

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

27 (ii) This subtitle does not prevent any law enforcement agency from  
28 requiring a law enforcement officer under investigation to submit to blood alcohol  
29 tests, blood, breath, or urine tests for controlled dangerous substances, polygraph  
30 examinations, or interrogations which specifically relate to the subject matter of the  
31 investigation. This subtitle does not prevent a law enforcement agency from  
32 commencing any action which may lead to a punitive measure as a result of a law  
33 enforcement officer's refusal to submit to a blood alcohol test, blood, breath, or urine  
34 tests for controlled dangerous substances, polygraph examination, or interrogation,  
35 after having been ordered to do so by the law enforcement agency. The results of any  
36 blood alcohol test, blood, breath, or urine test for controlled dangerous substances,  
37 polygraph examination, or interrogation, as may be required by the law enforcement  
38 agency under this subparagraph are not admissible or discoverable in any criminal  
39 proceedings against the law enforcement officer when the law enforcement officer has

1 been ordered to submit thereto. The results of a polygraph examination may not be  
2 used as evidence in any administrative hearing when the law enforcement officer has  
3 been ordered to submit to a polygraph examination by the law enforcement agency  
4 unless the agency and the law enforcement officer agree to the admission of the  
5 results at the administrative hearing.

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

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

14 (10) (i) At the request of any law enforcement officer under  
15 interrogation, the officer shall have the right to be represented by counsel or any  
16 other responsible representative of his choice who shall be present and available for  
17 consultation at all times during the interrogation, unless waived by the law  
18 enforcement officer.

19 (ii) Counsel or any other responsible representative of a law  
20 enforcement officer under interrogation as provided under subparagraph (i) of this  
21 paragraph, may:

22 1. Request a recess at any point during the interrogation for  
23 consultation with the officer;

24 2. Enter an objection to any question posed during the  
25 interrogation; and

26 3. State on the record the reason for an objection outside the  
27 presence of the officer.

28 (iii) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS  
29 PARAGRAPH, THE interrogation shall be suspended for a period of time not to exceed  
30 ten days until representation is obtained. However, the chief may, for good cause  
31 shown, within that ten-day period, extend that period of time.

32 (IV) THE INTERROGATION OF A LAW ENFORCEMENT OFFICER WHO  
33 IS A MEMBER OF THE PRINCE GEORGE'S COUNTY POLICE DEPARTMENT MAY BE  
34 SUSPENDED ONLY FOR A PERIOD NOT TO EXCEED 3 DAYS IN A CASE INVOLVING:

35 1. THE LAW ENFORCEMENT OFFICER AND A DISCHARGE OF  
36 THE LAW ENFORCEMENT OFFICER'S WEAPON; OR

37 2. THE DEATH OF AN INDIVIDUAL WHILE IN THE CUSTODY  
38 OF THE LAW ENFORCEMENT OFFICER.

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

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

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

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

15 2. 3 years have passed since the findings by the law  
16 enforcement agency or administrative hearing board; AND

17 3. THE OFFICER IS NOT A MEMBER OF THE PRINCE  
18 GEORGE'S COUNTY POLICE DEPARTMENT.

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

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

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

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

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

1 729.

2 (A) THIS SECTION DOES NOT APPLY TO LAW ENFORCEMENT OFFICERS OF  
3 THE PRINCE GEORGE'S COUNTY POLICE DEPARTMENT.

4 (B) A law enforcement officer may not be required or requested to disclose any  
5 item of his property, income, assets, source of income, debts, or personal or domestic  
6 expenditures (including those of any member of his family or household) unless that  
7 information is necessary in investigating a possible conflict of interest with respect to  
8 the performance of his official duties, or unless such disclosure is required by State or  
9 federal law.

10 730.

11 (K) (1) IN PRINCE GEORGE'S COUNTY, TO ASSIST IN MAKING CONCLUSIONS  
12 CONCERNING A COMPLAINT AGAINST A PRINCE GEORGE'S COUNTY POLICE OFFICER,  
13 THE CIVILIAN COMPLAINT OVERSIGHT PANEL MAY ISSUE A SUBPOENA SIGNED BY  
14 THE CHAIR OF THE PANEL TO COMPEL:

15 (I) THE ATTENDANCE AND TESTIMONY OF A WITNESS; OR

16 (II) THE PRODUCTION OF A DOCUMENT OR OTHER ITEM.

17 (2) ON PETITION OF THE CIVILIAN COMPLAINT OVERSIGHT PANEL, A  
18 COURT OF COMPETENT JURISDICTION MAY ISSUE AN ORDER REQUIRING  
19 COMPLIANCE WITH THE SUBPOENA IF THE COURT FINDS THAT THE ATTENDANCE  
20 AND TESTIMONY OF THE PERSON OR THE PRODUCTION OF A DOCUMENT OR OTHER  
21 ITEM IS RELEVANT AND NECESSARY.

22 (3) A COURT OF COMPETENT JURISDICTION MAY HOLD A PERSON WHO  
23 FAILS TO OBEY AN ORDER IN CONTEMPT OF COURT.

24 **Article 41 - Governor - Executive and Administrative Departments**

25 4-201.

26 (d) Subject to the authority of the Secretary of Public Safety and Correctional  
27 Services, the Commission is vested with the following authority, responsibility and  
28 duty:

29 (6) To certify persons as police officers who have:

30 (i) Satisfactorily met the Commission's standards; or

31 (ii) Provided the Commission with sufficient evidence that he or  
32 she has satisfactorily completed a training program in another state of equal quality  
33 and content as required by the Commission;

34 (l) The Commission may recall the certificate, provided for in subsection (d)(6)  
35 of this section, if it is suspended or revoked for any of the following reasons:



- 1 (1) The certificate was issued by administrative error;
- 2 (2) The certificate was obtained through misrepresentation or fraud;
- 3 (3) The holder has been convicted of a felony; [or]
- 4 (4) The holder has been convicted of a misdemeanor for which a sentence  
5 of imprisonment for more than 1 year may be imposed; OR

6 (5) IF A HOLDER IS A MEMBER OF THE PRINCE GEORGE'S COUNTY  
7 POLICE DEPARTMENT, THE HOLDER HAS BEEN DISQUALIFIED FROM COURT  
8 TESTIMONY BECAUSE OF A POLICE ADMINISTRATIVE FINDING THAT THE HOLDER  
9 HAS KNOWINGLY MADE A FALSE STATEMENT IN THE PERFORMANCE OF THE  
10 HOLDER'S DUTIES AS A MEMBER OF THE PRINCE GEORGE'S COUNTY POLICE  
11 DEPARTMENT.

## 12 Article - Criminal Procedure

13 10-105.

14 (A) THIS SECTION DOES NOT APPLY TO A PERSON WHO IS SERVING OR HAS  
15 SERVED AS A LAW ENFORCEMENT OFFICER AS DEFINED IN ARTICLE 27, § 727 OF THE  
16 CODE.

17 [(a)] (B) A person who has been charged with the commission of a crime,  
18 including a violation of the Transportation Article for which a term of imprisonment  
19 may be imposed, may file a petition listing relevant facts for expungement of a police  
20 record, court record, or other record maintained by the State or a political subdivision  
21 of the State if:

- 22 (1) the person is acquitted;
- 23 (2) the charge is otherwise dismissed;
- 24 (3) a probation before judgment is entered, unless the person is charged  
25 with a violation of § 21-902 of the Transportation Article or Article 27, § 388A or §  
26 388B of the Code;
- 27 (4) a nolle prosequi is entered;
- 28 (5) the court indefinitely postpones trial of a criminal charge by marking  
29 the criminal charge "stet" on the docket;
- 30 (6) the case is compromised under Article 27, § 12A-5 of the Code;
- 31 (7) the charge was transferred to the juvenile court under § 4-202 of this  
32 article; or
- 33 (8) the person:

1 (i) is convicted of only one criminal act, and that act is not a crime  
2 of violence; and

3 (ii) is granted a full and unconditional pardon by the Governor.

4 [(b)] (C) (1) Except as provided in paragraphs (2) and (3) of this subsection,  
5 a person shall file a petition in the court in which the proceeding began.

6 (2) If the proceeding began in one court and was transferred to another  
7 court, the person shall file the petition in the court to which the proceeding was  
8 transferred.

9 (3) (i) If the proceeding in a court of original jurisdiction was appealed  
10 to a court exercising appellate jurisdiction, the person shall file the petition in the  
11 appellate court.

12 (ii) The appellate court may remand the matter to the court of  
13 original jurisdiction.

14 [(c)] (D) (1) A petition for expungement based on an acquittal, a nolle  
15 prosequi, or a dismissal may not be filed within 3 years after the disposition, unless  
16 the petitioner files with the petition a written general waiver and release of all the  
17 petitioner's tort claims arising from the charge.

18 (2) A petition for expungement based on a probation before judgment  
19 may not be filed until either:

20 (i) the petitioner has been discharged from probation; or

21 (ii) 3 years have passed since the probation was granted.

22 (3) A petition for expungement based on a full and unconditional pardon  
23 by the Governor may not be filed earlier than 5 years or later than 10 years after the  
24 pardon was signed by the Governor.

25 (4) A petition for expungement based on a stet or a compromise under  
26 Article 27, § 12A-5 of the Code may not be filed within 3 years after the stet or  
27 compromise.

28 (5) A court may grant a petition for expungement at any time on a  
29 showing of good cause.

30 [(d)] (E) (1) The court shall have a copy of a petition for expungement  
31 served on the State's Attorney.

32 (2) Unless the State's Attorney files an objection to the petition for  
33 expungement within 30 days after the petition is served, the court shall pass an order  
34 requiring the expungement of all police records and court records about the charge.

35 [(e)] (F) (1) If the State's Attorney files a timely objection to the petition, the  
36 court shall hold a hearing.

1           (2)     If the court at the hearing finds that the person is entitled to  
2 expungement, the court shall order the expungement of all police records and court  
3 records about the charge.

4           (3)     If the court finds that the person is not entitled to expungement, the  
5 court shall deny the petition.

6           (4)     The person is not entitled to expungement if:

7                   (i)     the petition is based on the entry of probation before judgment,  
8 a nolle prosequi, or a stet, or the grant of a pardon by the Governor; and

9                   (ii)    the person:

10                           1.     since the full and unconditional pardon or entry, has been  
11 convicted of a crime other than a minor traffic violation; or

12                           2.     is a defendant in a pending criminal proceeding.

13   [(f)]   (G)     Unless an order is stayed pending an appeal, within 60 days after  
14 entry of the order, every custodian of the police records and court records that are  
15 subject to the order of expungement shall advise in writing the court and the person  
16 who is seeking expungement of compliance with the order.

17   [(g)]   (H)    (1)     The State's Attorney is a party to the proceeding.

18           (2)     A party aggrieved by the decision of the court is entitled to appellate  
19 review as provided in the Courts Article.

20   SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
21 measure, is necessary for the immediate preservation of the public health or safety,  
22 has been passed by a ye and nay vote supported by three-fifths of all the members  
23 elected to each of the two Houses of the General Assembly, and shall take effect from  
24 the date it is enacted.