

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 1092
Appropriations

(Delegate Vaughn, *et al.*)

Law Enforcement Officers' Bill of Rights Act of 2003

This bill revises several provisions of the Law Enforcement Officers' Bill of Rights, which sets out the rights afforded to officers under investigation. Its main provisions hasten the interrogation of law enforcement officers in cases involving the discharge of a weapon or the death of someone in custody, grant subpoena power to citizens' review boards that have oversight authority for complaints against law enforcement officers, and prohibit the expungement of complaints against law enforcement officers and criminal records of current and former law enforcement officers.

Fiscal Summary

State Effect: These changes are largely procedural in nature and are not expected to significantly impact governmental finances.

Local Effect: Minimal – see above.

Small Business Effect: None.

Analysis

Bill Summary: This bill alters the hearing rights and procedures afforded to law enforcement officers against whom complaints have been made by: (1) authorizing a special investigator or a member of a citizens' review board to act as an investigating or interrogating officer; (2) providing for the appointment by the Governor or a local executive of one member of a hearing board for the purpose of hearing administrative

charges of the use of excessive force by a law enforcement officer; and (3) eliminating certain rights currently afforded to law enforcement officers. Specifically:

- for hearings involving excessive force, one member of a hearing board who is not a law enforcement officer may be appointed by the Governor (for complaints against State law enforcement officer) or the local executive (for complaints against local law enforcement officer);
- an interrogating officer or investigating officer includes –
 - if requested by a local executive (as defined by the bill), a special investigator; and
 - if a local government has a citizens' review board that oversees complaints against law enforcement, then a member of that board;
- the bill repeals current requirements that: (1) complaints alleging brutality be duly sworn to; and (2) complaints that allege brutality and could lead to disciplinary action be filed within 90 days of the alleged brutality;
- if a local government has a citizens' review board that oversees complaints against law enforcement officers, the board is authorized to issue subpoenas to compel attendance of witnesses or production of documents, and such subpoenas may be enforced via the court's contempt powers;
- for cases involving discharge of an officer's weapon or death of an individual while in the officer's custody, an interrogation may be suspended for purposes of obtaining representation for a maximum of three rather than ten days;
- there is no method of expunging a record of a formal complaint (bill repeals specific method under existing law for expunging formal complaints);
- law enforcement officers may not file a petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State via the general procedures relating to expungement of records;
- the officer may be required to disclose information relating to the officer's property, income, assets, source of income, debts, or personal or domestic expenditures (bill repeals existing law that generally prohibits disclosure of this information); and
- the Police Training Commission may recall its certificate – issued to certify certain persons as police officers – if the officer has been disqualified from court testimony because of a police administrative finding that the officer has knowingly made a false statement in the performance of the officer's duties.

Current Law: With respect to the provisions affected by this bill, the following represents current law:

- a hearing board to investigate a complaint against the officer generally must consist of not less than three members, all of whom are to be law enforcement officers authorized by the chief of the law enforcement agency and meeting certain other requirements. However, if the officer being investigated is part of a collective bargaining unit and the officer's agency has negotiated an alternative method of forming a hearing board with its exclusive collective bargaining representative, the officer may select that alternative method to form the hearing board;
- an interrogating officer or investigating officer means any sworn law enforcement officer or, if requested by the Governor, the Attorney General of Maryland, or the Attorney General's designee;
- complaints alleging brutality may not be investigated unless the complaint is duly sworn to by the aggrieved person or other authorized person. An investigation that could lead to disciplinary action may not be initiated, nor can action be taken, unless the complaint is filed within 90 days of the alleged brutality;
- there is no provision authorizing a citizens' review board to issue subpoenas;
- any interrogation of an officer must be suspended for a period of time not to exceed ten days until the officer obtains representation. The chief may extend that ten-day period for good cause;
- an officer may make a written request to have any record of a formal complaint expunged three years after the investigating agency or hearing board has made certain requisite findings;
- there is no specific law that prohibits a law enforcement officer from petitioning for expungement of police, court, or other records under the general provisions relating to expungement in the Maryland Code;
- an officer generally may not be required to disclose information relating to the officer's property, income, assets, source of income, debts, or personal or domestic expenditures; and
- the Police Training Commission may recall its certificate – issued to certify certain persons as police officers – if the officer's certificate has been suspended or revoked because: (1) it was issued by administrative error or obtained through misrepresentation or fraud; or (2) the holder has been convicted of any felony or of a misdemeanor carrying a potential sentence of imprisonment for more than one year.

Background: The Law Enforcement Officers' Bill of Rights was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could

lead to disciplinary action. It extends to officers of the following State and local agencies:

- the Department of State Police;
- the Baltimore City Police Department;
- the Baltimore City School Police Force;
- the Baltimore City Watershed Police Force;
- the police department, bureau, or force of any county;
- the police department, bureau, or force of any incorporated city or town;
- the office of the sheriff of any county;
- the police department, bureau, or force of any bi-county agency;
- the Maryland Transportation Authority Police and the police forces of the Department of Transportation;
- the police force of the Department of Natural Resources;
- the Field Enforcement Division of the Comptroller's Office;
- the Housing Authority of Baltimore City Police Force;
- the Crofton Police Department;
- the police force of the Department of Health and Mental Hygiene;
- the police force of the Department of General Services;
- the police force of the Department of Labor, Licensing, and Regulation;
- the office of the State Fire Marshal;
- the police forces of the University System of Maryland; and
- the police force of Morgan State University.

Additional Information

Prior Introductions: A similar bill, SB 655 of 2002, received an unfavorable report from the Senate Judicial Proceedings Committee. In 2001, three bills – HB 1158, HB 1192, and HB 1234 – made changes similar to the ones in this bill for Prince George's County officers only. HB 1158 eliminated the right to suspend an interrogation of a Prince George's County police officer in cases involving the discharge of a weapon or death of an individual while in the officer's custody. The Judiciary Committee held a hearing on HB 158 but no further action was taken. HB 1192 authorized the Prince George's County Executive to establish a hearing board to hear complaints of excessive force made against law enforcement officers with the Prince George's County Police

Department; HB 1234 authorized the Prince George's County Executive to appoint a special investigator as an interrogating or investigative officer for complaints alleging that a Prince George's County police officer used language to demean the inherent integrity of a person, used excessive force in the performance of duties, or harassed any person. HB 1192 and HB 1234 each received an unfavorable report from the Judiciary Committee.

Cross File: SB 279 (Senator Exum, *et al.*) – Judicial Proceedings.

Information Source(s): Montgomery County, Garrett County, Department of State Police, Department of Legislative Services

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