
By: **Senators Frosh, Garagiola, Green, and Jimeno**

Introduced and read first time: February 1, 2006

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers' Bill of Rights - Hearing Boards - Binding**
3 **Arbitration**

4 FOR the purpose of repealing prohibitions against making certain actions regarding
5 the formation of a law enforcement officers' hearing board and certain decisions
6 by a hearing board the subject of binding arbitration under certain
7 circumstances; and generally relating to hearing boards for complaints against
8 law enforcement officers.

9 BY repealing and reenacting, with amendments,
10 Article - Public Safety
11 Section 3-107 and 3-108
12 Annotated Code of Maryland
13 (2003 Volume and 2005 Supplement)

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

16 **Article - Public Safety**

17 3-107.

18 (a) (1) Except as provided in paragraph (2) of this subsection and § 3-111 of
19 this subtitle, if the investigation or interrogation of a law enforcement officer results
20 in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or
21 similar action that is considered punitive, the law enforcement officer is entitled to a
22 hearing on the issues by a hearing board before the law enforcement agency takes
23 that action.

24 (2) A law enforcement officer who has been convicted of a felony is not
25 entitled to a hearing under this section.

26 (b) (1) The law enforcement agency shall give notice to the law enforcement
27 officer of the right to a hearing by a hearing board under this section.

1 (2) The notice required under this subsection shall state the time and
2 place of the hearing and the issues involved.

3 (c) (1) Except as provided in paragraph (4) of this subsection and in § 3-111
4 of this subtitle, the hearing board authorized under this section shall consist of at
5 least three members who:

6 (i) are appointed by the chief and chosen from law enforcement
7 officers within that law enforcement agency, or from law enforcement officers of
8 another law enforcement agency with the approval of the chief of the other agency;
9 and

10 (ii) have had no part in the investigation or interrogation of the law
11 enforcement officer.

12 (2) At least one member of the hearing board shall be of the same rank
13 as the law enforcement officer against whom the complaint is filed.

14 (3) (i) If the chief is the law enforcement officer under investigation,
15 the chief of another law enforcement agency in the State shall function as the law
16 enforcement officer of the same rank on the hearing board.

17 (ii) If the chief of a State law enforcement agency is under
18 investigation, the Governor shall appoint the chief of another law enforcement agency
19 to function as the law enforcement officer of the same rank on the hearing board.

20 (iii) If the chief of a law enforcement agency of a county or municipal
21 corporation is under investigation, the official authorized to appoint the chief's
22 successor shall appoint the chief of another law enforcement agency to function as the
23 law enforcement officer of the same rank on the hearing board.

24 (iv) If the chief of a State law enforcement agency or the chief of a
25 law enforcement agency of a county or municipal corporation is under investigation,
26 the official authorized to appoint the chief's successor, or that official's designee, shall
27 function as the chief for purposes of this subtitle.

28 (4) (i) A law enforcement agency or the agency's superior
29 governmental authority that has recognized and certified an exclusive collective
30 bargaining representative may negotiate with the representative an alternative
31 method of forming a hearing board.

32 (ii) A law enforcement officer may elect the alternative method of
33 forming a hearing board if:

34 1. the law enforcement officer works in a law enforcement
35 agency described in subparagraph (i) of this paragraph; and

36 2. the law enforcement officer is included in the collective
37 bargaining unit.

1 (iii) The law enforcement agency shall notify the law enforcement
2 officer in writing before a hearing board is formed that the law enforcement officer
3 may elect an alternative method of forming a hearing board if one has been
4 negotiated under this paragraph.

5 (iv) If the law enforcement officer elects the alternative method,
6 that method shall be used to form the hearing board.

7 (v) An agency or exclusive collective bargaining representative may
8 not require a law enforcement officer to elect an alternative method of forming a
9 hearing board.

10 (vi) If the law enforcement officer has been offered summary
11 punishment, an alternative method of forming a hearing board may not be used.

12 (vii) [This] IF AUTHORIZED BY LOCAL LAW, THIS paragraph is [not]
13 subject to binding arbitration.

14 (d) (1) In connection with a disciplinary hearing, the chief or hearing board
15 may issue subpoenas to compel the attendance and testimony of witnesses and the
16 production of books, papers, records, and documents as relevant or necessary.

17 (2) The subpoenas may be served without cost in accordance with the
18 Maryland Rules that relate to service of process issued by a court.

19 (3) Each party may request the chief or hearing board to issue a
20 subpoena or order under this subtitle.

21 (4) In case of disobedience or refusal to obey a subpoena served under
22 this subsection, the chief or hearing board may apply without cost to the circuit court
23 of a county where the subpoenaed party resides or conducts business, for an order to
24 compel the attendance and testimony of the witness or the production of the books,
25 papers, records, and documents.

26 (5) On a finding that the attendance and testimony of the witness or the
27 production of the books, papers, records, and documents is relevant or necessary:

28 (i) the court may issue without cost an order that requires the
29 attendance and testimony of witnesses or the production of books, papers, records,
30 and documents; and

31 (ii) failure to obey the order may be punished by the court as
32 contempt.

33 (e) (1) The hearing shall be conducted by a hearing board.

34 (2) The hearing board shall give the law enforcement agency and law
35 enforcement officer ample opportunity to present evidence and argument about the
36 issues involved.

1 (3) The law enforcement agency and law enforcement officer may be
2 represented by counsel.

3 (4) Each party has the right to cross-examine witnesses who testify and
4 each party may submit rebuttal evidence.

5 (f) (1) Evidence with probative value that is commonly accepted by
6 reasonable and prudent individuals in the conduct of their affairs is admissible and
7 shall be given probative effect.

8 (2) The hearing board shall give effect to the rules of privilege recognized
9 by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious
10 evidence.

11 (3) Each record or document that a party desires to use shall be offered
12 and made a part of the record.

13 (4) Documentary evidence may be received in the form of copies or
14 excerpts, or by incorporation by reference.

15 (g) (1) The hearing board may take notice of:

16 (i) judicially cognizable facts; and

17 (ii) general, technical, or scientific facts within its specialized
18 knowledge.

19 (2) The hearing board shall:

20 (i) notify each party of the facts so noticed either before or during
21 the hearing, or by reference in preliminary reports or otherwise; and

22 (ii) give each party an opportunity and reasonable time to contest
23 the facts so noticed.

24 (3) The hearing board may utilize its experience, technical competence,
25 and specialized knowledge in the evaluation of the evidence presented.

26 (h) (1) With respect to the subject of a hearing conducted under this subtitle,
27 the chief shall administer oaths or affirmations and examine individuals under oath.

28 (2) In connection with a disciplinary hearing, the chief or a hearing
29 board may administer oaths.

30 (i) (1) Witness fees and mileage, if claimed, shall be allowed the same as for
31 testimony in a circuit court.

32 (2) Witness fees, mileage, and the actual expenses necessarily incurred
33 in securing the attendance of witnesses and their testimony shall be itemized and
34 paid by the law enforcement agency.

1 (j) An official record, including testimony and exhibits, shall be kept of the
2 hearing.

3 3-108.

4 (a) (1) A decision, order, or action taken as a result of a hearing under §
5 3-107 of this subtitle shall be in writing and accompanied by findings of fact.

6 (2) The findings of fact shall consist of a concise statement on each issue
7 in the case.

8 (3) A finding of not guilty terminates the action.

9 (4) If the hearing board makes a finding of guilt, the hearing board shall:

10 (i) reconvene the hearing;

11 (ii) receive evidence; and

12 (iii) consider the law enforcement officer's past job performance and
13 other relevant information as factors before making recommendations to the chief.

14 (5) A copy of the decision or order, findings of fact, conclusions, and
15 written recommendations for action shall be delivered or mailed promptly to:

16 (i) the law enforcement officer or the law enforcement officer's
17 counsel or representative of record; and

18 (ii) the chief.

19 (b) (1) After a disciplinary hearing and a finding of guilt, the hearing board
20 may recommend the penalty it considers appropriate under the circumstances,
21 including demotion, dismissal, transfer, loss of pay, reassignment, or other similar
22 action that is considered punitive.

23 (2) The recommendation of a penalty shall be in writing.

24 (c) (1) Notwithstanding any other provision of this subtitle, the decision of
25 the hearing board as to findings of fact and any penalty is final if:

26 (i) a chief is an eyewitness to the incident under investigation; or

27 (ii) a law enforcement agency or the agency's superior
28 governmental authority has agreed with an exclusive collective bargaining
29 representative recognized or certified under applicable law that the decision is final.

30 (2) The decision of the hearing board then may be appealed in
31 accordance with § 3-109 of this subtitle.

32 (3) [Paragraph] IF AUTHORIZED BY LOCAL LAW, PARAGRAPH (1)(ii) of
33 this subsection is [not] subject to binding arbitration.

1 (d) (1) Within 30 days after receipt of the recommendations of the hearing
2 board, the chief shall:

3 (i) review the findings, conclusions, and recommendations of the
4 hearing board; and

5 (ii) issue a final order.

6 (2) The final order and decision of the chief is binding and then may be
7 appealed in accordance with § 3-109 of this subtitle.

8 (3) The recommendation of a penalty by the hearing board is not binding
9 on the chief.

10 (4) The chief shall consider the law enforcement officer's past job
11 performance as a factor before imposing a penalty.

12 (5) The chief may increase the recommended penalty of the hearing
13 board only if the chief personally:

14 (i) reviews the entire record of the proceedings of the hearing
15 board;

16 (ii) meets with the law enforcement officer and allows the law
17 enforcement officer to be heard on the record;

18 (iii) discloses and provides in writing to the law enforcement officer,
19 at least 10 days before the meeting, any oral or written communication not included
20 in the record of the hearing board on which the decision to consider increasing the
21 penalty is wholly or partly based; and

22 (iv) states on the record the substantial evidence relied on to
23 support the increase of the recommended penalty.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2006.