

# HOUSE BILL 1245

E4

8lr2168

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By: **Cecil County Delegation**

Introduced and read first time: February 8, 2008

Assigned to: Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Cecil County – Correctional Officers’ Bill of Rights Act**

3 FOR the purpose of providing for certain rights of a correctional officer in Cecil County  
4 relating to employment, investigation, and discipline under certain  
5 circumstances; providing for the procedures for the investigation or  
6 interrogation of a correctional officer; establishing procedures for an application  
7 for a show cause order under certain circumstances; establishing a certain  
8 limitation on administrative charges against a correctional officer in Cecil  
9 County; providing for procedures for a hearing board for an investigation  
10 against a correctional officer in Cecil County; providing for expungement of a  
11 record of a formal complaint against a correctional officer in Cecil County under  
12 certain circumstances; providing for certain disciplinary actions against a  
13 correctional officer in Cecil County under certain circumstances; providing that  
14 this Act supersedes inconsistent provisions of any other State or local law that  
15 conflicts with this Act to the extent of the conflict; providing for the effect of this  
16 Act in relation to the duties of a managing official; prohibiting certain false  
17 statements; establishing a criminal penalty for providing a false statement to  
18 certain persons; providing for the scope of this Act; defining certain terms; and  
19 generally relating to rights of a correctional officer in Cecil County.

20 BY adding to

21 Article – Correctional Services

22 Section 11–1001 through 11–1014 to be under the new subtitle “Subtitle 10.  
23 Correctional Officers’ Bill of Rights”

24 Annotated Code of Maryland

25 (1999 Volume and 2007 Supplement)

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

28 **Article – Correctional Services**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   **SUBTITLE 10. CORRECTIONAL OFFICERS' BILL OF RIGHTS.**

2   **11-1001.**

3           (A)   **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
4 **INDICATED.**

5           (B)   **"CORRECTIONAL OFFICER" HAS THE MEANING STATED IN § 8-201**  
6 **OF THIS ARTICLE.**

7           (C)   (1)   **"HEARING" MEANS A PROCEEDING DURING AN**  
8 **INVESTIGATION CONDUCTED BY A HEARING BOARD TO TAKE TESTIMONY OR**  
9 **RECEIVE OTHER EVIDENCE.**

10           (2)   **"HEARING" DOES NOT INCLUDE AN INTERROGATION AT**  
11 **WHICH NO TESTIMONY IS TAKEN UNDER OATH.**

12           (D)   **"HEARING BOARD" MEANS A BOARD THAT IS AUTHORIZED BY THE**  
13 **MANAGING OFFICIAL TO HOLD A HEARING ON A COMPLAINT AGAINST A**  
14 **CORRECTIONAL OFFICER.**

15           (E)   **"INTERNAL INVESTIGATION UNIT" MEANS THE INTERNAL**  
16 **INVESTIGATION UNIT OF A CORRECTIONAL FACILITY CHARGED WITH THE**  
17 **INVESTIGATION OF COMPLAINTS WITHIN A CORRECTIONAL FACILITY.**

18   **11-1002.**

19           **THIS SUBTITLE APPLIES ONLY IN CECIL COUNTY.**

20   **11-1003.**

21           (A)   **EXCEPT AS OTHERWISE PROVIDED, THE PROVISIONS OF THIS**  
22 **SUBTITLE SUPERSEDE ANY INCONSISTENT PROVISIONS OF ANY OTHER STATE**  
23 **OR LOCAL LAW THAT CONFLICTS WITH THIS SUBTITLE TO THE EXTENT OF THE**  
24 **CONFLICT.**

25           (B)   **THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF THE**  
26 **MANAGING OFFICIAL TO REGULATE THE COMPETENT AND EFFICIENT**  
27 **OPERATION AND MANAGEMENT OF A COUNTY CORRECTIONAL FACILITY BY ANY**  
28 **REASONABLE MEANS INCLUDING TRANSFER AND REASSIGNMENT IF:**

29           (1)   **THAT ACTION IS NOT PUNITIVE IN NATURE; AND**

1           (2) THE MANAGING OFFICIAL DETERMINES THAT ACTION TO BE  
2 IN THE BEST INTERESTS OF THE INTERNAL MANAGEMENT OF THE  
3 CORRECTIONAL FACILITY.

4 **11-1004.**

5           (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
6 SUBSECTION, A CORRECTIONAL OFFICER HAS THE SAME RIGHTS TO ENGAGE IN  
7 POLITICAL ACTIVITY AS A STATE EMPLOYEE.

8           (2) THE RIGHT OF A CORRECTIONAL OFFICER TO ENGAGE IN  
9 POLITICAL ACTIVITY DOES NOT APPLY WHEN THE CORRECTIONAL OFFICER IS  
10 ON DUTY OR ACTING IN AN OFFICIAL CAPACITY.

11           (B) A MANAGING OFFICIAL:

12           (1) MAY NOT PROHIBIT SECONDARY EMPLOYMENT BY A  
13 CORRECTIONAL OFFICER; BUT

14           (2) MAY ADOPT REASONABLE REGULATIONS THAT RELATE TO  
15 SECONDARY EMPLOYMENT BY A CORRECTIONAL OFFICER.

16           (C) A CORRECTIONAL OFFICER MAY NOT BE REQUIRED OR REQUESTED  
17 TO DISCLOSE AN ITEM OF THE CORRECTIONAL OFFICER'S PROPERTY, INCOME,  
18 ASSETS, SOURCE OF INCOME, DEBTS, OR PERSONAL OR DOMESTIC  
19 EXPENDITURES, INCLUDING THOSE OF A MEMBER OF THE CORRECTIONAL  
20 OFFICER'S FAMILY OR HOUSEHOLD, UNLESS:

21           (1) THE INFORMATION IS NECESSARY TO INVESTIGATE A  
22 POSSIBLE CONFLICT OF INTEREST WITH RESPECT TO THE PERFORMANCE OF  
23 THE CORRECTIONAL OFFICER'S OFFICIAL DUTIES; OR

24           (2) THE DISCLOSURE IS REQUIRED BY FEDERAL OR STATE LAW.

25           (D) A CORRECTIONAL OFFICER MAY NOT BE DISCHARGED,  
26 DISCIPLINED, DEMOTED, OR DENIED PROMOTION, TRANSFER, OR  
27 REASSIGNMENT, OR OTHERWISE DISCRIMINATED AGAINST IN REGARD TO THE  
28 CORRECTIONAL OFFICER'S EMPLOYMENT OR BE THREATENED WITH THAT  
29 TREATMENT BECAUSE THE CORRECTIONAL OFFICER:

30           (1) HAS EXERCISED OR DEMANDED THE RIGHTS GRANTED BY  
31 THIS SUBTITLE; OR

32           (2) HAS LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

1           **(E) A STATUTE MAY NOT ABRIDGE AND A CORRECTIONAL FACILITY MAY**  
2 **NOT ADOPT A REGULATION THAT PROHIBITS THE RIGHT OF A CORRECTIONAL**  
3 **OFFICER TO BRING SUIT THAT ARISES OUT OF THE CORRECTIONAL OFFICER'S**  
4 **DUTIES AS A CORRECTIONAL OFFICER.**

5           **(F) A CORRECTIONAL OFFICER MAY WAIVE IN WRITING ANY OR ALL**  
6 **RIGHTS GRANTED BY THIS SUBTITLE.**

7 **11-1005.**

8           **(A) THE INVESTIGATION OR INTERROGATION BY AN INTERNAL**  
9 **INVESTIGATION UNIT OF A CORRECTIONAL OFFICER FOR A REASON THAT MAY**  
10 **LEAD TO DISCIPLINARY ACTION, DEMOTION, OR DISMISSAL SHALL BE**  
11 **CONDUCTED IN ACCORDANCE WITH THIS SECTION.**

12           **(B) FOR PURPOSES OF THIS SECTION, THE INVESTIGATING OFFICER OR**  
13 **INTERROGATING OFFICER SHALL BE A SWORN LAW ENFORCEMENT OR**  
14 **CORRECTIONAL OFFICIAL OR AN INDIVIDUAL WITH FORMER LAW**  
15 **ENFORCEMENT OR CORRECTIONS EXPERIENCE.**

16           **(C) (1) A COMPLAINT AGAINST A CORRECTIONAL OFFICER THAT**  
17 **ALLEGES BRUTALITY IN THE EXECUTION OF THE CORRECTIONAL OFFICER'S**  
18 **DUTIES MAY NOT BE INVESTIGATED UNLESS THE COMPLAINT IS SWORN TO,**  
19 **BEFORE AN OFFICIAL AUTHORIZED TO ADMINISTER OATHS, BY:**

20                   **(I) THE AGGRIEVED INDIVIDUAL;**

21                   **(II) A MEMBER OF THE AGGRIEVED INDIVIDUAL'S**  
22 **IMMEDIATE FAMILY;**

23                   **(III) AN INDIVIDUAL WITH FIRSTHAND KNOWLEDGE**  
24 **OBTAINED BECAUSE THE INDIVIDUAL WAS PRESENT AT AND OBSERVED THE**  
25 **ALLEGED INCIDENT; OR**

26                   **(IV) THE PARENT OR GUARDIAN OF THE MINOR CHILD, IF**  
27 **THE ALLEGED INCIDENT INVOLVES A MINOR CHILD.**

28           **(2) UNLESS A COMPLAINT IS FILED WITHIN 90 DAYS AFTER THE**  
29 **ALLEGED BRUTALITY, AN INVESTIGATION THAT MAY LEAD TO DISCIPLINARY**  
30 **ACTION UNDER THIS SUBTITLE FOR BRUTALITY MAY NOT BE INITIATED.**

31           **(D) (1) THE CORRECTIONAL OFFICER UNDER INVESTIGATION SHALL**  
32 **BE INFORMED OF THE NAME, RANK, AND COMMAND OF:**



1                   **(II) ALLOW FOR PERSONAL NECESSITIES AND REST**  
2 **PERIODS AS REASONABLY NECESSARY.**

3           **(I) THE CORRECTIONAL OFFICER UNDER INTERROGATION MAY NOT BE**  
4 **THREATENED WITH TRANSFER, DISMISSAL, OR DISCIPLINARY ACTION.**

5           **(J) (1) (I) ON REQUEST, THE CORRECTIONAL OFFICER UNDER**  
6 **INTERROGATION HAS THE RIGHT TO BE REPRESENTED BY COUNSEL OR**  
7 **ANOTHER RESPONSIBLE REPRESENTATIVE OF THE CORRECTIONAL OFFICER'S**  
8 **CHOICE WHO SHALL BE PRESENT AND AVAILABLE FOR CONSULTATION AT ALL**  
9 **TIMES DURING THE INTERROGATION.**

10                   **(II) THE CORRECTIONAL OFFICER MAY WAIVE THE RIGHT**  
11 **DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

12           **(2) (I) THE INTERROGATION SHALL BE SUSPENDED FOR A**  
13 **PERIOD NOT EXCEEDING 10 DAYS UNTIL REPRESENTATION IS OBTAINED.**

14                   **(II) WITHIN THE 10-DAY PERIOD DESCRIBED IN**  
15 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE MANAGING OFFICIAL, FOR GOOD**  
16 **CAUSE SHOWN, MAY EXTEND THE PERIOD FOR OBTAINING REPRESENTATION.**

17           **(3) DURING THE INTERROGATION, THE CORRECTIONAL**  
18 **OFFICER'S COUNSEL OR REPRESENTATIVE MAY:**

19                   **(I) REQUEST A RECESS AT ANY TIME TO CONSULT WITH THE**  
20 **CORRECTIONAL OFFICER;**

21                   **(II) OBJECT TO ANY QUESTION POSED; AND**

22                   **(III) STATE ON THE RECORD OUTSIDE THE PRESENCE OF**  
23 **THE CORRECTIONAL OFFICER THE REASON FOR THE OBJECTION.**

24           **(K) (1) A COMPLETE RECORD SHALL BE KEPT OF THE ENTIRE**  
25 **INTERROGATION, INCLUDING ALL RECESS PERIODS, OF THE CORRECTIONAL**  
26 **OFFICER.**

27           **(2) THE RECORD MAY BE WRITTEN, TAPED, OR TRANSCRIBED.**

28           **(3) ON COMPLETION OF THE INVESTIGATION, AND ON REQUEST**  
29 **OF THE CORRECTIONAL OFFICER UNDER INVESTIGATION OR THE**  
30 **CORRECTIONAL OFFICER'S COUNSEL OR REPRESENTATIVE, A COPY OF THE**

1 RECORD OF THE INTERROGATION SHALL BE MADE AVAILABLE AT LEAST 10  
2 DAYS BEFORE A HEARING.

3 (L) (1) THE INTERNAL INVESTIGATION UNIT MAY ORDER THE  
4 CORRECTIONAL OFFICER UNDER INVESTIGATION TO SUBMIT TO BLOOD  
5 ALCOHOL TESTS, BLOOD, BREATH, OR URINE TESTS FOR CONTROLLED  
6 DANGEROUS SUBSTANCES, POLYGRAPH EXAMINATIONS, OR INTERROGATIONS  
7 THAT SPECIFICALLY RELATE TO THE SUBJECT MATTER OF THE INVESTIGATION.

8 (2) IF THE INTERNAL INVESTIGATION UNIT ORDERS THE  
9 CORRECTIONAL OFFICER TO SUBMIT TO A TEST, EXAMINATION, OR  
10 INTERROGATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION AND THE  
11 CORRECTIONAL OFFICER REFUSES TO DO SO, THE INTERNAL INVESTIGATION  
12 UNIT MAY COMMENCE AN ACTION THAT MAY LEAD TO A PUNITIVE MEASURE AS A  
13 RESULT OF THE REFUSAL.

14 (3) IF THE INTERNAL INVESTIGATION UNIT ORDERS THE  
15 CORRECTIONAL OFFICER TO SUBMIT TO A TEST, EXAMINATION, OR  
16 INTERROGATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE  
17 RESULTS OF THE TEST, EXAMINATION, OR INTERROGATION ARE NOT  
18 ADMISSIBLE OR DISCOVERABLE IN A CRIMINAL PROCEEDING AGAINST THE  
19 CORRECTIONAL OFFICER.

20 (M) (1) IF THE INTERNAL INVESTIGATION UNIT ORDERS THE  
21 CORRECTIONAL OFFICER TO SUBMIT TO A POLYGRAPH EXAMINATION, THE  
22 RESULTS OF THE POLYGRAPH EXAMINATION MAY NOT BE USED AS EVIDENCE IN  
23 AN ADMINISTRATIVE HEARING UNLESS THE INTERNAL INVESTIGATION UNIT  
24 AND THE CORRECTIONAL OFFICER AGREE TO THE ADMISSION OF THE RESULTS.

25 (2) THE CORRECTIONAL OFFICER'S COUNSEL OR  
26 REPRESENTATIVE NEED NOT BE PRESENT DURING THE ACTUAL  
27 ADMINISTRATION OF A POLYGRAPH EXAMINATION BY A CERTIFIED  
28 POLYGRAPHER IF:

29 (I) THE QUESTIONS TO BE ASKED ARE REVIEWED WITH THE  
30 CORRECTIONAL OFFICER OR THE COUNSEL OR REPRESENTATIVE BEFORE THE  
31 ADMINISTRATION OF THE EXAMINATION;

32 (II) THE COUNSEL OR REPRESENTATIVE IS ALLOWED TO  
33 OBSERVE THE ADMINISTRATION OF THE EXAMINATION; AND

34 (III) A COPY OF THE FINAL REPORT OF THE EXAMINATION BY  
35 THE CERTIFIED POLYGRAPHER IS MADE AVAILABLE TO THE CORRECTIONAL

1 OFFICER OR THE COUNSEL OR REPRESENTATIVE WITHIN A REASONABLE TIME,  
2 NOT EXCEEDING 10 DAYS, AFTER COMPLETION OF THE EXAMINATION.

3 (N) (1) ON COMPLETION OF AN INVESTIGATION AND AT LEAST 10  
4 DAYS BEFORE A HEARING, THE CORRECTIONAL OFFICER UNDER  
5 INVESTIGATION SHALL BE:

6 (I) NOTIFIED OF THE NAME OF EACH WITNESS AND OF  
7 EACH CHARGE AND SPECIFICATION AGAINST THE CORRECTIONAL OFFICER; AND

8 (II) PROVIDED WITH A COPY OF THE INVESTIGATORY FILE  
9 AND ANY EXCULPATORY INFORMATION, IF THE CORRECTIONAL OFFICER AND  
10 THE CORRECTIONAL OFFICER'S REPRESENTATIVE AGREE TO:

11 1. EXECUTE A CONFIDENTIALITY AGREEMENT WITH  
12 THE INTERNAL INVESTIGATION UNIT NOT TO DISCLOSE ANY MATERIAL  
13 CONTAINED IN THE INVESTIGATORY FILE AND EXCULPATORY INFORMATION  
14 FOR ANY PURPOSE OTHER THAN TO DEFEND THE CORRECTIONAL OFFICER; AND

15 2. PAY A REASONABLE CHARGE FOR THE COST OF  
16 REPRODUCING THE MATERIAL.

17 (2) THE INTERNAL INVESTIGATION UNIT MAY EXCLUDE FROM  
18 THE EXCULPATORY INFORMATION PROVIDED TO A CORRECTIONAL OFFICER  
19 UNDER THIS SUBSECTION:

20 (I) THE IDENTITY OF CONFIDENTIAL SOURCES;

21 (II) NONEXCULPATORY INFORMATION; AND

22 (III) RECOMMENDATIONS AS TO CHARGES, DISPOSITION, OR  
23 PUNISHMENT.

24 (O) (1) THE INTERNAL INVESTIGATION UNIT MAY NOT INSERT  
25 ADVERSE MATERIAL INTO A FILE OF THE CORRECTIONAL OFFICER, EXCEPT THE  
26 FILE OF THE INTERNAL INVESTIGATION, UNLESS THE CORRECTIONAL OFFICER  
27 HAS AN OPPORTUNITY TO REVIEW, SIGN, RECEIVE A COPY OF, AND COMMENT IN  
28 WRITING ON THE ADVERSE MATERIAL.

29 (2) THE CORRECTIONAL OFFICER MAY WAIVE THE RIGHT  
30 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

31 11-1006.



1           (A) A CORRECTIONAL OFFICER WHO IS DENIED A RIGHT GRANTED BY  
2 THIS SUBTITLE MAY APPLY TO THE CIRCUIT COURT OF THE COUNTY WHERE THE  
3 CORRECTIONAL OFFICER IS REGULARLY EMPLOYED FOR AN ORDER THAT  
4 DIRECTS THE INTERNAL INVESTIGATION UNIT TO SHOW CAUSE WHY THE RIGHT  
5 SHOULD NOT BE GRANTED.

6           (B) THE CORRECTIONAL OFFICER MAY APPLY FOR THE SHOW CAUSE  
7 ORDER:

8                   (1) EITHER INDIVIDUALLY OR THROUGH THE CORRECTIONAL  
9 OFFICER'S CERTIFIED OR RECOGNIZED EMPLOYEE ORGANIZATION; AND

10                   (2) AT ANY TIME PRIOR TO THE BEGINNING OF A HEARING BY THE  
11 HEARING BOARD.

12 **11-1007.**

13           (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, AN INTERNAL  
14 INVESTIGATION UNIT MAY NOT BRING ADMINISTRATIVE CHARGES AGAINST A  
15 CORRECTIONAL OFFICER UNLESS THE UNIT FILES THE CHARGES WITHIN 1 YEAR  
16 AFTER THE ACT THAT GIVES RISE TO THE CHARGES COMES TO THE ATTENTION  
17 OF THE MANAGING OFFICIAL.

18           (B) THE 1-YEAR LIMITATION OF SUBSECTION (A) OF THIS SECTION  
19 DOES NOT APPLY TO CHARGES THAT RELATE TO CRIMINAL ACTIVITY OR  
20 EXCESSIVE FORCE.

21 **11-1008.**

22           (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
23 SUBSECTION AND § 11-1012 OF THIS SUBTITLE, IF THE INVESTIGATION OR  
24 INTERROGATION OF A CORRECTIONAL OFFICER RESULTS IN A  
25 RECOMMENDATION OF DEMOTION, DISMISSAL, TRANSFER, LOSS OF PAY,  
26 REASSIGNMENT, OR SIMILAR ACTION THAT IS CONSIDERED PUNITIVE, THE  
27 CORRECTIONAL OFFICER IS ENTITLED TO A HEARING ON THE ISSUES BY A  
28 HEARING BOARD BEFORE THE MANAGING OFFICIAL TAKES THAT ACTION.

29                   (2) A CORRECTIONAL OFFICER WHO HAS BEEN CONVICTED OF A  
30 FELONY IS NOT ENTITLED TO A HEARING UNDER THIS SECTION.

31           (B) (1) THE INTERNAL INVESTIGATION UNIT SHALL GIVE NOTICE TO  
32 THE CORRECTIONAL OFFICER OF THE RIGHT TO A HEARING BY A HEARING  
33 BOARD UNDER THIS SECTION.

1           **(2) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL**  
2 **STATE THE TIME AND PLACE OF THE HEARING AND THE ISSUES INVOLVED.**

3           **(c) (1) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**  
4 **SUBSECTION AND IN § 11-1012 OF THIS SUBTITLE, THE HEARING BOARD**  
5 **AUTHORIZED UNDER THIS SECTION SHALL CONSIST OF AT LEAST THREE**  
6 **MEMBERS WHO:**

7                   **(I) ARE APPOINTED BY THE MANAGING OFFICIAL AND**  
8 **CHOSEN FROM CORRECTIONAL OFFICERS WITHIN THAT CORRECTIONAL**  
9 **FACILITY, OR FROM CORRECTIONAL OFFICERS OF ANOTHER CORRECTIONAL**  
10 **FACILITY WITH THE APPROVAL OF THE MANAGING OFFICIAL OF THE OTHER**  
11 **FACILITY; AND**

12                   **(II) HAVE HAD NO PART IN THE INVESTIGATION OR**  
13 **INTERROGATION OF THE CORRECTIONAL OFFICER.**

14           **(2) AT LEAST ONE MEMBER OF THE HEARING BOARD SHALL BE**  
15 **OF THE SAME RANK AS THE CORRECTIONAL OFFICER AGAINST WHOM THE**  
16 **COMPLAINT IS FILED.**

17           **(3) (I) IF THE MANAGING OFFICIAL IS THE CORRECTIONAL**  
18 **OFFICER UNDER INVESTIGATION, THE MANAGING OFFICIAL OF ANOTHER**  
19 **CORRECTIONAL FACILITY IN THE STATE SHALL FUNCTION AS THE**  
20 **CORRECTIONAL OFFICER OF THE SAME RANK ON THE HEARING BOARD.**

21                   **(II) IF THE MANAGING OFFICIAL OF A CORRECTIONAL**  
22 **FACILITY OF A COUNTY OR MUNICIPAL CORPORATION IS UNDER**  
23 **INVESTIGATION, THE OFFICIAL AUTHORIZED TO APPOINT THE MANAGING**  
24 **OFFICIAL'S SUCCESSOR SHALL SELECT THE MANAGING OFFICIAL OF ANOTHER**  
25 **CORRECTIONAL FACILITY TO FUNCTION AS THE CORRECTIONAL OFFICER OF**  
26 **THE SAME RANK ON THE HEARING BOARD.**

27           **(4) (I) A CORRECTIONAL FACILITY OR THE FACILITY'S**  
28 **SUPERIOR GOVERNMENTAL AUTHORITY THAT HAS RECOGNIZED AND CERTIFIED**  
29 **AN EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE MAY NEGOTIATE**  
30 **WITH THE REPRESENTATIVE AN ALTERNATIVE METHOD OF FORMING A**  
31 **HEARING BOARD.**

32                   **(II) A CORRECTIONAL OFFICER MAY ELECT THE**  
33 **ALTERNATIVE METHOD OF FORMING A HEARING BOARD IF:**

1                   **1. THE CORRECTIONAL OFFICER WORKS IN A**  
2 **CORRECTIONAL FACILITY DESCRIBED IN SUBPARAGRAPH (I) OF THIS**  
3 **PARAGRAPH; AND**

4                   **2. THE CORRECTIONAL OFFICER IS INCLUDED IN**  
5 **THE COLLECTIVE BARGAINING UNIT.**

6                   **(III) THE INTERNAL INVESTIGATION UNIT SHALL NOTIFY**  
7 **THE CORRECTIONAL OFFICER IN WRITING BEFORE A HEARING BOARD IS**  
8 **FORMED THAT THE CORRECTIONAL OFFICER MAY ELECT AN ALTERNATIVE**  
9 **METHOD OF FORMING A HEARING BOARD IF ONE HAS BEEN NEGOTIATED UNDER**  
10 **THIS PARAGRAPH.**

11                   **(IV) IF THE CORRECTIONAL OFFICER ELECTS THE**  
12 **ALTERNATIVE METHOD, THAT METHOD SHALL BE USED TO FORM THE HEARING**  
13 **BOARD.**

14                   **(V) A CORRECTIONAL FACILITY OR EXCLUSIVE COLLECTIVE**  
15 **BARGAINING REPRESENTATIVE MAY NOT REQUIRE A CORRECTIONAL OFFICER**  
16 **TO ELECT AN ALTERNATIVE METHOD OF FORMING A HEARING BOARD.**

17                   **(VI) IF THE CORRECTIONAL OFFICER HAS BEEN OFFERED**  
18 **SUMMARY PUNISHMENT, AN ALTERNATIVE METHOD OF FORMING A HEARING**  
19 **BOARD MAY NOT BE USED.**

20                   **(VII) THIS PARAGRAPH IS NOT SUBJECT TO BINDING**  
21 **ARBITRATION.**

22                   **(D) (1) IN CONNECTION WITH A DISCIPLINARY HEARING, THE**  
23 **MANAGING OFFICIAL OR HEARING BOARD MAY ISSUE SUBPOENAS TO COMPEL**  
24 **THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF**  
25 **BOOKS, PAPERS, RECORDS, AND DOCUMENTS AS RELEVANT OR NECESSARY.**

26                   **(2) THE SUBPOENAS MAY BE SERVED WITHOUT COST IN**  
27 **ACCORDANCE WITH THE MARYLAND RULES THAT RELATE TO SERVICE OF**  
28 **PROCESS ISSUED BY A COURT.**

29                   **(3) EACH PARTY MAY REQUEST THE MANAGING OFFICIAL OR**  
30 **HEARING BOARD TO ISSUE A SUBPOENA OR ORDER UNDER THIS SUBTITLE.**

31                   **(4) IN CASE OF DISOBEDIENCE OR REFUSAL TO OBEY A**  
32 **SUBPOENA SERVED UNDER THIS SUBSECTION, THE MANAGING OFFICIAL MAY**  
33 **APPLY WITHOUT COST TO THE CIRCUIT COURT OF A COUNTY WHERE THE**  
34 **SUBPOENAED PARTY RESIDES OR CONDUCTS BUSINESS, FOR AN ORDER TO**

1 COMPEL THE ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE  
2 PRODUCTION OF THE BOOKS, PAPERS, RECORDS, AND DOCUMENTS.

3 (5) ON A FINDING THAT THE ATTENDANCE AND TESTIMONY OF  
4 THE WITNESS OR THE PRODUCTION OF THE BOOKS, PAPERS, RECORDS, AND  
5 DOCUMENTS IS RELEVANT OR NECESSARY:

6 (I) THE COURT MAY ISSUE WITHOUT COST AN ORDER THAT  
7 REQUIRES THE ATTENDANCE AND TESTIMONY OF WITNESSES OR THE  
8 PRODUCTION OF BOOKS, PAPERS, RECORDS, AND DOCUMENTS; AND

9 (II) FAILURE TO OBEY THE ORDER MAY BE PUNISHED BY  
10 THE COURT AS CONTEMPT.

11 (E) (1) THE HEARING SHALL BE CONDUCTED BY A HEARING BOARD.

12 (2) THE HEARING BOARD SHALL GIVE THE INTERNAL  
13 INVESTIGATION UNIT AND CORRECTIONAL OFFICER AMPLE OPPORTUNITY TO  
14 PRESENT EVIDENCE AND ARGUMENT ABOUT THE ISSUES INVOLVED.

15 (3) THE CORRECTIONAL FACILITY AND CORRECTIONAL OFFICER  
16 MAY BE REPRESENTED BY COUNSEL.

17 (4) EACH PARTY HAS THE RIGHT TO CROSS-EXAMINE WITNESSES  
18 WHO TESTIFY AND EACH PARTY MAY SUBMIT REBUTTAL EVIDENCE.

19 (F) (1) EVIDENCE WITH PROBATIVE VALUE THAT IS COMMONLY  
20 ACCEPTED BY REASONABLE AND PRUDENT INDIVIDUALS IN THE CONDUCT OF  
21 THEIR AFFAIRS IS ADMISSIBLE AND SHALL BE GIVEN PROBATIVE EFFECT.

22 (2) THE HEARING BOARD SHALL GIVE EFFECT TO THE RULES OF  
23 PRIVILEGE RECOGNIZED BY LAW AND SHALL EXCLUDE INCOMPETENT,  
24 IRRELEVANT, IMMATERIAL, AND UNDULY REPETITIOUS EVIDENCE.

25 (3) EACH RECORD OR DOCUMENT THAT A PARTY DESIRES TO USE  
26 SHALL BE OFFERED AND MADE A PART OF THE RECORD.

27 (4) DOCUMENTARY EVIDENCE MAY BE RECEIVED IN THE FORM  
28 OF COPIES OR EXCERPTS, OR BY INCORPORATION BY REFERENCE.

29 (G) (1) THE HEARING BOARD MAY TAKE NOTICE OF:

30 (I) JUDICIALLY COGNIZABLE FACTS; AND

1                   (II) GENERAL, TECHNICAL, OR SCIENTIFIC FACTS WITHIN  
2 ITS SPECIALIZED KNOWLEDGE.

3                   (2) THE HEARING BOARD SHALL:

4                   (I) NOTIFY EACH PARTY OF THE FACTS SO NOTICED EITHER  
5 BEFORE OR DURING THE HEARING, OR BY REFERENCE IN PRELIMINARY  
6 REPORTS OR OTHERWISE; AND

7                   (II) GIVE EACH PARTY AN OPPORTUNITY AND REASONABLE  
8 TIME TO CONTEST THE FACTS SO NOTICED.

9                   (3) THE HEARING BOARD MAY UTILIZE ITS EXPERIENCE,  
10 TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE IN THE EVALUATION  
11 OF THE EVIDENCE PRESENTED.

12                   (H) (1) WITH RESPECT TO THE SUBJECT OF A HEARING CONDUCTED  
13 UNDER THIS SUBTITLE, THE MANAGING OFFICIAL SHALL ADMINISTER OATHS OR  
14 AFFIRMATIONS AND EXAMINE INDIVIDUALS UNDER OATH.

15                   (2) IN CONNECTION WITH A DISCIPLINARY HEARING, THE  
16 MANAGING OFFICIAL OR A HEARING BOARD MAY ADMINISTER OATHS.

17                   (I) (1) WITNESS FEES AND MILEAGE, IF CLAIMED, SHALL BE  
18 ALLOWED THE SAME AS FOR TESTIMONY IN A CIRCUIT COURT.

19                   (2) WITNESS FEES, MILEAGE, AND THE ACTUAL EXPENSES  
20 NECESSARILY INCURRED IN SECURING THE ATTENDANCE OF WITNESSES AND  
21 THEIR TESTIMONY SHALL BE ITEMIZED AND PAID BY THE CORRECTIONAL  
22 FACILITY.

23                   (J) AN OFFICIAL RECORD, INCLUDING TESTIMONY AND EXHIBITS,  
24 SHALL BE KEPT OF THE HEARING.

25 **11-1009.**

26                   (A) (1) A DECISION, ORDER, OR ACTION TAKEN AS A RESULT OF A  
27 HEARING UNDER § 11-1008 OF THIS SUBTITLE SHALL BE IN WRITING AND  
28 ACCOMPANIED BY FINDINGS OF FACT.

29                   (2) THE FINDINGS OF FACT SHALL CONSIST OF A CONCISE  
30 STATEMENT ON EACH ISSUE IN THE CASE.

31                   (3) A FINDING OF NOT GUILTY TERMINATES THE ACTION.

1           **(4) IF THE HEARING BOARD MAKES A FINDING OF GUILT, THE**  
2 **HEARING BOARD SHALL:**

3                   **(I) RECONVENE THE HEARING;**

4                   **(II) RECEIVE EVIDENCE; AND**

5                   **(III) CONSIDER THE CORRECTIONAL OFFICER'S PAST JOB**  
6 **PERFORMANCE AND OTHER RELEVANT INFORMATION AS FACTORS BEFORE**  
7 **MAKING RECOMMENDATIONS TO THE MANAGING OFFICIAL.**

8           **(5) A COPY OF THE DECISION OR ORDER, FINDINGS OF FACT,**  
9 **CONCLUSIONS, AND WRITTEN RECOMMENDATIONS FOR ACTION SHALL BE**  
10 **DELIVERED OR MAILED PROMPTLY TO:**

11                   **(I) THE CORRECTIONAL OFFICER OR THE CORRECTIONAL**  
12 **OFFICER'S COUNSEL OR REPRESENTATIVE OF RECORD; AND**

13                   **(II) THE MANAGING OFFICIAL.**

14           **(B) (1) AFTER A DISCIPLINARY HEARING AND A FINDING OF GUILT,**  
15 **THE HEARING BOARD MAY RECOMMEND THE PENALTY IT CONSIDERS**  
16 **APPROPRIATE UNDER THE CIRCUMSTANCES, INCLUDING DEMOTION,**  
17 **DISMISSAL, TRANSFER, LOSS OF PAY, REASSIGNMENT, OR OTHER SIMILAR**  
18 **ACTION THAT IS CONSIDERED PUNITIVE.**

19                   **(2) THE RECOMMENDATION OF A PENALTY SHALL BE IN WRITING.**

20           **(C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS**  
21 **SUBTITLE, THE DECISION OF THE HEARING BOARD AS TO FINDINGS OF FACT**  
22 **AND ANY PENALTY IS FINAL IF:**

23                   **(I) A MANAGING OFFICIAL IS AN EYEWITNESS TO THE**  
24 **INCIDENT UNDER INVESTIGATION; OR**

25                   **(II) A MANAGING OFFICIAL HAS AGREED WITH AN**  
26 **EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE RECOGNIZED OR**  
27 **CERTIFIED UNDER APPLICABLE LAW THAT THE DECISION IS FINAL.**

28                   **(2) THE DECISION OF THE HEARING BOARD THEN MAY BE**  
29 **APPEALED IN ACCORDANCE WITH § 11-1010 OF THIS SUBTITLE.**

1           **(3) PARAGRAPH (1)(II) OF THIS SUBSECTION IS NOT SUBJECT TO**  
2 **BINDING ARBITRATION.**

3           **(D) (1) WITHIN 30 DAYS AFTER RECEIPT OF THE RECOMMENDATIONS**  
4 **OF THE HEARING BOARD, THE MANAGING OFFICIAL SHALL:**

5                   **(I) REVIEW THE FINDINGS, CONCLUSIONS, AND**  
6 **RECOMMENDATIONS OF THE HEARING BOARD; AND**

7                   **(II) ISSUE A FINAL ORDER.**

8           **(2) THE FINAL ORDER AND DECISION OF THE MANAGING**  
9 **OFFICIAL IS BINDING AND THEN MAY BE APPEALED IN ACCORDANCE WITH §**  
10 **11-1010 OF THIS SUBTITLE.**

11           **(3) THE RECOMMENDATION OF A PENALTY BY THE HEARING**  
12 **BOARD IS NOT BINDING ON THE MANAGING OFFICIAL.**

13           **(4) THE MANAGING OFFICIAL SHALL CONSIDER THE**  
14 **CORRECTIONAL OFFICER'S PAST JOB PERFORMANCE AS A FACTOR BEFORE**  
15 **IMPOSING A PENALTY.**

16           **(5) THE MANAGING OFFICIAL MAY INCREASE THE**  
17 **RECOMMENDED PENALTY OF THE HEARING BOARD ONLY IF THE MANAGING**  
18 **OFFICIAL PERSONALLY:**

19                   **(I) REVIEWS THE ENTIRE RECORD OF THE PROCEEDINGS**  
20 **OF THE HEARING BOARD;**

21                   **(II) MEETS WITH THE CORRECTIONAL OFFICER AND**  
22 **ALLOWS THE CORRECTIONAL OFFICER TO BE HEARD ON THE RECORD;**

23                   **(III) DISCLOSES AND PROVIDES IN WRITING TO THE**  
24 **CORRECTIONAL OFFICER, AT LEAST 10 DAYS BEFORE THE MEETING, ANY ORAL**  
25 **OR WRITTEN COMMUNICATION NOT INCLUDED IN THE RECORD OF THE**  
26 **HEARING BOARD ON WHICH THE DECISION TO CONSIDER INCREASING THE**  
27 **PENALTY IS WHOLLY OR PARTLY BASED; AND**

28                   **(IV) STATES ON THE RECORD THE SUBSTANTIAL EVIDENCE**  
29 **RELIED ON TO SUPPORT THE INCREASE OF THE RECOMMENDED PENALTY.**

30 **11-1010.**

1           (A) AN APPEAL FROM A DECISION MADE UNDER § 11-1009 OF THIS  
2 SUBTITLE SHALL BE TAKEN TO THE CIRCUIT COURT FOR THE COUNTY IN  
3 ACCORDANCE WITH MARYLAND RULE 7-202.

4           (B) A PARTY AGGRIEVED BY A DECISION OF A COURT UNDER THIS  
5 SUBTITLE MAY APPEAL TO THE COURT OF SPECIAL APPEALS.

6 **11-1011.**

7           (A) ON WRITTEN REQUEST, A CORRECTIONAL OFFICER MAY HAVE  
8 EXPUNGED FROM ANY FILE THE RECORD OF A FORMAL COMPLAINT MADE  
9 AGAINST THE CORRECTIONAL OFFICER IF:

10                   (1) (I) THE INTERNAL INVESTIGATION UNIT THAT  
11 INVESTIGATED THE COMPLAINT:

12                                   1. EXONERATED THE CORRECTIONAL OFFICER OF  
13 ALL CHARGES IN THE COMPLAINT; OR

14                                   2. DETERMINED THAT THE CHARGES WERE  
15 UNSUSTAINED OR UNFOUNDED; OR

16                                   (II) A HEARING BOARD ACQUITTED THE CORRECTIONAL  
17 OFFICER, DISMISSED THE ACTION, OR MADE A FINDING OF NOT GUILTY; AND

18                   (2) AT LEAST 3 YEARS HAVE PASSED SINCE THE FINAL  
19 DISPOSITION BY THE CORRECTIONAL FACILITY OR HEARING BOARD.

20 **11-1012.**

21           (A) THIS SUBTITLE DOES NOT PROHIBIT SUMMARY PUNISHMENT BY  
22 HIGHER-RANKING CORRECTIONAL OFFICERS AS DESIGNATED BY THE  
23 MANAGING OFFICIAL.

24           (B) (1) SUMMARY PUNISHMENT MAY BE IMPOSED FOR MINOR  
25 VIOLATIONS OF CORRECTIONAL FACILITY RULES AND REGULATIONS IF:

26                                   (I) THE FACTS THAT CONSTITUTE THE MINOR VIOLATION  
27 ARE NOT IN DISPUTE;

28                                   (II) THE CORRECTIONAL OFFICER WAIVES THE HEARING  
29 PROVIDED UNDER THIS SUBTITLE; AND



1                   (III) THE CORRECTIONAL OFFICER ACCEPTS THE  
2 PUNISHMENT IMPOSED BY THE HIGHEST-RANKING CORRECTIONAL OFFICER,  
3 OR INDIVIDUAL ACTING IN THAT CAPACITY, OF THE UNIT TO WHICH THE  
4 CORRECTIONAL OFFICER IS ATTACHED.

5                   (2) SUMMARY PUNISHMENT IMPOSED UNDER THIS SUBSECTION  
6 MAY NOT EXCEED SUSPENSION OF 3 DAYS WITHOUT PAY OR A FINE OF \$150.

7                   (C) (1) IF A CORRECTIONAL OFFICER IS OFFERED SUMMARY  
8 PUNISHMENT IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION AND  
9 REFUSES:

10                   (I) THE MANAGING OFFICIAL MAY CONVENE A HEARING  
11 BOARD OF ONE OR MORE MEMBERS; AND

12                   (II) THE HEARING BOARD HAS ONLY THE AUTHORITY TO  
13 RECOMMEND THE SANCTIONS PROVIDED IN THIS SECTION FOR SUMMARY  
14 PUNISHMENT.

15                   (2) IF A SINGLE MEMBER HEARING BOARD IS CONVENED:

16                   (I) THE MEMBER NEED NOT BE OF THE SAME RANK AS THE  
17 CORRECTIONAL OFFICER; BUT

18                   (II) ALL OTHER PROVISIONS OF THIS SUBTITLE APPLY.

19 **11-1013.**

20                   (A) THIS SUBTITLE DOES NOT PROHIBIT EMERGENCY SUSPENSION BY  
21 HIGHER-RANKING CORRECTIONAL OFFICERS AS DESIGNATED BY THE  
22 MANAGING OFFICIAL.

23                   (B) (1) THE MANAGING OFFICIAL MAY IMPOSE EMERGENCY  
24 SUSPENSION WITH PAY IF IT APPEARS THAT THE ACTION IS IN THE BEST  
25 INTEREST OF THE INMATES, PUBLIC, AND THE CORRECTIONAL FACILITY.

26                   (2) IF THE CORRECTIONAL OFFICER IS SUSPENDED WITH PAY,  
27 THE MANAGING OFFICIAL MAY SUSPEND THE CORRECTIONAL POWERS OF THE  
28 CORRECTIONAL OFFICER AND REASSIGN THE CORRECTIONAL OFFICER TO  
29 RESTRICTED DUTIES PENDING:

30                   (I) A DETERMINATION BY A COURT WITH RESPECT TO A  
31 CRIMINAL VIOLATION; OR

1                   (II) A FINAL DETERMINATION BY A HEARING BOARD WITH  
2 RESPECT TO A CORRECTIONAL FACILITY VIOLATION.

3                   (3) A CORRECTIONAL OFFICER WHO IS SUSPENDED UNDER THIS  
4 SUBSECTION IS ENTITLED TO A PROMPT HEARING.

5                   (C) (1) IF A CORRECTIONAL OFFICER IS CHARGED WITH A FELONY,  
6 THE MANAGING OFFICIAL MAY IMPOSE AN EMERGENCY SUSPENSION OF  
7 CORRECTIONAL POWERS WITHOUT PAY.

8                   (2) A CORRECTIONAL OFFICER WHO IS SUSPENDED UNDER  
9 PARAGRAPH (1) OF THIS SUBSECTION IS ENTITLED TO A PROMPT HEARING.

10 **11-1014.**

11                   (A) A PERSON MAY NOT KNOWINGLY MAKE A FALSE STATEMENT,  
12 REPORT, OR COMPLAINT DURING AN INVESTIGATION OR PROCEEDING  
13 CONDUCTED UNDER THIS SUBTITLE.

14                   (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A  
15 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT  
16 EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$500 OR BOTH.

17                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2008.