

HOUSE BILL 924

E4

9lr1532

By: **Delegates Shank, Kelly, Myers, and Smigiel**

Introduced and read first time: February 12, 2009

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – State Correctional Officers’ Bill Of Rights**

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

19 BY adding to

20 Article – Correctional Services

21 Section 10–901 through 10–913 to be under the new subtitle “Subtitle 9. State
22 Correctional Officers’ Bill of Rights”

23 Annotated Code of Maryland

24 (2008 Replacement Volume and 2008 Supplement)

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

27 **Article – Correctional Services**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



SUBTITLE 9. STATE CORRECTIONAL OFFICERS' BILL OF RIGHTS.

10-901.

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

(B) (1) "HEARING" MEANS A PROCEEDING DURING AN INVESTIGATION CONDUCTED BY A HEARING BOARD TO TAKE TESTIMONY OR RECEIVE OTHER EVIDENCE.

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

(C) "HEARING BOARD" MEANS A BOARD THAT IS AUTHORIZED BY THE MANAGING OFFICIAL TO HOLD A HEARING ON A COMPLAINT AGAINST A STATE CORRECTIONAL OFFICER.

(D) "INTERNAL INVESTIGATION UNIT" MEANS THE INTERNAL INVESTIGATION UNIT OF A CORRECTIONAL FACILITY CHARGED WITH THE INVESTIGATION OF COMPLAINTS WITHIN A CORRECTIONAL FACILITY.

(E) "STATE CORRECTIONAL OFFICER" MEANS AN EMPLOYEE OF THE DIVISION OF CORRECTION WORKING IN A STATE CORRECTIONAL FACILITY WHOSE DUTIES RELATE TO THE INVESTIGATION, CARE, CUSTODY, CONTROL, OR SUPERVISION OF INMATES.

10-902.

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

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

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

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

1 **10-903.**

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

5 (2) THE RIGHT OF A STATE CORRECTIONAL OFFICER TO ENGAGE
6 IN POLITICAL ACTIVITY DOES NOT APPLY WHEN THE STATE CORRECTIONAL
7 OFFICER IS ON DUTY OR ACTING IN AN OFFICIAL CAPACITY.

8 (B) A MANAGING OFFICIAL:

9 (1) MAY NOT PROHIBIT SECONDARY EMPLOYMENT BY A STATE
10 CORRECTIONAL OFFICER; BUT

11 (2) MAY ADOPT REASONABLE REGULATIONS THAT RELATE TO
12 SECONDARY EMPLOYMENT BY A STATE CORRECTIONAL OFFICER.

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

18 (1) THE INFORMATION IS NECESSARY TO INVESTIGATE A
19 POSSIBLE CONFLICT OF INTEREST WITH RESPECT TO THE PERFORMANCE OF
20 THE STATE CORRECTIONAL OFFICER'S OFFICIAL DUTIES; OR

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

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

27 (1) HAS EXERCISED OR DEMANDED THE RIGHTS GRANTED BY
28 THIS SUBTITLE; OR

29 (2) HAS LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

30 (E) A STATUTE MAY NOT ABRIDGE AND A STATE CORRECTIONAL
31 FACILITY MAY NOT ADOPT A REGULATION THAT PROHIBITS THE RIGHT OF A

1 STATE CORRECTIONAL OFFICER TO BRING SUIT THAT ARISES OUT OF THE
2 STATE CORRECTIONAL OFFICER'S DUTIES AS A STATE CORRECTIONAL
3 OFFICER.

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

6 10-904.

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

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

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

19 (I) THE AGGRIEVED INDIVIDUAL;

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

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

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

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

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

1 (I) THE LAW ENFORCEMENT OR CORRECTIONAL OFFICIAL
2 OR OTHER INDIVIDUAL IN CHARGE OF THE INVESTIGATION;

3 (II) THE INTERROGATING OFFICIAL; AND

4 (III) EACH INDIVIDUAL PRESENT DURING AN
5 INTERROGATION.

6 (2) BEFORE AN INTERROGATION, THE STATE CORRECTIONAL
7 OFFICER UNDER INVESTIGATION SHALL BE INFORMED IN WRITING OF THE
8 NATURE OF THE INVESTIGATION.

9 (E) IF THE STATE CORRECTIONAL OFFICER UNDER INTERROGATION IS
10 UNDER ARREST, OR IS LIKELY TO BE PLACED UNDER ARREST AS A RESULT OF
11 THE INTERROGATION, THE STATE CORRECTIONAL OFFICER SHALL BE
12 INFORMED COMPLETELY OF ALL OF THE STATE CORRECTIONAL OFFICER'S
13 RIGHTS BEFORE THE INTERROGATION BEGINS.

14 (F) UNLESS THE SERIOUSNESS OF THE INVESTIGATION IS OF A DEGREE
15 THAT AN IMMEDIATE INTERROGATION IS REQUIRED, THE INTERROGATION
16 SHALL BE CONDUCTED AT A REASONABLE HOUR, PREFERABLY WHEN THE
17 STATE CORRECTIONAL OFFICER IS ON DUTY.

18 (G) (1) THE INTERROGATION SHALL TAKE PLACE:

19 (I) AT THE OFFICE OF THE COMMAND OF THE
20 INVESTIGATING OFFICER OR AT THE OFFICE OF THE MANAGING OFFICIAL OF
21 THE STATE CORRECTIONAL FACILITY IN WHICH THE INCIDENT ALLEGEDLY
22 OCCURRED, AS DESIGNATED BY THE INVESTIGATING OFFICIAL; OR

23 (II) AT ANOTHER REASONABLE AND APPROPRIATE PLACE.

24 (2) THE STATE CORRECTIONAL OFFICER UNDER INVESTIGATION
25 MAY WAIVE THE RIGHT DESCRIBED IN PARAGRAPH (1)(I) OF THIS SUBSECTION.

26 (H) (1) ALL QUESTIONS DIRECTED TO THE STATE CORRECTIONAL
27 OFFICER UNDER INTERROGATION SHALL BE ASKED BY AND THROUGH ONE
28 INTERROGATING OFFICER DURING ANY ONE SESSION OF INTERROGATION
29 CONSISTENT WITH PARAGRAPH (2) OF THIS SUBSECTION.

30 (2) EACH SESSION OF INTERROGATION SHALL:

31 (I) BE FOR A REASONABLE PERIOD; AND

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

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

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

10 (II) THE STATE CORRECTIONAL OFFICER MAY WAIVE THE
11 RIGHT 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 STATE CORRECTIONAL
18 OFFICER'S COUNSEL OR REPRESENTATIVE MAY:

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

21 (II) OBJECT TO ANY QUESTION POSED; AND

22 (III) STATE ON THE RECORD OUTSIDE THE PRESENCE OF
23 THE STATE 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 STATE
26 CORRECTIONAL OFFICER.

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

28 (3) ON COMPLETION OF THE INVESTIGATION, AND ON REQUEST
29 OF THE STATE CORRECTIONAL OFFICER UNDER INVESTIGATION OR THE STATE
30 CORRECTIONAL OFFICER'S COUNSEL OR REPRESENTATIVE, A COPY OF THE
31 RECORD OF THE INTERROGATION SHALL BE MADE AVAILABLE AT LEAST 10
32 DAYS BEFORE A HEARING.

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

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

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

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

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

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

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

33 (III) A COPY OF THE FINAL REPORT OF THE EXAMINATION BY
34 THE CERTIFIED POLYGRAPHER IS MADE AVAILABLE TO THE STATE
35 CORRECTIONAL OFFICER OR THE COUNSEL OR REPRESENTATIVE WITHIN A

1 REASONABLE TIME, NOT EXCEEDING 10 DAYS, AFTER COMPLETION OF THE
2 EXAMINATION.

3 (N) (1) ON COMPLETION OF AN INVESTIGATION AND AT LEAST 10
4 DAYS BEFORE A HEARING, THE STATE 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 STATE CORRECTIONAL
8 OFFICER; AND

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

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

17 2. PAY A REASONABLE CHARGE FOR THE COST OF
18 REPRODUCING THE MATERIAL.

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

22 (I) THE IDENTITY OF CONFIDENTIAL SOURCES;

23 (II) NONEXCULPATORY INFORMATION; AND

24 (III) RECOMMENDATIONS AS TO CHARGES, DISPOSITION, OR
25 PUNISHMENT.

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

31 (2) THE STATE CORRECTIONAL OFFICER MAY WAIVE THE RIGHT
32 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

1 **10-905.**

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

7 (B) THE STATE CORRECTIONAL OFFICER MAY APPLY FOR THE
8 SHOW-CAUSE ORDER:

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

12 (2) AT ANY TIME BEFORE THE BEGINNING OF A HEARING BY THE
13 HEARING BOARD.

14 **10-906.**

15 (A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, AN INTERNAL
16 INVESTIGATION UNIT MAY NOT BRING ADMINISTRATIVE CHARGES AGAINST A
17 STATE CORRECTIONAL OFFICER UNLESS THE UNIT FILES THE CHARGES WITHIN
18 1 YEAR AFTER THE ACT THAT GIVES RISE TO THE CHARGES COMES TO THE
19 ATTENTION OF THE MANAGING OFFICIAL.

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

23 **10-907.**

24 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
25 SUBSECTION AND § 10-911 OF THIS SUBTITLE, IF THE INVESTIGATION OR
26 INTERROGATION OF A STATE CORRECTIONAL OFFICER RESULTS IN A
27 RECOMMENDATION OF DEMOTION, DISMISSAL, TRANSFER, LOSS OF PAY,
28 REASSIGNMENT, OR SIMILAR ACTION THAT IS CONSIDERED PUNITIVE, THE
29 STATE CORRECTIONAL OFFICER IS ENTITLED TO A HEARING ON THE ISSUES BY
30 A HEARING BOARD BEFORE THE MANAGING OFFICIAL TAKES THAT ACTION.

31 (2) A STATE CORRECTIONAL OFFICER WHO HAS BEEN
32 CONVICTED OF A FELONY IS NOT ENTITLED TO A HEARING UNDER THIS
33 SECTION.

1 **(B) (1) THE INTERNAL INVESTIGATION UNIT SHALL GIVE NOTICE TO**
2 **THE STATE CORRECTIONAL OFFICER OF THE RIGHT TO A HEARING BY A**
3 **HEARING BOARD UNDER THIS SECTION.**

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

6 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
7 **SUBSECTION AND IN § 10-911 OF THIS SUBTITLE, THE HEARING BOARD**
8 **AUTHORIZED UNDER THIS SECTION SHALL CONSIST OF AT LEAST THREE**
9 **MEMBERS WHO:**

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

15 **(II) HAVE HAD NO PART IN THE INVESTIGATION OR**
16 **INTERROGATION OF THE STATE CORRECTIONAL OFFICER.**

17 **(2) AT LEAST ONE MEMBER OF THE HEARING BOARD SHALL BE**
18 **OF THE SAME RANK AS THE STATE CORRECTIONAL OFFICER AGAINST WHOM**
19 **THE COMPLAINT IS FILED.**

20 **(3) IF THE MANAGING OFFICIAL IS THE STATE CORRECTIONAL**
21 **OFFICER UNDER INVESTIGATION, THE MANAGING OFFICIAL OF ANOTHER STATE**
22 **CORRECTIONAL FACILITY SHALL FUNCTION AS THE STATE CORRECTIONAL**
23 **OFFICER OF THE SAME RANK ON THE HEARING BOARD.**

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

29 **(II) A STATE CORRECTIONAL OFFICER MAY ELECT THE**
30 **ALTERNATIVE METHOD OF FORMING A HEARING BOARD IF:**

31 **1. THE STATE CORRECTIONAL OFFICER WORKS IN A**
32 **STATE CORRECTIONAL FACILITY DESCRIBED IN SUBPARAGRAPH (I) OF THIS**
33 **PARAGRAPH; AND**

1 **2. THE STATE CORRECTIONAL OFFICER IS**
2 **INCLUDED IN THE COLLECTIVE BARGAINING UNIT.**

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

8 **(IV) IF THE STATE CORRECTIONAL OFFICER ELECTS THE**
9 **ALTERNATIVE METHOD, THAT METHOD SHALL BE USED TO FORM THE HEARING**
10 **BOARD.**

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

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

18 **(VII) THIS PARAGRAPH IS NOT SUBJECT TO BINDING**
19 **ARBITRATION.**

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

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

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

29 **(4) IN CASE OF DISOBEDIENCE OR REFUSAL TO OBEY A**
30 **SUBPOENA SERVED UNDER THIS SUBSECTION, THE MANAGING OFFICIAL MAY**
31 **APPLY WITHOUT COST TO THE CIRCUIT COURT OF A COUNTY WHERE THE**
32 **SUBPOENAED PARTY RESIDES OR CONDUCTS BUSINESS FOR AN ORDER TO**
33 **COMPEL THE ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE**
34 **PRODUCTION OF THE BOOKS, PAPERS, RECORDS, AND DOCUMENTS.**

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

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

7 (II) **FAILURE TO OBEY THE ORDER MAY BE PUNISHED BY**
8 **THE COURT AS CONTEMPT.**

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

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

14 (3) **THE STATE CORRECTIONAL FACILITY AND STATE**
15 **CORRECTIONAL OFFICER MAY BE REPRESENTED BY COUNSEL.**

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

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

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

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

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

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

29 (I) **JUDICIALLY COGNIZABLE FACTS; AND**

30 (II) **GENERAL, TECHNICAL, OR SCIENTIFIC FACTS WITHIN**
31 **ITS SPECIALIZED KNOWLEDGE.**

(2) THE HEARING BOARD SHALL:

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

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

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

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

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

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

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

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

10-908.

(A) (1) A DECISION, ORDER, OR ACTION TAKEN AS A RESULT OF A HEARING UNDER § 10-907 OF THIS SUBTITLE SHALL BE IN WRITING AND ACCOMPANIED BY FINDINGS OF FACT.

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

(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 STATE CORRECTIONAL OFFICER'S PAST
6 JOB 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 STATE CORRECTIONAL OFFICER OR THE STATE
12 CORRECTIONAL 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 § 10-909 OF THIS SUBTITLE.

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

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

3 (I) REVIEW THE FINDINGS, CONCLUSIONS, AND
4 RECOMMENDATIONS OF THE HEARING BOARD; AND

5 (II) ISSUE A FINAL ORDER.

6 (2) THE FINAL ORDER AND DECISION OF THE MANAGING
7 OFFICIAL IS BINDING AND THEN MAY BE APPEALED IN ACCORDANCE WITH §
8 10-909 OF THIS SUBTITLE.

9 (3) THE RECOMMENDATION OF A PENALTY BY THE HEARING
10 BOARD IS NOT BINDING ON THE MANAGING OFFICIAL.

11 (4) THE MANAGING OFFICIAL SHALL CONSIDER THE STATE
12 CORRECTIONAL OFFICER'S PAST JOB PERFORMANCE AS A FACTOR BEFORE
13 IMPOSING A PENALTY.

14 (5) THE MANAGING OFFICIAL MAY INCREASE THE
15 RECOMMENDED PENALTY OF THE HEARING BOARD ONLY IF THE MANAGING
16 OFFICIAL PERSONALLY:

17 (I) REVIEWS THE ENTIRE RECORD OF THE PROCEEDINGS
18 OF THE HEARING BOARD;

19 (II) MEETS WITH THE STATE CORRECTIONAL OFFICER AND
20 ALLOWS THE STATE CORRECTIONAL OFFICER TO BE HEARD ON THE RECORD;

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

26 (IV) STATES ON THE RECORD THE SUBSTANTIAL EVIDENCE
27 RELIED ON TO SUPPORT THE INCREASE OF THE RECOMMENDED PENALTY.

28 10-909.

29 (A) AN APPEAL FROM A DECISION MADE UNDER § 10-908 OF THIS
30 SUBTITLE SHALL BE TAKEN TO THE CIRCUIT COURT FOR THE COUNTY IN
31 ACCORDANCE WITH MARYLAND RULE 7-202.

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

3 **10-910.**

4 **ON WRITTEN REQUEST, A STATE CORRECTIONAL OFFICER MAY HAVE**
5 **EXPUNGED FROM ANY FILE THE RECORD OF A FORMAL COMPLAINT MADE**
6 **AGAINST THE STATE CORRECTIONAL OFFICER IF:**

7 **(1) (I) THE INTERNAL INVESTIGATION UNIT THAT**
8 **INVESTIGATED THE COMPLAINT:**

9 **1. EXONERATED THE STATE CORRECTIONAL**
10 **OFFICER OF ALL CHARGES IN THE COMPLAINT; OR**

11 **2. DETERMINED THAT THE CHARGES WERE**
12 **UNSUSTAINED OR UNFOUNDED; OR**

13 **(II) A HEARING BOARD ACQUITTED THE STATE**
14 **CORRECTIONAL OFFICER, DISMISSED THE ACTION, OR MADE A FINDING OF NOT**
15 **GUILTY; AND**

16 **(2) AT LEAST 3 YEARS HAVE PASSED SINCE THE FINAL**
17 **DISPOSITION BY THE STATE CORRECTIONAL FACILITY OR HEARING BOARD.**

18 **10-911.**

19 **(A) THIS SUBTITLE DOES NOT PROHIBIT SUMMARY PUNISHMENT BY**
20 **HIGHER-RANKING STATE CORRECTIONAL OFFICERS AS DESIGNATED BY THE**
21 **MANAGING OFFICIAL.**

22 **(B) (1) SUMMARY PUNISHMENT MAY BE IMPOSED FOR MINOR**
23 **VIOLATIONS OF STATE CORRECTIONAL FACILITY RULES AND REGULATIONS IF:**

24 **(I) THE FACTS THAT CONSTITUTE THE MINOR VIOLATION**
25 **ARE NOT IN DISPUTE;**

26 **(II) THE STATE CORRECTIONAL OFFICER WAIVES THE**
27 **HEARING PROVIDED UNDER THIS SUBTITLE; AND**

28 **(III) THE STATE CORRECTIONAL OFFICER ACCEPTS THE**
29 **PUNISHMENT IMPOSED BY THE HIGHEST-RANKING STATE CORRECTIONAL**

1 OFFICER, OR INDIVIDUAL ACTING IN THAT CAPACITY, OF THE UNIT TO WHICH
2 THE STATE CORRECTIONAL OFFICER IS ATTACHED.

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

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

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

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

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

14 (I) THE MEMBER NEED NOT BE OF THE SAME RANK AS THE
15 STATE CORRECTIONAL OFFICER; BUT

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

17 10-912.

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

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

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

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

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

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

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

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

11 **10-913.**

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

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2009.