

HOUSE BILL 1228

E4

9lr2550

By: **Delegates Carter, Anderson, and Oaks**
Introduced and read first time: February 13, 2009
Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Baltimore City - Law Enforcement Officers' Bill of Rights - Hearing Boards**

3 FOR the purpose of providing that certain provisions of law relating to the
4 membership of a hearing board that may conduct a hearing regarding certain
5 charges against a law enforcement officer do not apply to certain law
6 enforcement officers who are members of certain law enforcement agencies in
7 Baltimore City; establishing certain requirements, applicable to a law
8 enforcement officer who is a member of a certain law enforcement agency in
9 Baltimore City, relating to the membership of a hearing board that may conduct
10 a hearing regarding certain charges against a law enforcement officer;
11 establishing that a certain hearing board consists of a certain judge, rotated
12 from a pool selected by a committee composed of certain individuals, with a
13 certain exception; requiring a certain hearing board to review certain charges
14 for a certain purpose prior to a certain hearing; authorizing a certain hearing
15 board to dismiss certain charges under certain circumstances; and generally
16 relating to a hearing board under the Law Enforcement Officers' Bill of Rights
17 concerning certain law enforcement officers in Baltimore City.

18 BY repealing and reenacting, with amendments,
19 Article - Public Safety
20 Section 3-107
21 Annotated Code of Maryland
22 (2003 Volume and 2008 Supplement)

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

25 **Article - Public Safety**

26 3-107.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



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

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

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

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

13 (c) (1) **THIS SUBSECTION DOES NOT APPLY TO A LAW ENFORCEMENT**
14 **OFFICER WHO IS A MEMBER OF:**

15 (I) **THE POLICE DEPARTMENT OF BALTIMORE CITY;**

16 (II) **THE BALTIMORE CITY SCHOOL POLICE FORCE;**

17 (III) **THE BALTIMORE CITY WATERSHED POLICE FORCE;**

18 (IV) **THE HOUSING AUTHORITY OF BALTIMORE CITY**
19 **POLICE FORCE; OR**

20 (V) **THE BALTIMORE CITY SHERIFF'S DEPARTMENT.**

21 [(1)] (2) Except as provided in paragraph [(4)] (5) of this subsection
22 and in § 3–111 of this subtitle, the hearing board authorized under this section shall
23 consist of at least three members who:

24 (i) are appointed by the chief and chosen from law enforcement
25 officers within that law enforcement agency, or from law enforcement officers of
26 another law enforcement agency with the approval of the chief of the other agency;
27 and

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

30 [(2)] (3) At least one member of the hearing board shall be of the
31 same rank as the law enforcement officer against whom the complaint is filed.

1 ~~[(3)]~~ **(4)** (i) If the chief is the law enforcement officer under
2 investigation, the chief of another law enforcement agency in the State shall function
3 as the law enforcement officer of the same rank on the hearing board.

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

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

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

15 ~~[(4)]~~ **(5)** (i) A law enforcement agency or the agency's superior
16 governmental authority that has recognized and certified an exclusive collective
17 bargaining representative may negotiate with the representative an alternative
18 method of forming a hearing board.

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

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

23 2. the law enforcement officer is included in the
24 collective bargaining unit.

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

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

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

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

1 (vii) If authorized by local law, this paragraph is subject to
2 binding arbitration.

3 (D) (1) THIS SUBSECTION APPLIES TO A LAW ENFORCEMENT
4 OFFICER WHO IS A MEMBER OF:

5 (I) THE POLICE DEPARTMENT OF BALTIMORE CITY;

6 (II) THE BALTIMORE CITY SCHOOL POLICE FORCE;

7 (III) THE BALTIMORE CITY WATERSHED POLICE FORCE;

8 (IV) THE HOUSING AUTHORITY OF BALTIMORE CITY
9 POLICE FORCE; OR

10 (V) THE BALTIMORE CITY SHERIFF'S DEPARTMENT.

11 (2) EXCEPT AS PROVIDED IN § 3-111 OF THIS SUBTITLE, THE
12 HEARING BOARD AUTHORIZED UNDER THIS SECTION SHALL CONSIST OF ONE
13 RETIRED JUDGE, ROTATED FROM A POOL SELECTED BY A COMMITTEE
14 COMPOSED OF THE BALTIMORE CITY POLICE COMMISSIONER, A
15 REPRESENTATIVE OF THE MAYOR OF BALTIMORE, AND A REPRESENTATIVE OF
16 THE CIVILIAN REVIEW BOARD OF BALTIMORE CITY.

17 (3) PRIOR TO THE HEARING, THE HEARING BOARD:

18 (I) SHALL REVIEW THE CHARGES AGAINST THE LAW
19 ENFORCEMENT OFFICER FOR LEGAL SUFFICIENCY BASED ON THE LAW
20 ENFORCEMENT AGENCY'S CODE OF CONDUCT AND GENERAL ORDERS; AND

21 (II) MAY DISMISS THE CHARGES IF THE HEARING BOARD
22 DETERMINES THE CHARGES TO BE LEGALLY INSUFFICIENT.

23 [(d)] (E) (1) In connection with a disciplinary hearing, the chief or
24 hearing board may issue subpoenas to compel the attendance and testimony of
25 witnesses and the production of books, papers, records, and documents as relevant or
26 necessary.

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

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

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

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

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

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

13 **[(e)] (F)** (1) The hearing shall be conducted by a hearing board.

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

17 (3) The law enforcement agency and law enforcement officer may be
18 represented by counsel.

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

21 **[(f)] (G)** (1) Evidence with probative value that is commonly accepted by
22 reasonable and prudent individuals in the conduct of their affairs is admissible and
23 shall be given probative effect.

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

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

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

31 **[(g)] (H)** (1) The hearing board may take notice of:

32 (i) judicially cognizable facts; and

1 (ii) general, technical, or scientific facts within its specialized
2 knowledge.

3 (2) The hearing board shall:

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

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

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

10 [(h)] (I) (1) With respect to the subject of a hearing conducted under this
11 subtitle, the chief shall administer oaths or affirmations and examine individuals
12 under oath.

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

15 [(i)] (J) (1) Witness fees and mileage, if claimed, shall be allowed the
16 same as for testimony in a circuit court.

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

20 [(j)] (K) An official record, including testimony and exhibits, shall be kept
21 of the hearing.

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