

HOUSE BILL 1090

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By: **Delegates G. Clagett, Barkley, Bohanan, Bronrott, DeBoy, Donoghue, Guzzone, Jones, Proctor, and Sophocleus**
Introduced and read first time: February 17, 2010
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 and 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 conducting an investigation against a State
10 correctional officer; providing for expungement of a record of a formal complaint
11 against a State correctional officer under certain circumstances; providing for
12 certain 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 conflict with this Act to the extent of the conflict;
15 providing for the effect of this Act in relation to the duties of an appointing
16 authority; prohibiting certain false statements; establishing a criminal penalty
17 for providing a false statement to certain persons; defining certain terms; and
18 generally relating to rights of a State correctional officer.

19 BY adding to

20 Article – Correctional Services

21 Section 10–901 through 10–914 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 2009 Supplement)

25 BY repealing and reenacting, without amendments,

26 Article – State Personnel and Pensions

27 Section 1–101(b) and 11–105

28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2009 Replacement Volume and 2009 Supplement)

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

Article – Correctional Services

SUBTITLE 9. STATE CORRECTIONAL OFFICERS' BILL OF RIGHTS.

10-901.

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

(B) "APPOINTING AUTHORITY" HAS THE MEANING STATED IN § 1-101 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

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

(D) (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.

(E) "HEARING BOARD" MEANS A HEARING BOARD THAT IS AUTHORIZED UNDER § 10-908 OF THIS SUBTITLE TO HOLD A HEARING ON A COMPLAINT AGAINST A CORRECTIONAL OFFICER.

(F) "INTERNAL INVESTIGATIVE UNIT" MEANS THE INTERNAL INVESTIGATIVE UNIT ESTABLISHED UNDER § 10-701 OF THIS ARTICLE.

(G) "MISCONDUCT" MEANS:

(1) ENGAGING IN INTENTIONAL BEHAVIOR, WITHOUT JUSTIFICATION, THAT INJURES ANOTHER PERSON, CAUSES DAMAGE TO PROPERTY, OR THREATENS THE SAFETY OF THE WORKPLACE;

(2) ENGAGING IN UNJUSTIFIABLY OFFENSIVE CONDUCT TOWARD FELLOW EMPLOYEES, INMATES, OR THE PUBLIC;

1 **(3) USING EXCESSIVE FORCE IN THE TREATMENT OR CARE OF AN**
2 **INMATE;**

3 **(4) POSSESSING OR TRAFFICKING IN CONTRABAND AT A**
4 **DEPARTMENT FACILITY;**

5 **(5) BEING ON DUTY WHILE UNDER THE INFLUENCE OF ALCOHOL**
6 **OR A CONTROLLED DANGEROUS SUBSTANCE, OR WHILE ENGAGED IN THE**
7 **ILLEGAL USE OF A PRESCRIPTION DRUG;**

8 **(6) ENGAGING IN A SOCIAL, PERSONAL, INTIMATE, OR SEXUAL**
9 **RELATIONSHIP WITH AN INMATE;**

10 **(7) STEALING STATE PROPERTY WITH A VALUE OF \$300 OR LESS;**

11 **(8) ENGAGING IN CONDUCT INVOLVING DISHONESTY, FRAUD,**
12 **DECEIT, MISREPRESENTATION, OR ILLEGALITY;**

13 **(9) WILLFULLY MAKING A FALSE OFFICIAL STATEMENT OR**
14 **REPORT;**

15 **(10) VIOLATING A LAWFUL ORDER OR FAILING TO OBEY A LAWFUL**
16 **ORDER GIVEN BY A SUPERIOR;**

17 **(11) ENGAGING IN ANY OF THE ACTIONS THAT ARE CAUSE FOR**
18 **AUTOMATIC TERMINATION OF EMPLOYMENT UNDER § 11-105 OF THE STATE**
19 **PERSONNEL AND PENSIONS ARTICLE; OR**

20 **(12) COMMITTING ANY VIOLATION OF THE DEPARTMENT'S**
21 **STANDARDS OF CONDUCT.**

22 **10-902.**

23 **THE PURPOSE OF THIS SUBTITLE IS TO ESTABLISH PROCEDURES FOR THE**
24 **INVESTIGATION OF A CORRECTIONAL OFFICER BY THE INTERNAL**
25 **INVESTIGATIVE UNIT OF THE DEPARTMENT FOR ALLEGED MISCONDUCT THAT**
26 **MAY LEAD TO DISCIPLINARY ACTION, DEMOTION, OR DISMISSAL.**

27 **10-903.**

28 **EXCEPT AS OTHERWISE PROVIDED, THE PROVISIONS OF THIS SUBTITLE**
29 **SUPERSEDE ANY INCONSISTENT PROVISIONS OF ANY OTHER STATE LAW THAT**
30 **CONFLICT WITH THIS SUBTITLE TO THE EXTENT OF THE CONFLICT.**

1 **10-904.**

2 (A) AN APPOINTING AUTHORITY MAY NOT PROHIBIT OR REGULATE
3 SECONDARY EMPLOYMENT BY A CORRECTIONAL OFFICER.

4 (B) A CORRECTIONAL OFFICER MAY NOT BE REQUIRED OR REQUESTED
5 TO DISCLOSE AN ITEM OF THE CORRECTIONAL OFFICER'S PROPERTY, INCOME,
6 ASSETS, SOURCE OF INCOME, DEBTS, OR PERSONAL OR DOMESTIC
7 EXPENDITURES, INCLUDING THOSE OF A MEMBER OF THE CORRECTIONAL
8 OFFICER'S FAMILY OR HOUSEHOLD, UNLESS THE DISCLOSURE IS REQUIRED BY
9 FEDERAL OR STATE LAW.

10 (C) A CORRECTIONAL OFFICER MAY NOT BE DISCHARGED,
11 DISCIPLINED, OR DEMOTED, DENIED PROMOTION, TRANSFER, OR
12 REASSIGNMENT, OR OTHERWISE DISCRIMINATED AGAINST IN REGARD TO THE
13 CORRECTIONAL OFFICER'S EMPLOYMENT OR BE THREATENED WITH THAT
14 TREATMENT BECAUSE THE CORRECTIONAL OFFICER:

15 (1) HAS EXERCISED OR DEMANDED THE RIGHTS GRANTED BY
16 THIS SUBTITLE; OR

17 (2) HAS LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

18 (D) THE RIGHT OF A CORRECTIONAL OFFICER TO BRING SUIT ARISING
19 OUT OF THE CORRECTIONAL OFFICER'S DUTIES AS A CORRECTIONAL OFFICER
20 MAY NOT BE ABRIDGED BY RULE, REGULATION, OR POLICY.

21 (E) THE FACT THAT A CORRECTIONAL OFFICER IS UNDER
22 INVESTIGATION MAY NOT IMPACT NEGATIVELY A PROMOTIONAL PROCESS IN
23 WHICH THE CORRECTIONAL OFFICER IS INVOLVED.

24 **10-905.**

25 (A) THE INVESTIGATION OR INTERROGATION BY THE INTERNAL
26 INVESTIGATIVE UNIT OF A CORRECTIONAL OFFICER FOR A REASON THAT MAY
27 LEAD TO DISCIPLINARY ACTION, DEMOTION, OR DISMISSAL SHALL BE
28 CONDUCTED IN ACCORDANCE WITH THIS SECTION.

29 (B) THE INVESTIGATING OFFICER OR INTERROGATING OFFICER SHALL
30 BE A MEMBER OF THE INTERNAL INVESTIGATIVE UNIT.

1 **(C) A COMPLAINT AGAINST A CORRECTIONAL OFFICER THAT ALLEGES**
2 **BRUTALITY IN THE EXECUTION OF THE CORRECTIONAL OFFICER'S DUTIES MAY**
3 **NOT BE INVESTIGATED UNLESS THE COMPLAINT:**

4 **(1) IS FILED WITHIN 15 DAYS AFTER THE ALLEGED BRUTALITY;**
5 **AND**

6 **(2) IS SWORN ON PERSONAL KNOWLEDGE, BEFORE AN OFFICIAL**
7 **AUTHORIZED TO ADMINISTER OATHS, BY:**

8 **(I) THE INDIVIDUAL FILING THE COMPLAINT; OR**

9 **(II) AN INDIVIDUAL WITH FIRSTHAND KNOWLEDGE**
10 **OBTAINED BECAUSE THE INDIVIDUAL WAS PRESENT AT AND OBSERVED THE**
11 **ALLEGED INCIDENT.**

12 **(D) (1) BEFORE AN INTERROGATION, THE CORRECTIONAL OFFICER**
13 **UNDER INVESTIGATION SHALL BE INFORMED OF THE NAME, RANK, AND**
14 **COMMAND OF:**

15 **(I) THE INTERNAL INVESTIGATIVE UNIT MEMBER IN**
16 **CHARGE OF THE INVESTIGATION;**

17 **(II) THE INTERROGATING OFFICER; AND**

18 **(III) EACH INDIVIDUAL WHO WILL BE PRESENT DURING THE**
19 **INTERROGATION.**

20 **(2) AT LEAST 24 HOURS BEFORE AN INTERROGATION, THE**
21 **CORRECTIONAL OFFICER UNDER INVESTIGATION SHALL BE INFORMED IN**
22 **WRITING BY THE APPOINTING AUTHORITY OF:**

23 **(I) THE NATURE OF THE INVESTIGATION;**

24 **(II) THE NAME OF THE COMPLAINANT; AND**

25 **(III) THE CORRECTIONAL OFFICER'S RIGHTS UNDER THIS**
26 **SUBTITLE.**

27 **(E) IF THE CORRECTIONAL OFFICER UNDER INTERROGATION IS UNDER**
28 **ARREST, OR IS LIKELY TO BE PLACED UNDER ARREST AS A RESULT OF THE**
29 **INTERROGATION, THE CORRECTIONAL OFFICER SHALL BE INFORMED**
30 **COMPLETELY OF THE CORRECTIONAL OFFICER'S CONSTITUTIONAL RIGHTS**
31 **BEFORE THE INTERROGATION BEGINS.**

1 **(F) UNLESS THE SERIOUSNESS OF THE INVESTIGATION IS OF A DEGREE**
2 **THAT AN IMMEDIATE INTERROGATION IS REQUIRED, THE INTERROGATION**
3 **SHALL BE CONDUCTED AT A REASONABLE HOUR, PREFERABLY WHEN THE**
4 **CORRECTIONAL OFFICER IS ON DUTY.**

5 **(G) THE INTERROGATION SHALL TAKE PLACE AT:**

6 **(1) THE APPOINTING AUTHORITY'S OFFICE;**

7 **(2) THE APPOINTING AUTHORITY'S CONFERENCE ROOM;**

8 **(3) THE ROLL CALL ROOM;**

9 **(4) THE CORRECTIONAL FACILITY OFFICE OF THE**
10 **CORRECTIONAL OFFICERS' EXCLUSIVE BARGAINING REPRESENTATIVE; OR**

11 **(5) ANOTHER REASONABLE AND APPROPRIATE PLACE.**

12 **(H) (1) ALL QUESTIONS DIRECTED TO THE CORRECTIONAL OFFICER**
13 **UNDER INTERROGATION SHALL BE ASKED BY ONE INTERROGATING OFFICER**
14 **DURING ANY ONE SESSION OF INTERROGATION.**

15 **(2) EACH SESSION OF INTERROGATION SHALL:**

16 **(I) PROVIDE A BREAK OF AT LEAST 15 MINUTES FOR EACH**
17 **60 MINUTES OF INTERROGATION; AND**

18 **(II) ALLOW FOR PERSONAL NECESSITIES AND REST**
19 **PERIODS AS REASONABLY NECESSARY.**

20 **(I) THE CORRECTIONAL OFFICER UNDER INTERROGATION MAY NOT BE**
21 **THREATENED WITH CRIMINAL PROSECUTION, TRANSFER, DISMISSAL, OR**
22 **DISCIPLINARY ACTION.**

23 **(J) (1) THE INTERROGATING OFFICER MAY NOT INTENTIONALLY**
24 **MAKE A FALSE STATEMENT DURING THE COURSE OF AN INTERROGATION.**

25 **(2) IF AN INTERROGATING OFFICER INTENTIONALLY MAKES A**
26 **FALSE STATEMENT DURING AN INTERROGATION, THE INTERROGATING OFFICER**
27 **SHALL BE SUBJECT TO DISCIPLINE FROM THE INTERNAL INVESTIGATION UNIT,**
28 **INCLUDING TERMINATION.**

1 **(K) (1) (I) ON REQUEST, THE CORRECTIONAL OFFICER UNDER**
2 **INTERROGATION SHALL BE REPRESENTED BY COUNSEL OR ANOTHER**
3 **REPRESENTATIVE PROVIDED BY THE CORRECTIONAL OFFICERS' EXCLUSIVE**
4 **BARGAINING REPRESENTATIVE.**

5 **(II) THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL**
6 **BE PRESENT AND AVAILABLE FOR CONSULTATION AT ALL TIMES DURING THE**
7 **INTERROGATION.**

8 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
9 **IF REPRESENTATION IS NOT AVAILABLE, THE INTERROGATION SHALL BE**
10 **SUSPENDED UNTIL REPRESENTATION IS OBTAINED.**

11 **(II) A SUSPENSION OF INTERROGATION UNDER**
12 **SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY NOT EXCEED 10 DAYS UNLESS**
13 **THE APPOINTING AUTHORITY, FOR GOOD CAUSE SHOWN, EXTENDS THE PERIOD**
14 **FOR OBTAINING REPRESENTATION.**

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

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

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

20 **(III) STATE ON THE RECORD THE REASON FOR THE**
21 **OBJECTION.**

22 **(L) (1) A COMPLETE RECORD SHALL BE KEPT OF THE ENTIRE**
23 **INTERROGATION, INCLUDING ALL RECESS PERIODS.**

24 **(2) THE RECORD SHALL BE MADE BY ELECTRONIC EQUIPMENT**
25 **OR BY A STENOGRAPHER.**

26 **(3) ON COMPLETION OF THE INVESTIGATION, AND ON REQUEST**
27 **OF THE CORRECTIONAL OFFICER OR THE CORRECTIONAL OFFICER'S COUNSEL**
28 **OR REPRESENTATIVE, A COPY OF THE RECORD OF THE INTERROGATION SHALL**
29 **BE PROVIDED WITHIN 5 DAYS OF THE REQUEST.**

30 **(M) ON COMPLETION OF AN INVESTIGATION AND AT LEAST 20 DAYS**
31 **BEFORE A HEARING, THE CORRECTIONAL OFFICER UNDER INVESTIGATION**
32 **SHALL BE:**

1 (1) NOTIFIED OF THE NAME OF EACH WITNESS AND OF EACH
2 CHARGE AND SPECIFICATION AGAINST THE CORRECTIONAL OFFICER; AND

3 (2) PROVIDED WITH A COPY OF THE INVESTIGATORY FILE AND
4 ANY EXCULPATORY INFORMATION, IF THE CORRECTIONAL OFFICER AND THE
5 CORRECTIONAL OFFICER'S COUNSEL OR REPRESENTATIVE AGREE TO EXECUTE
6 A CONFIDENTIALITY AGREEMENT WITH THE INTERNAL INVESTIGATIVE UNIT
7 NOT TO DISCLOSE ANY MATERIAL CONTAINED IN THE INVESTIGATORY FILE OR
8 EXCULPATORY INFORMATION FOR ANY PURPOSE OTHER THAN TO DEFEND THE
9 CORRECTIONAL OFFICER.

10 (N) A PERSON MAY NOT INSERT ADVERSE MATERIAL INTO A FILE OF
11 THE CORRECTIONAL OFFICER, EXCEPT THE FILE OF THE INTERNAL
12 INVESTIGATIVE UNIT, UNLESS THE CORRECTIONAL OFFICER HAS AN
13 OPPORTUNITY TO REVIEW, SIGN, RECEIVE A COPY OF, AND COMMENT IN
14 WRITING ON THE ADVERSE MATERIAL.

15 **10-906.**

16 (A) A CORRECTIONAL OFFICER WHO IS DENIED A RIGHT GRANTED BY
17 THIS SUBTITLE MAY APPLY TO THE CIRCUIT COURT OF THE COUNTY WHERE THE
18 CORRECTIONAL OFFICER IS REGULARLY EMPLOYED FOR AN ORDER TO SHOW
19 CAUSE WHY THE RIGHT SHOULD NOT BE GRANTED.

20 (B) THE CORRECTIONAL OFFICER MAY APPLY FOR THE SHOW CAUSE
21 ORDER:

22 (1) EITHER INDIVIDUALLY OR THROUGH THE CORRECTIONAL
23 OFFICERS' EXCLUSIVE BARGAINING REPRESENTATIVE WHO SHALL HAVE
24 STANDING FOR THAT PURPOSE; AND

25 (2) AT ANY TIME BEFORE THE BEGINNING OF A HEARING BY THE
26 HEARING BOARD.

27 (C) FAILURE TO OBEY THE COURT ORDER MAY BE PUNISHED BY THE
28 COURT AS CONTEMPT.

29 **10-907.**

30 THE APPOINTING AUTHORITY MAY NOT IMPOSE ANY DISCIPLINARY
31 ACTION 30 DAYS OR MORE AFTER THE INTERNAL INVESTIGATIVE UNIT OR THE
32 APPOINTING AUTHORITY ACQUIRES KNOWLEDGE OF THE ACTION THAT GIVES
33 RISE TO THE DISCIPLINE.

1 **10-908.**

2 (A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
3 SUBSECTION, IF THE INVESTIGATION OR INTERROGATION OF A CORRECTIONAL
4 OFFICER RESULTS IN A RECOMMENDATION OF TERMINATION, DEMOTION, OR
5 SUSPENSION WITHOUT PAY OF GREATER THAN 10 DAYS, THE CORRECTIONAL
6 OFFICER IS ENTITLED TO A HEARING ON THE ISSUES BY THE HEARING BOARD
7 BEFORE THE APPOINTING AUTHORITY TAKES ACTION ON THE
8 RECOMMENDATION.

9 (2) A CORRECTIONAL OFFICER WHO HAS BEEN CHARGED WITH A
10 FELONY MAY REQUEST A STAY OF ALL CHARGES AND PROCEEDINGS UNDER
11 THIS SECTION UNTIL AFTER A VERDICT HAS BEEN REACHED IN THE FELONY
12 CASE.

13 (3) A CORRECTIONAL OFFICER WHO HAS BEEN CONVICTED OF A
14 FELONY IS NOT ENTITLED TO A HEARING UNDER THIS SECTION.

15 (B) (1) THE INTERNAL INVESTIGATIVE UNIT SHALL GIVE WRITTEN
16 NOTICE TO THE CORRECTIONAL OFFICER OF THE RIGHT TO A HEARING BY THE
17 HEARING BOARD UNDER THIS SECTION.

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

20 (C) (1) (I) THE HEARING BOARD AUTHORIZED UNDER THIS
21 SECTION SHALL CONSIST OF AT LEAST THREE MEMBERS, INCLUDING:

22 1. ONE MEMBER SELECTED BY THE APPOINTING
23 AUTHORITY OF THE CORRECTIONAL FACILITY WHERE THE CORRECTIONAL
24 OFFICER IS REGULARLY EMPLOYED, CHOSEN FROM A LIST OF THREE
25 CORRECTIONAL OFFICERS EMPLOYED AT THE CORRECTIONAL FACILITY
26 SELECTED BY THE EXCLUSIVE BARGAINING REPRESENTATIVE;

27 2. ONE MEMBER SELECTED BY THE EXCLUSIVE
28 BARGAINING REPRESENTATIVE FROM A LIST COMPILED BY THE APPOINTING
29 AUTHORITY OF THREE CORRECTIONAL OFFICERS FROM ANOTHER
30 CORRECTIONAL FACILITY THAT ARE AT THE SAME RANK AS THE CORRECTIONAL
31 OFFICER AGAINST WHOM THE COMPLAINT IS FILED; AND

32 3. ONE MEMBER, WHO SHALL SERVE AS THE CHAIR
33 OF THE HEARING BOARD, SELECTED FROM A LIST OF ARBITRATORS WHO ARE
34 MEMBERS OF THE NATIONAL ACADEMY OF ARBITRATORS MAINTAINED

1 JOINTLY BY THE EXCLUSIVE BARGAINING REPRESENTATIVE AND THE
2 DEPARTMENT.

3 (II) THE APPOINTING AUTHORITY AND THE EXCLUSIVE
4 BARGAINING REPRESENTATIVE MAY NEGOTIATE AN ALTERNATIVE METHOD OF
5 FORMING THE HEARING BOARD.

6 (2) TO SERVE ON THE HEARING BOARD, A CORRECTIONAL
7 OFFICER MAY NOT HAVE HAD ANY PART IN THE INVESTIGATION OR THE
8 INTERROGATION OF THE CORRECTIONAL OFFICER AGAINST WHOM THE
9 COMPLAINT IS FILED OR BE INVOLVED IN ANY WAY WITH THE INCIDENTS THAT
10 ARE THE SUBJECT OF THE COMPLAINT.

11 (3) IF NO ONE IS WILLING TO SERVE AS A MEMBER OF THE
12 HEARING BOARD UNDER PARAGRAPH (1)(I)2 OF THIS SUBSECTION, THE
13 APPOINTING AUTHORITY MAY APPOINT A MEMBER FROM A LIST AGREED ON BY
14 THE EXCLUSIVE BARGAINING REPRESENTATIVE.

15 (4) (I) DECISIONS OF THE HEARING BOARD SHALL BE BY
16 MAJORITY VOTE OF ALL MEMBERS OF THE BOARD.

17 (II) THE VOTES OF THE HEARING BOARD ARE
18 CONFIDENTIAL, AND DECISIONS SHALL BE REPORTED BY THE CHAIR.

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

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

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

28 (4) IN CASE OF REFUSAL TO OBEY A SUBPOENA SERVED UNDER
29 THIS SUBSECTION, THE PARTIES TO THE PROCEEDING MAY APPLY WITHOUT
30 COST TO THE CIRCUIT COURT OF A COUNTY WHERE THE SUBPOENAED PARTY
31 RESIDES OR CONDUCTS BUSINESS, FOR AN ORDER TO COMPEL THE
32 ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE PRODUCTION OF THE
33 DOCUMENTS SOUGHT.

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

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

7 **(II) IMPOSE PUNISHMENT FOR FAILURE TO OBEY THE**
8 **ORDER.**

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

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

14 **(3) THE CORRECTIONAL FACILITY AND CORRECTIONAL OFFICER**
15 **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 MAY 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 AND ADMINISTRATIVELY COGNIZABLE**
30 **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 USE ITS EXPERIENCE, TECHNICAL
10 COMPETENCE, AND SPECIALIZED KNOWLEDGE IN THE EVALUATION OF THE
11 EVIDENCE PRESENTED.

12 (H) THE OFFICIATING MEMBER OF A HEARING BOARD SHALL
13 ADMINISTER OATHS OR AFFIRMATIONS AND EXAMINE INDIVIDUALS UNDER
14 OATH.

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

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

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

23 (K) TO THE EXTENT THAT ANY PROVISION OF THIS SECTION IS
24 INCONSISTENT WITH THE ADMINISTRATIVE PROCEDURE ACT, THE
25 ADMINISTRATIVE PROCEDURE ACT SHALL GOVERN.

26 **10-909.**

27 (A) (1) A DECISION, ORDER, OR ACTION TAKEN AS A RESULT OF A
28 HEARING UNDER § 10-908 OF THIS SUBTITLE SHALL BE IN WRITING AND
29 ACCOMPANIED BY FINDINGS OF FACT.

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

1 **(3) A FINDING OF NOT GUILTY BY THE HEARING BOARD**
2 **TERMINATES THE ACTION.**

3 **(4) THE HEARING BOARD MAY MAKE A FINDING OF GUILTY ON**
4 **CLEAR AND CONVINCING EVIDENCE THAT ESTABLISHES FAULT WITH THE**
5 **CORRECTIONAL OFFICER'S ACTIONS.**

6 **(5) IF THE HEARING BOARD MAKES A FINDING OF GUILT, THE**
7 **HEARING BOARD SHALL:**

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

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

10 **(III) CONSIDER THE CORRECTIONAL OFFICER'S PAST JOB**
11 **PERFORMANCE AND OTHER RELEVANT MITIGATING INFORMATION AS FACTORS**
12 **BEFORE DECIDING A PENALTY.**

13 **(6) THE HEARING BOARD SHALL DECIDE THE PENALTY IT**
14 **CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES, INCLUDING**
15 **DEMOTION, DISMISSAL, TRANSFER, LOSS OF PAY, REASSIGNMENT, OR OTHER**
16 **SIMILAR ACTION THAT IS CONSIDERED PUNITIVE.**

17 **(7) A COPY OF THE DECISION OR ORDER, FINDINGS OF FACT,**
18 **CONCLUSIONS, AND A WRITTEN DETERMINATION OF PENALTY SHALL BE**
19 **DELIVERED OR MAILED PROMPTLY TO:**

20 **(I) THE CORRECTIONAL OFFICER OR THE CORRECTIONAL**
21 **OFFICER'S COUNSEL OR REPRESENTATIVE OF RECORD;**

22 **(II) THE APPOINTING AUTHORITY OF THE CORRECTIONAL**
23 **FACILITY; AND**

24 **(III) THE SECRETARY.**

25 **(B) THE DECISION OF THE HEARING BOARD AS TO FINDINGS OF FACT**
26 **AND PENALTY IS FINAL.**

27 **(C) WITHIN 5 DAYS AFTER RECEIPT OF THE DECISION OF THE HEARING**
28 **BOARD, THE SECRETARY SHALL ISSUE A FINAL ORDER IMPLEMENTING THE**
29 **DECISION OF THE HEARING BOARD.**

30 **(D) THE FINAL ORDER AND DECISION OF THE HEARING BOARD THEN**
31 **MAY BE APPEALED IN ACCORDANCE WITH § 10-910 OF THIS SUBTITLE.**

1 **(E) (1) THE CORRECTIONAL TRAINING COMMISSION MAY REVOKE**
2 **THE CERTIFICATION OF A CORRECTIONAL OFFICER IN CONJUNCTION WITH**
3 **DISCIPLINARY ACTION TAKEN UNDER THIS SUBTITLE.**

4 **(2) IF A HEARING BOARD RESCINDS OR MODIFIES A**
5 **DISCIPLINARY ACTION AGAINST A CORRECTIONAL OFFICER, THE HEARING**
6 **BOARD MAY REINSTATE THE CORRECTIONAL OFFICER'S CERTIFICATION WITH**
7 **NO FURTHER EXAMINATION OR CONDITION.**

8 **10-910.**

9 **(A) AN APPEAL FROM A DECISION MADE UNDER § 10-909 OF THIS**
10 **SUBTITLE SHALL BE TAKEN TO THE CIRCUIT COURT FOR THE COUNTY IN**
11 **ACCORDANCE WITH MARYLAND RULE 7-202.**

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

14 **10-911.**

15 **(A) (1) ON WRITTEN REQUEST, A CORRECTIONAL OFFICER MAY HAVE**
16 **EXPUNGED FROM ANY FILE THE RECORD OF A FORMAL COMPLAINT MADE**
17 **AGAINST THE CORRECTIONAL OFFICER IF:**

18 **(I) THE INTERNAL INVESTIGATIVE UNIT THAT**
19 **INVESTIGATED THE COMPLAINT:**

20 **1. EXONERATED THE CORRECTIONAL OFFICER OF**
21 **ALL CHARGES IN THE COMPLAINT; OR**

22 **2. DETERMINED THAT THE CHARGES WERE**
23 **UNSUSTAINED OR UNFOUNDED; OR**

24 **(II) A HEARING BOARD ACQUITTED THE CORRECTIONAL**
25 **OFFICER, DISMISSED THE ACTION, OR MADE A FINDING OF NOT GUILTY.**

26 **(2) THERE IS NO TIME REQUIREMENT FOR EXPUNGEMENT UNDER**
27 **PARAGRAPH (1) OF THIS SUBSECTION.**

28 **(B) (1) ON WRITTEN REQUEST, A CORRECTIONAL OFFICER WHO WAS**
29 **FOUND TO HAVE COMMITTED WRONGDOING MAY HAVE EXPUNGED FROM THE**
30 **CORRECTIONAL OFFICER'S PERSONAL FILE THE RECORD OF THAT**
31 **WRONGDOING IF:**

1 **(I) 12 MONTHS HAVE PASSED SINCE THE FINDING OF**
2 **WRONGDOING; AND**

3 **(II) THE CORRECTIONAL OFFICER HAS NOT BEEN FOUND TO**
4 **HAVE COMMITTED ANY WRONGDOING OF THE SAME TYPE.**

5 **(2) FOR THE PURPOSES OF THIS SUBSECTION,**
6 **PERFORMANCE-BASED OFFENSES SHALL BE CONSIDERED ONE TYPE OF**
7 **OFFENSE AND ATTENDANCE-BASED OFFENSES SHALL BE CONSIDERED**
8 **ANOTHER TYPE OF OFFENSE.**

9 **10-912.**

10 **(A) THIS SUBTITLE DOES NOT PROHIBIT EMERGENCY SUSPENSION BY A**
11 **CORRECTIONAL OFFICER OF HIGHER RANK AS DESIGNATED BY THE**
12 **APPOINTING AUTHORITY.**

13 **(B) (1) THE APPOINTING AUTHORITY MAY IMPOSE EMERGENCY**
14 **SUSPENSION WITH PAY IF IT APPEARS THAT THE ACTION IS IN THE BEST**
15 **INTEREST OF THE INMATES, THE PUBLIC, AND THE CORRECTIONAL FACILITY.**

16 **(2) IF THE CORRECTIONAL OFFICER IS SUSPENDED WITH PAY,**
17 **THE APPOINTING AUTHORITY MAY SUSPEND THE CORRECTIONAL POWERS OF**
18 **THE CORRECTIONAL OFFICER AND REASSIGN THE CORRECTIONAL OFFICER TO**
19 **RESTRICTED DUTIES PENDING:**

20 **(I) A DETERMINATION BY A COURT WITH RESPECT TO A**
21 **CRIMINAL VIOLATION; OR**

22 **(II) A FINAL DETERMINATION BY THE HEARING BOARD WITH**
23 **RESPECT TO A CORRECTIONAL FACILITY VIOLATION.**

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

26 **(C) (1) IF A CORRECTIONAL OFFICER IS CHARGED WITH A FELONY,**
27 **THE APPOINTING AUTHORITY MAY IMPOSE AN EMERGENCY SUSPENSION OF**
28 **CORRECTIONAL POWERS WITHOUT PAY.**

29 **(2) A CORRECTIONAL OFFICER WHO IS SUSPENDED UNDER**
30 **PARAGRAPH (1) OF THIS SUBSECTION IS ENTITLED TO A PROMPT HEARING,**
31 **HELD NO MORE THAN 90 DAYS AFTER THE SUSPENSION.**

1 **10-913.**

2 (A) ON RECEIVING A TERMINATION, DEMOTION, OR SUSPENSION
3 WITHOUT PAY OF GREATER THAN 10 DAYS, A CORRECTIONAL OFFICER MAY:

4 (1) FILE AN APPEAL UNDER § 11-109 OF THE STATE PERSONNEL
5 AND PENSIONS ARTICLE; OR

6 (2) REQUEST A HEARING BY THE HEARING BOARD.

7 (B) IF A CORRECTIONAL OFFICER RECEIVES PUNITIVE ACTION OTHER
8 THAN TERMINATION, DEMOTION, OR SUSPENSION WITHOUT PAY OF GREATER
9 THAN 10 DAYS, THE CORRECTIONAL OFFICER MAY APPEAL ONLY UNDER §
10 11-109 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

11 (C) AN EMERGENCY SUSPENSION IS NOT SUBJECT TO APPEAL.

12 **10-914.**

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

16 (B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
17 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
18 EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$5,000 OR BOTH.

19 **Article – State Personnel and Pensions**20 **1-101.**

21 (b) “Appointing authority” means an individual or a unit of government that
22 has the power to make appointments and terminate employment.

23 **11-105.**

24 The following actions are causes for automatic termination of employment:

25 (1) intentional conduct, without justification, that:

26 (i) seriously injures another person;

27 (ii) causes substantial damage to property; or

28 (iii) seriously threatens the safety of the workplace;

- 1 (2) theft of State property of a value greater than \$300;
- 2 (3) illegal sale, use, or possession of drugs on the job;
- 3 (4) conviction of a controlled dangerous substance offense by an
4 employee in a designated sensitive classification;
- 5 (5) conviction of a felony;
- 6 (6) accepting for personal use any fee, gift, or other valuable thing in
7 connection with or during the course of State employment if given to the employee by
8 any person with the hope or expectation of receiving a favor or better treatment than
9 that accorded to other persons;
- 10 (7) (i) violation of the Fair Election Practices Act; or
- 11 (ii) using, threatening, or attempting to use political influence
12 or the influence of any State employee or officer in securing promotion, transfer, leave
13 of absence, or increased pay;
- 14 (8) wantonly careless conduct or unwarrantable excessive force in the
15 treatment or care of an individual who is a client, patient, prisoner, or any other
16 individual who is in the care or custody of this State; and
- 17 (9) violation of § 3–314 of the Criminal Law Article.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2010.