

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 218 (Senator Shank)

Judicial Proceedings

Judiciary

Public Safety - Law Enforcement Officers' Bill of Rights - Internal Investigation Unit

This bill includes the Internal Investigation Unit (IIU) of the Department of Public Safety and Correctional Services (DPSCS) under the definition of “law enforcement officer” for purposes of the Law Enforcement Officers’ Bill of Rights (LEOBOR).

Fiscal Summary

State Effect: While the bill may create some new operational difficulties for DPSCS, the number of investigators in IIU is small, and the impact is expected to be minimal. Any future impacts arising from decisions of LEOBOR hearing boards, instead of grievance procedures under the current collective bargaining agreement for State employees, cannot be reliably measured or predicted.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: LEOBOR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 23 specified State and local agencies but does not extend to any correctional officers in the State.

Chapter 194 of 2010 established a State Correctional Officers’ Bill of Rights (COBOR) providing for rights of a State correctional officer relating to the employment,

investigation, and discipline of correctional officers who are employees of the Division of Correction (DOC) working in a State correctional facility. The Act established exclusive procedures for the investigation and discipline of a State employed correctional officer for alleged misconduct.

Members of IIU are not police officers for purposes of LEOBOR or DOC correctional officers covered under COBOR. Employees of the unit are covered under the current collective bargaining agreement for State employees (under the State Personnel and Pensions Article), including an agreement of the parties on the standards of wages, hours, and other terms and conditions of employment for State employees in the State Personnel Management System. A Memorandum of Understanding between the State and the Maryland State Law Enforcement Officers Labor Alliance (SLEOLA) addresses disciplinary matters for law enforcement officers.

Background: The current IIU of DPSCS has 22 authorized full-time positions, of which 18 are full-time detectives/investigators and 7.35 are contractual positions. IIU handles primarily criminal investigations within DOC. The detective positions are in the skilled service and are members of Bargaining Unit I under the current collective bargaining agreement. Unit I is represented by SLEOLA.

Employees of IIU enjoy the same protections afforded under Title 11 of the State Personnel and Pensions Article, with regard to the imposition of disciplinary actions and the disciplinary appeals process as other State employees.

Title 11 requires that the appointing authority take the following steps before imposing a disciplinary action against an employee:

- investigate the alleged misconduct;
- meet with the employee;
- consider any mitigating circumstances;
- determine the appropriate disciplinary action, if any, to be imposed; and
- give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.

Further, as skilled service employees, these individuals have the right to appeal any disciplinary action through the full administrative appeal process, which ends with a final administrative decision from the Office of Administrative Hearings (OAH). Hearings at OAH are contested case proceedings and the Rules of Procedure for the OAH permit discovery and the examination and cross-examination of witnesses.

LEOBOR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined.

LEOBOR requirements are much more restrictive and time consuming than the Title 11 requirements. Specifically, LEOBOR delineates who can do the investigation, what management must disclose to the employee, when and where the meeting can take place, and limits the duration of the meeting.

When an investigation or interrogation results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues prior to the imposition of the disciplinary action. The hearing board process is bifurcated. First, the board meets to determine guilt and if the officer is found guilty of the charges. A second hearing is held to determine the level of discipline.

State Fiscal Effect: The bill requires IIU sworn staff positions that may come under investigation involving disciplinary matters to be handled differently than other classifications within the agency. Because of the relative small size of the unit, DPSCS indicates that law enforcement officers from other State or local agencies, who are already under LEOBOR would have to be utilized to assemble a disciplinary process review boards when needed.

DPSCS also indicates that the bill restricts the ability of agency management to conduct investigations of misconduct and impose discipline on sworn IIU staff in a timely manner. LEOBOR provides tighter procedural time limits for investigative steps and interviews, and places limitations on interviewing techniques otherwise permitted by law. Timeframes established in the bill afford benefits to employees during investigations but eliminates the department's ability to impose discipline to sworn detectives with the current prescribed 30-day period.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services,
Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2011
ncs/hlb

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510