

HOUSE BILL 1457

E4

2lr3324

By: **Charles County Delegation**

Rules suspended

Introduced and read first time: March 7, 2012

Assigned to: Rules and Executive Nominations

Re-referred to: Appropriations, March 9, 2012

Committee Report: Favorable

House action: Adopted

Read second time: April 1, 2012

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of providing for certain rights of a correctional officer in Charles
4 County 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 a certain limitation on
7 administrative charges against a correctional officer in Charles County;
8 providing for procedures for a hearing board for an investigation against a
9 correctional officer in Charles County; providing for expungement of a record of
10 a formal complaint against a correctional officer in Charles County under
11 certain circumstances; providing for certain disciplinary actions against a
12 correctional officer in Charles County under certain circumstances; providing
13 that this Act supersedes inconsistent provisions of any other State or local law
14 that conflicts with this Act to the extent of the conflict; providing for the effect of
15 this Act in relation to the duties of the Sheriff of Charles County; establishing
16 that the Assistant Sheriff of Charles County shall resolve any dispute
17 concerning the application of this Act; providing for the scope of this Act;
18 defining certain terms; and generally relating to rights of a correctional officer
19 in Charles County.

20 BY adding to

21 Article – Correctional Services

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 11–1101 through 11–1111 to be under the new subtitle “Subtitle 11.
2 Charles County Correctional Officers’ Bill of Rights”
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2011 Supplement)

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

7 **Article – Correctional Services**

8 **SUBTITLE 11. CHARLES COUNTY CORRECTIONAL OFFICERS’ BILL OF RIGHTS.**

9 **11–1101.**

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

12 (B) “CORRECTIONAL OFFICER” HAS THE MEANING STATED IN § 8–201
13 OF THIS ARTICLE.

14 (C) (1) “HEARING” MEANS A PROCEEDING DURING AN
15 INVESTIGATION CONDUCTED BY A HEARING BOARD TO TAKE TESTIMONY OR
16 RECEIVE OTHER EVIDENCE.

17 (2) “HEARING” DOES NOT INCLUDE AN INTERROGATION AT
18 WHICH NO TESTIMONY IS TAKEN UNDER OATH.

19 (D) “HEARING BOARD” MEANS A BOARD THAT IS AUTHORIZED BY THE
20 MANAGING OFFICIAL TO HOLD A HEARING ON A COMPLAINT AGAINST A
21 CORRECTIONAL OFFICER.

22 **11–1102.**

23 **THIS SUBTITLE APPLIES ONLY IN CHARLES COUNTY.**

24 **11–1103.**

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

29 (B) THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF THE SHERIFF
30 TO REGULATE THE COMPETENT AND EFFICIENT OPERATION AND MANAGEMENT

1 OF THE SHERIFF'S OFFICE BY ANY REASONABLE MEANS INCLUDING TRANSFER
2 AND REASSIGNMENT IF:

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

4 (2) THE SHERIFF DETERMINES THAT ACTION TO BE IN THE BEST
5 INTERESTS OF THE INTERNAL MANAGEMENT OF THE SHERIFF'S OFFICE.

6 11-1104.

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

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

13 (B) THE SHERIFF'S OFFICE:

14 (1) MAY NOT PROHIBIT SECONDARY EMPLOYMENT BY A
15 CORRECTIONAL OFFICER; BUT

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

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

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

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

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

1 **(1) HAS EXERCISED OR DEMANDED THE RIGHTS GRANTED BY**
2 **THIS SUBTITLE; OR**

3 **(2) HAS LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.**

4 **(E) A STATUTE MAY NOT ABRIDGE AND THE SHERIFF'S OFFICE MAY**
5 **NOT ADOPT A REGULATION THAT PROHIBITS THE RIGHT OF A CORRECTIONAL**
6 **OFFICER TO BRING SUIT THAT ARISES OUT OF THE CORRECTIONAL OFFICER'S**
7 **DUTIES AS A CORRECTIONAL OFFICER.**

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

10 **11-1105.**

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

15 **(B) FOR PURPOSES OF THIS SECTION, THE INVESTIGATING OFFICER OR**
16 **INTERROGATING OFFICER SHALL BE A MEMBER OF THE SHERIFF'S OFFICE.**

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

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

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

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

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

29 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
30 **UNLESS A COMPLAINT IS FILED WITHIN 90 DAYS AFTER THE ALLEGED**

1 BRUTALITY, AN INVESTIGATION THAT MAY LEAD TO DISCIPLINARY ACTION
2 UNDER THIS SUBTITLE FOR BRUTALITY MAY NOT BE INITIATED AND AN ACTION
3 MAY NOT BE TAKEN.

4 (II) THE SHERIFF'S OFFICE MAY INVESTIGATE ANY
5 COMPLAINT OF BRUTALITY AT ANY TIME IF THE COMPLAINT IS MADE BY AN
6 EMPLOYEE OR A MEMBER OF THE SHERIFF'S OFFICE.

7 (D) (1) THE CORRECTIONAL OFFICER UNDER INVESTIGATION SHALL
8 BE INFORMED OF THE NAME, RANK, AND COMMAND OF:

9 (I) THE OFFICER IN CHARGE OF THE INVESTIGATION;

10 (II) THE INTERROGATING OFFICER; AND

11 (III) EACH INDIVIDUAL PRESENT DURING AN
12 INTERROGATION.

13 (2) BEFORE AN INTERROGATION, THE CORRECTIONAL OFFICER
14 UNDER INVESTIGATION SHALL BE INFORMED IN WRITING OF THE NATURE OF
15 THE INVESTIGATION.

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

20 (F) THE INTERROGATION SHALL TAKE PLACE:

21 (1) AT THE OFFICE OF THE COMMAND OF THE INVESTIGATING
22 OFFICER OR AT THE OFFICE OF THE CORRECTIONAL OFFICER UNDER
23 INVESTIGATION, AS DESIGNATED BY THE INVESTIGATING OFFICER; OR

24 (2) AT ANOTHER REASONABLE AND APPROPRIATE PLACE.

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

29 (2) EACH SESSION OF INTERROGATION SHALL:

30 (I) BE FOR A REASONABLE PERIOD; AND

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

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

5 **(I) (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 5 DAYS UNTIL REPRESENTATION IS OBTAINED.**

14 **(II) WITHIN THE 5-DAY PERIOD DESCRIBED IN**
15 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE SHERIFF, FOR GOOD CAUSE**
16 **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 **(J) (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 (K) (1) THE SHERIFF'S OFFICE MAY ORDER THE CORRECTIONAL
4 OFFICER UNDER INVESTIGATION TO SUBMIT TO BLOOD ALCOHOL TESTS,
5 BLOOD, BREATH, OR URINE TESTS FOR CONTROLLED DANGEROUS SUBSTANCES,
6 POLYGRAPH EXAMINATIONS, OR INTERROGATIONS THAT SPECIFICALLY RELATE
7 TO THE SUBJECT MATTER OF THE INVESTIGATION.

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

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

20 (L) (1) IF THE SHERIFF'S OFFICE ORDERS THE CORRECTIONAL
21 OFFICER TO SUBMIT TO A POLYGRAPH EXAMINATION, THE RESULTS OF THE
22 POLYGRAPH EXAMINATION MAY NOT BE USED AS EVIDENCE IN AN
23 ADMINISTRATIVE HEARING UNLESS THE SHERIFF'S OFFICE AND THE
24 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 (M) (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 SHERIFF'S OFFICE NOT TO DISCLOSE ANY MATERIAL CONTAINED IN THE
13 INVESTIGATORY FILE AND EXCULPATORY INFORMATION FOR ANY PURPOSE
14 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 SHERIFF'S OFFICE MAY EXCLUDE FROM THE
18 EXCULPATORY INFORMATION PROVIDED TO A CORRECTIONAL OFFICER UNDER
19 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 (N) (1) THE SHERIFF'S OFFICE MAY NOT INSERT ADVERSE MATERIAL
25 INTO A FILE OF THE CORRECTIONAL OFFICER, EXCEPT THE FILE OF THE
26 INTERNAL INVESTIGATION, UNLESS THE CORRECTIONAL OFFICER HAS AN
27 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 11-1106.

1 **(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE SHERIFF'S**
2 **OFFICE MAY NOT BRING ADMINISTRATIVE CHARGES AGAINST A CORRECTIONAL**
3 **OFFICER UNLESS THE SHERIFF'S OFFICE FILES THE CHARGES WITHIN 1 YEAR**
4 **AFTER THE ACT THAT GIVES RISE TO THE CHARGES COMES TO THE ATTENTION**
5 **OF THE APPROPRIATE SHERIFF'S OFFICE OFFICIAL.**

6 **(B) THE 1-YEAR LIMITATION OF SUBSECTION (A) OF THIS SECTION**
7 **DOES NOT APPLY TO CHARGES THAT RELATE TO CRIMINAL ACTIVITY OR**
8 **BRUTALITY.**

9 **11-1107.**

10 **(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
11 **SUBSECTION, IF THE INVESTIGATION OR INTERROGATION OF A CORRECTIONAL**
12 **OFFICER RESULTS IN A RECOMMENDATION OF DEMOTION, DISMISSAL,**
13 **TRANSFER, LOSS OF PAY, REASSIGNMENT, OR SIMILAR ACTION THAT IS**
14 **CONSIDERED PUNITIVE, THE CORRECTIONAL OFFICER IS ENTITLED TO A**
15 **HEARING ON THE ISSUES BY A HEARING BOARD BEFORE THE SHERIFF TAKES**
16 **THAT ACTION.**

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

19 **(B) (1) THE SHERIFF'S OFFICE SHALL GIVE NOTICE TO THE**
20 **CORRECTIONAL OFFICER OF THE RIGHT TO A HEARING BY A HEARING BOARD**
21 **UNDER THIS SECTION.**

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

24 **(C) (1) THE HEARING BOARD AUTHORIZED UNDER THIS SECTION**
25 **SHALL CONSIST OF AT LEAST THREE MEMBERS WHO:**

26 **(I) ARE APPOINTED BY THE SHERIFF AND CHOSEN FROM**
27 **CORRECTIONAL OFFICERS WITHIN THE SHERIFF'S OFFICE, OR FROM**
28 **CORRECTIONAL OFFICERS OF ANOTHER CORRECTIONAL FACILITY WITH THE**
29 **APPROVAL OF THE SHERIFF OF THE OTHER FACILITY; AND**

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

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

4 **(3) AT LEAST TWO MEMBERS OF THE HEARING BOARD SHALL BE**
5 **CORRECTIONAL OFFICERS.**

6 **(D) (1) IN CONNECTION WITH A DISCIPLINARY HEARING, THE**
7 **SHERIFF OR HEARING BOARD MAY ISSUE SUBPOENAS TO COMPEL THE**
8 **ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF BOOKS,**
9 **PAPERS, RECORDS, AND DOCUMENTS AS RELEVANT OR NECESSARY.**

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

13 **(3) EACH PARTY MAY REQUEST THE SHERIFF OR HEARING**
14 **BOARD TO ISSUE A SUBPOENA OR AN ORDER UNDER THIS SUBTITLE.**

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

16 **(2) THE HEARING BOARD SHALL GIVE THE SHERIFF'S OFFICE**
17 **AND CORRECTIONAL OFFICER AMPLE OPPORTUNITY TO PRESENT EVIDENCE**
18 **AND ARGUMENT ABOUT THE ISSUES INVOLVED.**

19 **(3) THE SHERIFF'S OFFICE AND CORRECTIONAL OFFICER MAY**
20 **BE REPRESENTED BY COUNSEL.**

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

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

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

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

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

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

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

5 **(II) GENERAL, TECHNICAL, OR SCIENTIFIC FACTS WITHIN**
6 **THE HEARING BOARD'S SPECIALIZED KNOWLEDGE.**

7 **(2) THE HEARING BOARD SHALL:**

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

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

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

16 **(H) IN CONNECTION WITH A DISCIPLINARY HEARING, THE SHERIFF OR**
17 **A HEARING BOARD MAY ADMINISTER OATHS.**

18 **(I) AN OFFICIAL RECORD, INCLUDING TESTIMONY AND EXHIBITS,**
19 **SHALL BE KEPT OF THE HEARING.**

20 **11-1108.**

21 **(A) (1) A DECISION, AN ORDER, OR AN ACTION TAKEN AS A RESULT**
22 **OF A HEARING UNDER § 11-1107 OF THIS SUBTITLE SHALL BE IN WRITING AND**
23 **ACCOMPANIED BY FINDINGS OF FACT.**

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

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

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

1 (I) RECONVENE THE HEARING;

2 (II) RECEIVE EVIDENCE; AND

3 (III) CONSIDER THE CORRECTIONAL OFFICER'S PAST JOB
4 PERFORMANCE AND OTHER RELEVANT INFORMATION AS FACTORS BEFORE
5 MAKING RECOMMENDATIONS TO THE SHERIFF.

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

9 (I) THE CORRECTIONAL OFFICER OR THE CORRECTIONAL
10 OFFICER'S COUNSEL OR REPRESENTATIVE OF RECORD; AND

11 (II) THE SHERIFF.

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

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

18 (C) (1) WITHIN 30 DAYS AFTER RECEIPT OF THE RECOMMENDATIONS
19 OF THE HEARING BOARD, THE SHERIFF SHALL:

20 (I) REVIEW THE FINDINGS, CONCLUSIONS, AND
21 RECOMMENDATIONS OF THE HEARING BOARD; AND

22 (II) ISSUE A FINAL ORDER.

23 (2) THE RECOMMENDATION OF A PENALTY BY THE HEARING
24 BOARD IS NOT BINDING ON THE SHERIFF.

25 (3) THE SHERIFF SHALL CONSIDER THE CORRECTIONAL
26 OFFICER'S PAST JOB PERFORMANCE AS A FACTOR BEFORE IMPOSING A
27 PENALTY.

28 (4) THE SHERIFF MAY INCREASE THE RECOMMENDED PENALTY
29 OF THE HEARING BOARD ONLY IF THE SHERIFF PERSONALLY MEETS WITH THE

1 CORRECTIONAL OFFICER AND ALLOWS THE CORRECTIONAL OFFICER TO BE
2 HEARD ON THE RECORD.

3 11-1109.

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

7 (1) THE INVESTIGATION OR HEARING RESULTED IN A FINDING OF
8 NONSUSTAINED OR UNFOUNDED; OR

9 (2) THE CORRECTIONAL OFFICER WAS EXONERATED AND AT
10 LEAST 3 YEARS HAVE PASSED SINCE THE FINAL DISPOSITION BY THE SHERIFF'S
11 OFFICE OR HEARING BOARD.

12 11-1110.

13 (A) (1) THE SHERIFF MAY IMPOSE EMERGENCY SUSPENSION WITH
14 PAY IF IT APPEARS THAT THE ACTION IS IN THE BEST INTEREST OF THE PUBLIC
15 AND THE SHERIFF'S OFFICE.

16 (2) IF THE CORRECTIONAL OFFICER IS SUSPENDED WITH PAY,
17 THE SHERIFF MAY REASSIGN THE CORRECTIONAL OFFICER TO RESTRICTED
18 DUTIES PENDING:

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

21 (II) A FINAL DETERMINATION BY A HEARING BOARD WITH
22 RESPECT TO A SHERIFF'S OFFICE VIOLATION.

23 (B) IF A CORRECTIONAL OFFICER IS CHARGED WITH A FELONY, THE
24 SHERIFF MAY IMPOSE AN EMERGENCY SUSPENSION OF CORRECTIONAL POWERS
25 WITHOUT PAY.

26 (C) A CORRECTIONAL OFFICER WHO IS SUSPENDED UNDER THIS
27 SECTION IS ENTITLED TO A PROMPT HEARING BEFORE THE ASSISTANT SHERIFF
28 OR THE ASSISTANT SHERIFF'S DESIGNEE.

29 11-1111.

1 **ANY DISPUTE CONCERNING THE APPLICATION OR INTERPRETATION OF**
2 **THIS SUBTITLE SHALL BE RESOLVED BY THE ASSISTANT SHERIFF.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.