

Chapter 31

(House Bill 346)

AN ACT concerning

Harford County – Correctional Officers’ Bill of Rights

FOR the purpose of adding Harford County to the provisions of law relating to the Cecil County, Garrett County, and St. Mary’s County Correctional Officers’ Bill of Rights; providing that certain provisions of law relating to hearing board procedures and the finality of certain hearing board decisions do not apply in Harford County; defining certain terms; and generally relating to the Correctional Officers’ Bill of Rights.

BY repealing and reenacting, with amendments,
 Article – Correctional Services
 Section 11–1001, 11–1002, 11–1008, and 11–1009
 Annotated Code of Maryland
 (2008 Replacement Volume and 2012 Supplement)

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

Article – Correctional Services

11–1001.

(a) In this subtitle the following words have the meanings indicated.

(b) **IN HARFORD COUNTY, “AGENCY” MEANS THE OFFICE OF THE SHERIFF OF HARFORD COUNTY.**

(c) (1) “Correctional officer” has the meaning stated in § 8–201 of this article.

(2) “Correctional officer” does not include an officer who is in probationary status on initial entry into the correctional agency except if an allegation of brutality in the execution of the officer’s duties is made against the officer.

[(c)] (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.

[(d)] (E) “Hearing board” means a board that is authorized by the managing official to hold a hearing on a complaint against a correctional officer.

[(e)] (F) “Internal investigation unit” means the internal investigation unit of a correctional facility charged with the investigation of complaints within a correctional facility.

(G) IN HARFORD COUNTY, “MANAGING OFFICIAL” MEANS THE SHERIFF OF HARFORD COUNTY.

11-1002.

This subtitle applies only in Cecil County, Garrett County, **HARFORD COUNTY**, and St. Mary’s County.

11-1008.

(a) (1) Except as provided in paragraph (2) of this subsection and § 11-1012 of this subtitle, if the investigation or interrogation of a correctional officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the correctional officer is entitled to a hearing on the issues by a hearing board before the managing official takes that action.

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

(b) (1) The internal investigation unit shall give notice to the correctional officer of the right to a hearing by a hearing board under this section.

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

(c) (1) Except as provided in paragraph (4) of this subsection and in § 11-1012 of this subtitle, the hearing board authorized under this section shall consist of at least three members who:

(i) are appointed by the managing official and chosen from correctional officers within that correctional facility, or from correctional officers of another correctional facility with the approval of the managing official of the other facility; and

(ii) have had no part in the investigation or interrogation of the correctional officer.

(2) At least one member of the hearing board shall be of the same rank as the correctional officer against whom the complaint is filed.

(3) (i) **THIS PARAGRAPH DOES NOT APPLY IN HARFORD COUNTY.**

(II) If the managing official is the correctional officer under investigation, the managing official of another correctional facility in the State shall function as the correctional officer of the same rank on the hearing board.

~~[(ii)]~~ **(III)** If the managing official of a correctional facility of a county or municipal corporation is under investigation, the official authorized to appoint the managing official's successor shall select the managing official of another correctional facility to function as the correctional officer of the same rank on the hearing board.

(4) (i) **THIS PARAGRAPH DOES NOT APPLY IN HARFORD COUNTY.**

(II) A correctional facility or the facility's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board.

~~[(ii)]~~ **(III)** A correctional officer may elect the alternative method of forming a hearing board if:

1. the correctional officer works in a correctional facility described in subparagraph ~~[(i)]~~ **(II)** of this paragraph; and
2. the correctional officer is included in the collective bargaining unit.

~~[(iii)]~~ **(IV)** The internal investigation unit shall notify the correctional officer in writing before a hearing board is formed that the correctional officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.

~~[(iv)]~~ **(V)** If the correctional officer elects the alternative method, that method shall be used to form the hearing board.

~~[(v)]~~ **(VI)** A correctional facility or exclusive collective bargaining representative may not require a correctional officer to elect an alternative method of forming a hearing board.

~~[(vi)] (VII)~~ If the correctional officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.

~~[(vii)] (VIII)~~ This paragraph is not subject to binding arbitration.

(d) (1) In connection with a disciplinary hearing, the managing official or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.

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

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

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

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

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

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

(e) (1) The hearing shall be conducted by a hearing board.

(2) The hearing board shall give the internal investigation unit and correctional officer ample opportunity to present evidence and argument about the issues involved.

(3) The correctional facility and correctional officer may be represented by counsel.

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

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

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

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

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

(g) (1) The hearing board may take notice of:

- (i) judicially cognizable facts; and
- (ii) general, technical, or scientific facts within 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 correctional facility.

(j) An official record, including testimony and exhibits, shall be kept of the hearing.

11-1009.

(a) (1) A decision, order, or action taken as a result of a hearing under § 11-1008 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.

(4) If the hearing board makes a finding of guilt, the hearing board shall:

(i) reconvene the hearing;

(ii) receive evidence; and

(iii) consider the correctional officer's past job performance and other relevant information as factors before making recommendations to the managing official.

(5) A copy of the decision or order, findings of fact, conclusions, and written recommendations for action shall be delivered or mailed promptly to:

(i) the correctional officer or the correctional officer's counsel or representative of record; and

(ii) the managing official.

(b) (1) After a disciplinary hearing and a finding of guilt, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive.

(2) The recommendation of a penalty shall be in writing.

(c) (1) Notwithstanding any other provision of this subtitle, the decision of the hearing board as to findings of fact and any penalty is final if:

(i) a managing official is an eyewitness to the incident under investigation; or

(ii) **EXCEPT IN HARFORD COUNTY**, a managing official has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.

(2) The decision of the hearing board then may be appealed in accordance with § 11–1010 of this subtitle.

(3) Paragraph (1)(ii) of this subsection is not subject to binding arbitration.

(d) (1) Within 30 days after receipt of the recommendations of the hearing board, the managing official shall:

(i) review the findings, conclusions, and recommendations of the hearing board; and

(ii) issue a final order.

(2) The final order and decision of the managing official is binding and then may be appealed in accordance with § 11–1010 of this subtitle.

(3) The recommendation of a penalty by the hearing board is not binding on the managing official.

(4) The managing official shall consider the correctional officer's past job performance as a factor before imposing a penalty.

(5) The managing official may increase the recommended penalty of the hearing board only if the managing official personally:

(i) reviews the entire record of the proceedings of the hearing board;

(ii) meets with the correctional officer and allows the correctional officer to be heard on the record;

(iii) discloses and provides in writing to the correctional officer, at least 10 days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and

(iv) states on the record the substantial evidence relied on to support the increase of the recommended penalty.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, April 9, 2013.