

HOUSE BILL 760

E4
HB 968/15 – JUD

6lr0315

By: **Delegates Carter, Glenn, and B. Robinson**

Introduced and read first time: February 8, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers' Bill of Rights – Alterations**

3 FOR the purpose of altering the requirements for making a certain complaint against a law
4 enforcement officer for a reason that may lead to a certain action; altering the
5 individuals who may conduct an investigation, an interrogation, or a hearing against
6 a certain law enforcement officer under certain circumstances; requiring
7 confidentiality of certain information under certain circumstances; providing for the
8 suspension of a law enforcement officer's police powers during a certain
9 investigation; altering where a certain interrogation may occur; altering certain
10 procedures for investigating, interrogating, disciplining, and conducting a hearing
11 against a certain law enforcement officer under certain circumstances; establishing
12 certain deadlines for certain procedures; altering certain terms; and generally
13 relating to the Law Enforcement Officers' Bill of Rights.

14 BY repealing and reenacting, with amendments,
15 Article – Public Safety
16 Section 3–101(c) and (d), 3–104, 3–106, 3–107(a), (c), and (d)(1), 3–108, 3–110(a), and
17 3–112(c)
18 Annotated Code of Maryland
19 (2011 Replacement Volume and 2015 Supplement)

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

22 **Article – Public Safety**

23 3–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) (1) "Hearing" means a proceeding [during an investigation] **FOLLOWING**
2 **THE IMPOSITION OF DISCIPLINE** conducted by a hearing board to take testimony or
3 receive other evidence.

4 (2) "Hearing" does not include an interrogation [at which no testimony is
5 taken under oath].

6 (d) "Hearing board" means a board that is authorized by the chief to [hold a
7 hearing on a complaint against] **REVIEW DISCIPLINE IMPOSED ON** a law enforcement
8 officer.

9 3-104.

10 (a) The investigation or interrogation by a law enforcement agency of a law
11 enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal
12 shall be conducted in accordance with this section.

13 [(b) For purposes of this section, the investigating officer or interrogating officer
14 shall be:

15 (1) a sworn law enforcement officer; or

16 (2) if requested by the Governor, the Attorney General or Attorney
17 General's designee.

18 (c) (1) A complaint against a law enforcement officer that alleges brutality in
19 the execution of the law enforcement officer's duties may not be investigated unless the
20 complaint is sworn to, before an official authorized to administer oaths, by:

21 (i) the aggrieved individual;

22 (ii) a member of the aggrieved individual's immediate family;

23 (iii) an individual with firsthand knowledge obtained because the
24 individual was present at and observed the alleged incident; or

25 (iv) the parent or guardian of the minor child, if the alleged incident
26 involves a minor child.

27 (2) Unless a complaint is filed within 90 days after the alleged brutality,
28 an investigation that may lead to disciplinary action under this subtitle for brutality may
29 not be initiated and an action may not be taken.]

30 **(B) THIS SECTION DOES NOT PROHIBIT AN OFFICER FROM DESCRIBING AN**
31 **INCIDENT UNDER INVESTIGATION OR PROHIBIT THE LAW ENFORCEMENT AGENCY**
32 **FROM QUESTIONING AN OFFICER ABOUT AN INCIDENT.**

1 [(d)] (C) (1) The law enforcement officer under investigation shall be
2 informed of the name[, rank, and command] of:

3 (i) the [law enforcement officer] **PERSON** in charge of the
4 investigation;

5 (ii) the [interrogating officer] **INTERROGATOR**; and

6 (iii) each individual present during an interrogation.

7 (2) Before an interrogation, the law enforcement officer under
8 investigation shall be informed in writing of the nature of the investigation.

9 [(e)] (D) If the law enforcement officer under interrogation is under arrest, or is
10 likely to be placed under arrest as a result of the interrogation, the law enforcement officer
11 shall be informed completely of all of the law enforcement officer's rights before the
12 interrogation begins.

13 [(f)] (E) Unless the seriousness of the investigation is of a degree that an
14 immediate interrogation is required, the interrogation shall be conducted at a reasonable
15 hour, preferably when the law enforcement officer is on duty.

16 **(F) INFORMATION AND EVIDENCE ACQUIRED DURING AN INVESTIGATION**
17 **MAY NOT BE SHARED WITH THE LAW ENFORCEMENT OFFICER UNDER**
18 **INVESTIGATION OR THE LAW ENFORCEMENT OFFICER'S COUNSEL OR**
19 **REPRESENTATIVE UNTIL AFTER THE LAW ENFORCEMENT OFFICER HAS BEEN**
20 **QUESTIONED.**

21 (g) (1) The interrogation shall take place:

22 (i) at the office [of the command of the investigating officer] **OF THE**
23 **INVESTIGATOR** or at the office of the local precinct or police unit in which the incident
24 allegedly occurred, as designated by the [investigating officer] **INVESTIGATOR**; or

25 (ii) at another reasonable and appropriate place.

26 (2) The law enforcement officer under investigation may waive the right
27 described in paragraph (1)(i) of this subsection.

28 (h) (1) All questions directed to the law enforcement officer under
29 interrogation shall be asked by and through one [interrogating officer] **INTERROGATOR**
30 during any one session of interrogation consistent with paragraph (2) of this subsection.

31 (2) Each session of interrogation shall:

1 (i) be for a reasonable period; and

2 (ii) allow for personal necessities and rest periods as reasonably
3 necessary.

4 (i) The law enforcement officer under interrogation may not be threatened with
5 transfer, dismissal, or disciplinary action.

6 (j) (1) (i) On request, the law enforcement officer under interrogation has
7 the right to be represented by counsel or another responsible representative of the law
8 enforcement officer's choice who shall be present and available for consultation at all times
9 during the interrogation.

10 (ii) The law enforcement officer may waive the right described in
11 subparagraph (i) of this paragraph.

12 [(2) (i) The interrogation shall be suspended for a period not exceeding
13 10 days until representation is obtained.

14 (ii) Within that 10-day period, the chief for good cause shown may
15 extend the period for obtaining representation.]

16 [(3) (2) During the interrogation, the law enforcement officer's counsel
17 or representative may:

18 (i) request a recess at any time to consult with the law enforcement
19 officer;

20 (ii) object to any question posed; and

21 (iii) state on the record outside the presence of the law enforcement
22 officer the reason for the objection.

23 (k) (1) A complete record shall be kept of the entire interrogation, including all
24 recess periods, of the law enforcement officer.

25 (2) The record may be written, taped, [or] transcribed, **OR OTHERWISE**
26 **RECORDED.**

27 (3) On completion of the investigation, and on request of the law
28 enforcement officer under investigation or the law enforcement officer's counsel or
29 representative, a copy of the record of the interrogation shall be made available at least 10
30 days before a hearing.

31 (l) (1) The law enforcement agency may order the law enforcement officer
32 under investigation to submit to blood alcohol tests, blood, breath, or urine tests for

1 controlled dangerous substances, polygraph examinations, or interrogations that
2 specifically relate to the subject matter of the investigation.

3 (2) If the law enforcement agency orders the law enforcement officer to
4 submit to a test, examination, or interrogation described in paragraph (1) of this subsection
5 and the law enforcement officer refuses to do so, the law enforcement agency may
6 commence an action that may lead to a punitive measure as a result of the refusal.

7 (3) If the law enforcement agency orders the law enforcement officer to
8 submit to a test, examination, or interrogation described in paragraph (1) of this subsection,
9 the results of the test, examination, or interrogation are not admissible or discoverable in
10 a criminal proceeding against the law enforcement officer.

11 (m) (1) If the law enforcement agency orders the law enforcement officer to
12 submit to a polygraph examination, the results of the polygraph examination may not be
13 used as evidence in [an administrative] A hearing unless the law enforcement agency and
14 the law enforcement officer agree to the admission of the results.

15 (2) The law enforcement officer's counsel or representative need not be
16 present during the actual administration of a polygraph examination by a certified
17 polygraph examiner if:

18 (i) the questions to be asked are reviewed with the law enforcement
19 officer or the counsel or representative before the administration of the examination;

20 (ii) the counsel or representative is allowed to observe the
21 administration of the examination; and

22 (iii) a copy of the final report of the examination by the certified
23 polygraph examiner is made available to the law enforcement officer or the counsel or
24 representative within a reasonable time, not exceeding 10 days, after completion of the
25 examination.

26 (n) (1) On completion of an investigation [and at least 10 days before a
27 hearing], the law enforcement officer under investigation shall be:

28 (i) notified of the name of each witness and of each charge and
29 specification against the law enforcement officer; and

30 (ii) provided with a copy of the investigatory file and any exculpatory
31 information, if the law enforcement officer and the law enforcement officer's representative
32 agree to:

33 1. execute a confidentiality agreement with the law
34 enforcement agency not to disclose any material contained in the investigatory file and
35 exculpatory information for any purpose other than to defend the law enforcement officer;
36 and

1 2. pay a reasonable charge for the cost of reproducing the
2 material.

3 (2) The law enforcement agency may exclude from the exculpatory
4 information provided to a law enforcement officer under this subsection:

5 (i) the identity of confidential sources; **AND**

6 (ii) nonexculpatory information[; and

7 (iii) recommendations as to charges, disposition, or punishment].

8 (o) (1) The law enforcement agency may not insert adverse material into a file
9 of the law enforcement officer, except the file of the internal investigation or the intelligence
10 division, unless the law enforcement officer has an opportunity to review, sign, receive a
11 copy of, and comment in writing on the adverse material.

12 (2) The law enforcement officer may waive the right described in
13 paragraph (1) of this subsection.

14 3–106.

15 (a) Subject to subsection (b) of this section, a law enforcement agency may not
16 bring administrative charges against a law enforcement officer unless the agency files the
17 charges within:

18 **(1)** 1 year after the act that gives rise to the charges comes to the attention
19 of the appropriate law enforcement agency official; **OR**

20 **(2)** **1 YEAR AFTER THE CONCLUSION OF A CIVIL CLAIM, ANY PART OF**
21 **WHICH IS SETTLED OR RESOLVED IN FAVOR OF A PLAINTIFF.**

22 (b) The [1–year] limitation of subsection (a) of this section does not apply to
23 charges that relate to criminal activity or excessive force.

24 **(C) WITHIN 30 DAYS OF THE COMPLETION OF AN INVESTIGATION, THE**
25 **CHIEF SHALL:**

26 **(1)** **REVIEW THE ENTIRE RECORD OF THE INVESTIGATION; AND**

27 **(2)** **ISSUE A FINAL ORDER.**

28 **(D) THE CHIEF SHALL CONSIDER THE LAW ENFORCEMENT OFFICER’S PAST**
29 **JOB PERFORMANCE AS A FACTOR BEFORE IMPOSING A PENALTY.**

1 3–107.

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

8 (2) A law enforcement officer who has been convicted, **INCLUDING A PLEA**
9 **RESULTING IN PROBATION BEFORE JUDGMENT**, of a **MISDEMEANOR INVOLVING**
10 **DISHONESTY OR VIOLENCE, A MISDEMEANOR COMMITTED WHILE ON DUTY, OR ANY**
11 felony is not entitled to a hearing under this section.

12 (c) (1) Except as provided in paragraph (4) of this subsection and in § 3–111 of
13 this subtitle, the hearing board authorized under this section shall consist of at least three
14 members who:

15 (i) are appointed by the chief and chosen from law enforcement
16 officers within that law enforcement agency, [or] from law enforcement officers of another
17 law enforcement agency with the approval of the chief of the other agency, **OR ARE**
18 **RESIDENTS OF THE JURISDICTION SERVED BY THE LAW ENFORCEMENT OFFICER;**
19 and

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

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

24 (3) (i) If the chief is the law enforcement officer under investigation, the
25 chief of another law enforcement agency in the State shall function as the law enforcement
26 officer of the same rank on the hearing board.

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

30 (iii) If the chief of a law enforcement agency of a county or municipal
31 corporation is under investigation, the official authorized to appoint the chief’s successor
32 shall appoint the chief of another law enforcement agency to function as the law
33 enforcement officer of the same rank on the hearing board.

34 (iv) If the chief of a State law enforcement agency or the chief of a
35 law enforcement agency of a county or municipal corporation is under investigation, the

1 official authorized to appoint the chief's successor, or that official's designee, shall function
2 as the chief for purposes of this subtitle.

3 (4) (i) A law enforcement agency or the agency's superior governmental
4 authority that has recognized and certified an exclusive collective bargaining
5 representative may negotiate with the representative an alternative method of forming a
6 hearing board.

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

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

11 2. the law enforcement officer is included in the collective
12 bargaining unit.

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

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

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

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

24 (vii)] If authorized by local law, this paragraph is subject to binding
25 arbitration.

26 **(5) (I) A LAW ENFORCEMENT OFFICER SHALL REQUEST A**
27 **HEARING BY A HEARING BOARD WITHIN 30 DAYS OF THE IMPOSITION OF**
28 **DISCIPLINARY ACTION.**

29 **(II) A HEARING SHALL COMMENCE WITHIN 90 DAYS OF A**
30 **REQUEST BY A LAW ENFORCEMENT OFFICER.**

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

1 3-108.

2 (a) (1) A decision, order, or action taken as a result of a hearing under § 3-107
3 of this subtitle shall be in writing and accompanied by findings of fact.

4 (2) The findings of fact shall consist of a concise statement on each issue in
5 the case.

6 [(3) A finding of not guilty terminates the action.

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

8 (i) reconvene the hearing;

9 (ii) receive evidence; and

10 (iii) consider the law enforcement officer's past job performance and
11 other relevant information as factors before making recommendations to the chief.]

12 [(5) (3) A copy of the decision or order, findings of fact, AND conclusions[,
13 and written recommendations for action] shall be delivered or mailed promptly to:

14 (i) the law enforcement officer or the law enforcement officer's
15 counsel or representative of record; and

16 (ii) the chief.

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

21 (I) AFFIRM THE DISCIPLINARY DECISION AND PENALTIES
22 IMPOSED; OR

23 (II) OVERTURN THE DISCIPLINARY DECISION RESULTING IN
24 THE REMOVAL OF ALL PENALTIES.

25 (2) [The recommendation of a penalty] A DECISION BY THE HEARING
26 BOARD shall be in writing.

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

29 (i) a chief is an eyewitness to the incident under investigation; or

1 (ii) a law enforcement agency or the agency's superior governmental
2 authority has agreed with an exclusive collective bargaining representative recognized or
3 certified under applicable law that the decision is final.

4 (2)] The decision of the hearing board then may be appealed in accordance
5 with § 3-109 of this subtitle.

6 [(3) If authorized by local law, paragraph (1)(ii) of this subsection is subject
7 to binding arbitration.

8 (d) (1) Within 30 days after receipt of the recommendations of the hearing
9 board, the chief shall:

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

12 (ii) issue a final order.

13 (2) The final order and decision of the chief is binding and then may be
14 appealed in accordance with § 3-109 of this subtitle.

15 (3) The recommendation of a penalty by the hearing board is not binding
16 on the chief.

17 (4) The chief shall consider the law enforcement officer's past job
18 performance as a factor before imposing a penalty.

19 (5) The chief may increase the recommended penalty of the hearing board
20 only if the chief personally:

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

22 (ii) meets with the law enforcement officer and allows the law
23 enforcement officer to be heard on the record;

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

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

30 3-110.

31 (a) On written request, a law enforcement officer may have expunged from any
32 file the record of a formal complaint made against the law enforcement officer if:

1 (1) (i) the law enforcement agency that investigated the complaint:

2 1. exonerated the law enforcement officer of all charges in
3 the complaint; or

4 2. determined that the charges were unsustained or
5 unfounded; or

6 (ii) a hearing board acquitted the law enforcement officer, dismissed
7 the action, or made a finding of not guilty; and

8 (2) at least 3 years have passed since the final disposition by the law
9 enforcement agency or hearing board **WITH NO ADDITIONAL COMPLAINTS.**

10 3–112.

11 (c) (1) If a law enforcement officer is charged with a [felony] **CRIME**, the chief
12 may impose an emergency suspension of police powers without pay.

13 (2) A law enforcement officer who is suspended under paragraph (1) of this
14 subsection is entitled to a prompt hearing.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2016.