

HOUSE BILL 857

E4
HB 819/15 – JUD

6lr0323

By: **Delegates Carter and Glenn**

Introduced and read first time: February 8, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers – Alcohol and Drug Testing – Required**

3 FOR the purpose of requiring a law enforcement agency to order a law enforcement officer
4 to submit to certain alcohol and drug testing if the officer was involved in a certain
5 incident; and generally relating to alcohol and drug testing of law enforcement
6 officers.

7 BY repealing and reenacting, with amendments,
8 Article – Public Safety
9 Section 3–104
10 Annotated Code of Maryland
11 (2011 Replacement Volume and 2015 Supplement)

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

14 **Article – Public Safety**

15 3–104.

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

19 (b) For purposes of this section, the investigating officer or interrogating officer
20 shall be:

21 (1) a sworn law enforcement officer; or

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

4 (i) the aggrieved individual;

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

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

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

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

13 (d) (1) The law enforcement officer under investigation shall be informed of
14 the name, rank, and command of:

15 (i) the law enforcement officer in charge of the investigation;

16 (ii) the interrogating officer; and

17 (iii) each individual present during an interrogation.

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

20 (e) If the law enforcement officer under interrogation is under arrest, or is likely
21 to be placed under arrest as a result of the interrogation, the law enforcement officer shall
22 be informed completely of all of the law enforcement officer's rights before the interrogation
23 begins.

24 (f) Unless the seriousness of the investigation is of a degree that an immediate
25 interrogation is required, the interrogation shall be conducted at a reasonable hour,
26 preferably when the law enforcement officer is on duty.

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

28 (i) at the office of the command of the investigating officer or at the
29 office of the local precinct or police unit in which the incident allegedly occurred, as
30 designated by the investigating officer; or

31 (ii) at another reasonable and appropriate place.

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

3 (h) (1) All questions directed to the law enforcement officer under
4 interrogation shall be asked by and through one interrogating officer during any one
5 session of interrogation consistent with paragraph (2) of this subsection.

6 (2) Each session of interrogation shall:

7 (i) be for a reasonable period; and

8 (ii) allow for personal necessities and rest periods as reasonably
9 necessary.

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

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

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

18 (2) (i) The interrogation shall be suspended for a period not exceeding
19 10 days until representation is obtained.

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

22 (3) During the interrogation, the law enforcement officer's counsel or
23 representative may:

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

26 (ii) object to any question posed; and

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

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

31 (2) The record may be written, taped, or transcribed.

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

5 (l) (1) (i) **[The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
6 **PARAGRAPH, THE** law enforcement agency may order the law enforcement officer under
7 investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled
8 dangerous substances, polygraph examinations, or interrogations that specifically relate to
9 the subject matter of the investigation.

10 (ii) **THE LAW ENFORCEMENT AGENCY SHALL ORDER A LAW**
11 **ENFORCEMENT OFFICER TO SUBMIT TO A BLOOD ALCOHOL TEST AND BLOOD,**
12 **BREATH, OR URINE TESTS FOR CONTROLLED DANGEROUS SUBSTANCES IF THE**
13 **OFFICER WAS INVOLVED IN AN INCIDENT IN WHICH THE OFFICER:**

- 14 1. **DISCHARGED A FIREARM;**
15 2. **DISCHARGED AN ELECTRONIC CONTROL DEVICE; OR**
16 3. **CAUSED A MOTOR VEHICLE ACCIDENT.**

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

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

25 (m) (1) If the law enforcement agency orders the law enforcement officer to
26 submit to a polygraph examination, the results of the polygraph examination may not be
27 used as evidence in an administrative hearing unless the law enforcement agency and the
28 law enforcement officer agree to the admission of the results.

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

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

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

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

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

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

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

14 1. execute a confidentiality agreement with the law
15 enforcement agency not to disclose any material contained in the investigatory file and
16 exculpatory information for any purpose other than to defend the law enforcement officer;
17 and

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

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

22 (i) the identity of confidential sources;

23 (ii) nonexculpatory information; and

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

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

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

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