

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1262

(Delegate Oaks, *et al.*) (By Request - Baltimore City
Administration)

Judiciary

Judicial Proceedings

Baltimore City - Civilian Review Board

This bill alters provisions applicable to the Baltimore City Civilian Review Board. The bill alters the procedures and time limits for filing a complaint with the board and authorizes confidential complaints under specified circumstances. The bill also modifies the investigation process for a complaint and the definitions of the terms “abusive language” and “harassment.”

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: None.

Local Effect: The bill’s changes are procedural in nature. While the bill is anticipated to have a positive impact on the operations of the board, it does not directly affect Baltimore City finances.

Small Business Effect: None.

Analysis

Bill Summary:

Complaints

The bill repeals the time limits within which a complaint must be made after the action giving rise to the complaint occurs (generally one year, or 90 days for a complaint for excessive force). In addition, the bill repeals the requirement for a complaint to be witnessed by a notary public.

The form for a complaint that is required under current law must include *a request for* (1) the name of the complainant; (2) if known, the name of the police officer allegedly involved; (3) the date, time, and place of the alleged misconduct; (4) the circumstances of the alleged misconduct; and (5) an explanation of the alleged misconduct that is deemed to be wrongful. The board may review an incomplete complaint. In addition, a complainant may request that the complaint be kept confidential.

For a complaint that is requested to be confidential, a copy of the complaint must be sent within 48 hours to the board and may not be sent to the Internal Investigative Division (IID) until after the board sends its final recommendation to the head of the appropriate law enforcement unit. A recipient of a complaint that is requested to be confidential may not disclose the information in the complaint.

The board, instead of the secretary of the board, must assign a consecutive number to each complaint and, within 48 hours, must send a copy to each board member. The board, rather than the secretary, must also maintain on file a record of each complaint.

Investigations Relating to Confidential Complaints

The board must independently investigate a complaint that is requested to be kept confidential. If IID investigates an excessive force incident where there has not been a formal complaint filed by a civilian, IID's report remains subject to review and recommendation by the Civilian Review Board.

The bill repeals the 30-day time requirement after receipt of the IID report within which the board must submit a statement of its findings and recommendations to the head of the appropriate law enforcement unit; thus, the board may submit a statement of its findings and recommendations at any time.

Definitions

“Abusive language” is altered to mean harsh, violent, profane, or derogatory language that would demean the dignity of an individual and includes profanity and racial, ethnic, or sexist slurs. “Harassment” is altered to mean repeated or unwarranted verbal or physical annoyances or unwarranted threats or unwarranted demands.

Current Law: The Baltimore City Police Civilian Review Board is a permanent, independent agency in Baltimore City that is authorized to process complaints lodged by members of the public who allege abusive language, false arrest, false imprisonment, harassment, or excessive force by members of the Baltimore Police Department. The board may also review police department’s policies and make recommendations to the Police Commissioner. The following police agencies fall under the jurisdiction of the board: the Baltimore Police Department; the Baltimore City School Police; the Housing Authority Police of Baltimore City; the Baltimore City Sheriff’s Department; the Baltimore City Watershed Police Force; the police force of the Baltimore City Community College; and the police force of Morgan State University.

An individual who claims to have been subjected to or witnessed an act of abusive language, false arrest, false imprisonment, harassment, or excessive force, or injury allegedly resulting from excessive force caused by a police officer, may file a complaint at the Office of the Internal Investigative Division, the Legal Aid Bureau, the Maryland Human Relations Commission, the Baltimore Community Relations Commission, or at any of the police district stations in Baltimore City.

In general, a complaint must be made within one year of the action giving rise to the complaint. A complaint for excessive force, however, must be made within 90 days of the alleged act of excessive force. The complaint must be reduced to writing on a form authorized by the board, signed by the complainant, and witnessed by a notary public. In addition, a complaint for excessive force must be sworn to by the complainant.

The complaint must include:

- the name of the complainant;
- if known, the name of the police officer allegedly involved;
- the date, time, and place of the alleged misconduct;
- the circumstances of the alleged misconduct; and
- an explanation of the alleged misconduct that is deemed to be wrongful.

One copy of the completed form must be retained by the recipient of the complaint and a copy given to the complainant. A copy must be sent within 48 hours to IID and the

secretary of the board. The secretary of the board must assign a consecutive number to each complaint and, within 48 hours, must send a copy to each board member. The secretary must also maintain on file a record of each complaint.

IID must make a comprehensive investigation of each complaint and submit its IID report relating to the incident alleged to the board within 90 days from the date of the complaint. For good cause shown, the board may extend the time allowed to complete the report required.

The board must review all complaints alleging police misconduct under its jurisdiction and may investigate, simultaneously with IID, each complaint it deems appropriate and report its findings to IID.

The board may issue a subpoena, signed by the chairman of the board, to compel (1) the attendance and testimony of a witness other than the accused officer and (2) the production of any book, record, or other document. If a person fails to comply with a subpoena issued by the board, on petition of the board, a court of competent jurisdiction may compel compliance with the subpoena. A police officer may submit a witness list to the board 10 days or more before the board takes testimony.

The chairman or the secretary of the board may administer oaths in connection with any proceeding of the board. The police officer or the police officer's representative must have the right to question witnesses who testify about the complaint and all witness testimony must be recorded.

The board must review IID's report. On review of IID's investigative report, if any, for each case, the board must recommend to the head of the appropriate law enforcement unit to:

- sustain the complaint and may recommend the appropriate disciplinary action against the police officer;
- not sustain the complaint;
- exonerate the police officer;
- find that the complaint is unfounded; or
- require further investigation by IID.

The board must submit a statement of its findings and recommendations to the head of the appropriate law enforcement unit within 30 days after receipt of the IID report.

For purposes of a complaint, "abusive language" means the use of remarks intended to be demeaning, humiliating, mocking, insulting, or belittling that may or may not be based on

the actual or perceived race, color, religion, sex, national origin, sexual orientation, or gender identity of an individual. “Harassment” means:

- repeated or unwarranted conduct that is intended to be overtly demeaning, humiliating, mocking, insulting, or belittling; or
- any conduct that is intended to cause unnecessary physical discomfort or injury.

“Harassment” does not include conduct that is reasonably necessary to effect a lawful purpose.

The Law Enforcement Officers’ Bill of Rights (LEOBR) 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 26 specified State and local agencies and includes all of the agencies under the board’s jurisdiction. The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal must be conducted in accordance with LEOBR.

Background: Although the board was originally created without a budget, the fiscal 2015 budget for Baltimore City included \$148,639 for the activities of the board, including funding for two professional investigator positions who assist the board in gathering information on cases. In addition, the Mayor of Baltimore City indicates a commitment to hire two additional investigators. The staff of the Baltimore City Community Relations Commission provides administrative and clerical support to the board. The Office of the City Solicitor provides the board with legal assistance at times; however, the practice can create a conflict as the City Solicitor also represents the Baltimore Police Department.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 829 (Senator Conway)(By Request - Baltimore City Administration - Judicial Proceedings) is not identical.

Information Source(s): Baltimore City, Department of Legislative Services

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