

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 674
Judiciary

(Delegate Cluster, *et al.*)

Law Enforcement Officers' Bill of Rights - Hearing Board - Final Order

This bill transfers the final decision making function in a law enforcement disciplinary proceeding under the Law Enforcement Officers' Bill of Rights (LEOBR) from the chief of the law enforcement agency to the hearing board. The bill repeals the requirement for the hearing board to provide findings and make recommendations following a finding of guilt in an administrative hearing and instead requires the hearing board to issue a final order. The bill also repeals the requirement for the chief of a law enforcement agency to issue a final order consistent with specified procedural requirements.

The bill's provisions apply only prospectively and may not be applied or interpreted to have any effect on or application to any collective bargaining agreement in effect before the bill's effective date.

Fiscal Summary

State Effect: The bill is procedural in nature and does not directly affect State government finances.

Local Effect: The bill is procedural in nature and does not directly affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires the hearing board, after a disciplinary hearing and making a finding of guilt, to issue a final order in writing that includes the penalty it considers

appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive. The decision of the hearing board as to findings of fact and any penalty is final and binding. The order may be appealed.

The bill repeals provisions of LEOBR that provide that the decision of the hearing board as to findings of fact and any penalty is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The bill also repeals provisions that:

- require the chief of a law enforcement agency, within 30 days after receipt of the recommendations of the hearing board, to review the findings, conclusions, and recommendations of the hearing board and issue a final order;
- establish that the final order and decision of the chief is binding and then may be appealed;
- establish that the recommendation of the penalty by the hearing board is not binding on the chief of a law enforcement agency;
- require the chief of a law enforcement agency to consider the law enforcement officer's past job performance as a factor before imposing a penalty; and
- authorize the chief of a law enforcement agency to increase the recommended penalty of the hearing board as specified.

Current Law: 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. It does not grant collective bargaining rights. 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.

If the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board to contest the law enforcement agency's action. The hearing board process is bifurcated. First, the board meets to determine guilt. If the officer is found guilty of the charges, a second hearing is held to determine the level of discipline. A law enforcement officer who has been convicted of a felony is not entitled to a hearing.

The law enforcement agency must give notice to the law enforcement officer of the right to a hearing by a hearing board, which includes the time and place of the hearing and the issues involved.

Hearing boards for LEOBR purposes must consist of at least three members who (1) are appointed by the chief of the law enforcement agency and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency, and (2) have had no part in the investigation or interrogation of the law enforcement officer. At least one member of the hearing board must be of the same rank as the law enforcement officer against whom the complaint is filed.

If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State must function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency is under investigation, the Governor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board. If the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor must appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board. If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipality is under investigation, the official authorized to appoint the chief's successor, or that official's designee, must function as the chief for LEOBR purposes.

A law enforcement agency or the agency'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.

The hearing board must give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved. Each party may be represented by counsel, has the right to cross-examine witnesses who testify, and may submit rebuttal evidence.

Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and must be given probative effect. The hearing board must give effect to the rules of privilege recognized by law and must exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. An official record, including testimony and exhibits, must be kept of each hearing. Each record or document that a party desires to use must be offered and made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The hearing board may take notice of judicially cognizable facts and general, technical, or scientific facts within its specialized knowledge.

The decision, order, or action taken as a result of a hearing must be in writing and accompanied by findings of fact, including a concise statement on each issue in the case.

A copy of the decision/order, findings of fact, conclusions, and written recommendations for action must be promptly mailed to the law enforcement officer or the officer's counsel or representative and the chief of the law enforcement agency.

The decision of the hearing board as to finding of fact and any penalty is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The decision of the hearing board may then be appealed. Within 30 days after receipt of the recommendations of the hearing board, the chief must review the findings, conclusions, and recommendations of the hearing board and issue a final order. The recommendation of a penalty by the hearing board is not binding on the chief. The chief must consider the law enforcement officer's past job performance as a factor before imposing a penalty. The final order may be appealed.

On written request, a law enforcement officer may have expunged from any file the record of a formal complaint under specified conditions.

A law enforcement officer who is denied a right granted by LEOBR may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause why the right should not be granted. The officer may apply for the show cause order (1) either individually or through the officer's certified or recognized employee organization and (2) at any time prior to the beginning of a hearing by the hearing board. The court must grant appropriate relief if the court finds that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by LEOBR. Chapter 165 of 2014 shifted primary responsibility for remedying investigative violations under LEOBR from the administrative hearing officer to the circuit court.

Background: Over the last several years, numerous pieces of legislation regarding policing practices, law enforcement personnel training, serious police-involved incidents, and discipline have been considered in the State. Deadly force incidents by police officers in several locations across the country (including Ferguson, Missouri; Staten Island, New York; Cleveland, Ohio; and North Charleston, South Carolina) have resulted in heightened scrutiny of police practices nationwide, especially the discipline process.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Department of General Services; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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