

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1024  
Judiciary

(Charles County Delegation)

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Charles County - Citizens Complaint Oversight Board

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This bill establishes the Citizens Complaint Oversight Board of Charles County and establishes provisions governing the membership, duties, powers, jurisdiction, and staff for the board. The bill also establishes related criminal offenses and requirements for law enforcement units and other governmental employees and officials.

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Fiscal Summary

**State Effect:** Minimal increase in general fund expenditures for the Judiciary. Potential increase in general/special fund expenditures from increased litigation and damages awarded as a result of the bill; affected State law enforcement agencies can otherwise implement the bill with existing resources. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

**Local Effect:** Charles County expenditures increase by an estimated \$360,700 in FY 2022 and by at least \$466,000 annually thereafter to hire required staff. Potential increase in Charles County expenditures from increased litigation and damages awarded. Potential minimal increase in expenditures for the circuit court in Charles County. Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions. Affected local law enforcement agencies can implement the bill with existing resources. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

#### *Citizens Complaint Oversight Board of Charles County*

*Establishment:* The board is established as a permanent, statutory agency in Charles County to (1) conduct investigations into incidents of alleged police misconduct that occur in the county in a fair and timely manner; (2) identify and address patterns of police misconduct; and (3) make recommendations for improving the policies and operations of law enforcement units to reduce incidents of police misconduct. Each member of the board must be a resident of Charles County.

*Staff:* The board must employ sufficient staff to carry out the purposes of the board, including (1) two attorneys to advise and represent the board in hearings and investigations, enforce and defend against subpoenas, and formulate the rules and procedures for the administration of the board and (2) two investigators to conduct investigations for matters that are within the board's jurisdiction. Individuals employed by the board:

- must receive training from the Maryland Police Training and Standards Commission on policing procedures (as must the board members);
- if employed to conduct investigations, may not have been employed by a municipal, county, state, or federal law enforcement agency within two years before becoming employed by the board; and
- may not simultaneously be employed by any other governmental unit or agency.

*Jurisdiction:* The jurisdiction of the board extends to misconduct involving abusive language, false arrest, false imprisonment, harassment, use of excessive force, coercion, improper search and seizure, unlawful denial of access to counsel, and patterns and practices of such misconduct.

*Duties and Powers:* The board has numerous duties and powers regarding the investigation of alleged police misconduct and must:

- receive, register, and review all complaints within its jurisdiction made against police officers;
- conduct investigations relating to any incident within its jurisdiction, as specified;
- provide a copy of any complaint made against a police officer to the law enforcement unit that employs the police officer;
- provide mediation between the complainant and the police officer against whom a complaint is filed, as specified;

- make recommendations to the chief of a law enforcement unit relating to any disciplinary or other remedial action against a police officer employed by the law enforcement unit whom the board finds to have committed misconduct within its jurisdiction;
- make recommendations to the chief of a law enforcement unit relating to the law enforcement unit's policies, practices, programs, and training to eliminate misconduct; and
- address and engage with the personnel of a law enforcement unit and members of the community to provide information regarding the board's mission, policies, and ongoing operations.

The board may:

- subject to limitations under State and federal law, access any information or documents in the possession or under the control of a law enforcement unit or a unit of the Charles County government relating to a matter within the board's jurisdiction or mandate, as specified;
- conduct an investigation into any matter within its jurisdiction concurrent to any active criminal investigation or proceeding relating to the matter under investigation by the board; and
- refer the results or information from any investigation conducted under the bill's provisions to an appropriate law enforcement or prosecutorial agency for review and prosecution.

The board has the power to sue and to be sued in its own name, enter into contracts, hire and set wages for board staff, adopt, and carry out procedures for the discipline of board employees, and to adopt reasonable and proper regulations to carry out the bill's provisions.

*Complaints:* A complaint must be made within 366 days after the alleged misconduct of a police officer. A person may file a complaint alleging misconduct of a police officer with specified entities or at specified locations. Specified entities that receive a complaint must retain a copy of the complaint and forward it to the board within 48 hours of receipt. Staff for the board must assign a specified number to each complaint, send a copy to each member of the board within 48 hours, and maintain a record of each complaint.

The complaint must include specified information, and the procedures developed by the board for complaints must allow for (1) the filing of anonymous complaints and (2) complaints to be received using a variety of communication methods, as specified.

*Investigations and Recommendations:* The bill establishes requirements relating to investigations by the board and authorizes the board to conduct hearings, administer oaths

and affirmations, issue process to compel the attendance of witnesses and the production of evidence, and require a person to testify and produce evidence, as specified.

Within 30 days after completing an investigation, the board must issue a final summary report determining if a complaint is sustained, is not sustained, or is unfounded. If a complaint is sustained, the board must recommend disciplinary or remedial action against the police officer. A copy of each final summary report must be sent to the person who made the complaint and the chief of the law enforcement unit that employs the police officer. The board may review all disciplinary records and complaints made against a police officer if a final summary report of the board determines that a complaint made against the officer is sustained.

After an investigation, if the board is unable to reach a decision sufficient to issue a final summary report, the board must form a specified panel to hold a hearing. At the conclusion of such a hearing, the panel must make all findings to be included in the final summary report.

The board must be the custodian of all records of investigations, as specified.

*Policy Recommendations:* If the board issues a recommendation to a law enforcement unit regarding a policy, program, or practice of the unit, the chief must respond to the board's recommendation within 45 days, as specified. The response must include a description of any action the chief has taken or is planning to take with respect to the recommendations made to the board and state whether the chief plans to implement the recommendations. If the chief states intent not to implement a recommendation from the board, the chief must explain the reason for not implementing the recommendation.

*Reporting Requirements, Posting Information on Website, and Public Education and Information Program:* The board must make all final summary reports, as well as recommendations regarding policies, programs, or practices of law enforcement units, publicly available on a website maintained by the board. The board must redact information from final summary reports to the extent required by State law.

The board also must prepare and publish on its website and submit to the County Commissioners, the County Administrator, and the chief of each law enforcement unit, a semiannual statistical report and an annual statistical report regarding complaints processed under the bill. In addition, the board must develop and implement a public education and information program to inform the public about matters within the jurisdiction of the board.

The board may not make investigative records or reports containing personally identifying information publicly available.

*Criminal Offenses:* A person may not (1) retaliate against, punish, intimidate, discourage, threaten, or penalize another for making a complaint to the board, providing testimony, or documents to the board or cooperating with the board, as specified; (2) knowingly refuse to comply with a subpoena issued by the board; (3) knowingly interfere with or obstruct an investigation conducted by the board; or (4) knowingly make a false statement, report, or complaint to the board or a representative of the board. A violator is guilty of a misdemeanor and, on conviction, subject to maximum penalties of imprisonment for six months and/or a \$500 fine.

*Requirements for Law Enforcement Units and Other Government Employees/Officials:* A law enforcement unit must (1) place and maintain posters in all law enforcement stations and elsewhere throughout the county to explain the procedure for filing a complaint with the board and (2) explain the board's complaint procedures to all police officers, as specified.

A police officer, an employee of a law enforcement unit, a public official, or a government employee must cooperate with requests made by the board in relation to an investigation conducted pursuant to the bill. Failure to do so subjects the individual to specified discipline procedures.

*Rights Not Abrogated:* The procedures established under the bill's provisions relating to the board may not be construed to (1) abrogate any constitutional, statutory, or common law right of a police officer against whom a complaint is filed or the complaints, investigators, or witnesses who participate in the complaint procedure or (2) affect or change the methods or procedures for suspension or dismissal of police officers.

*Definitions:* "Law enforcement unit" means a governmental police force, sheriff's office, security force, or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State in Charles County. "Law enforcement unit" includes the Charles County Sheriff's Office and the La Plata Police Department.

"Police officer" means a member of a law enforcement unit who is authorized to make arrests or a member of a law enforcement unit who is authorized to make arrests in Charles County, while on duty or while the officer is off duty but performing activities that are within the scope of the officer's official duties.

**Current Law:** 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 specified State and local agencies but does not extend to any correctional officers in the State. LEOBR extends uniform protections to officers in two major components of the disciplinary process:

(1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. For additional information on LEOBR, see the **Appendix – Law Enforcement Officers’ Bill of Rights – Current Law/Background**.

**State Expenditures:** General fund expenditures increase minimally for the Judiciary. In addition, special fund and general fund expenditures may increase as a result of increased litigation and payments of claims filed under the Maryland Tort Claims Act (MTCA) from the State Insurance Trust Fund (SITF). The extent to which this occurs cannot be reliably determined at this time and depends on actual case volume and the value of claims.

#### *Judiciary*

The bill authorizes service of subpoenas by the board and establishes a criminal offense and penalties. Although a reliable estimate of the number of subpoenas that will be issued under the bill or the number of criminal cases that will result from the bill cannot be determined, it is unlikely that these provisions increase expenditures for the Judiciary more than minimally.

#### *Claims against the State*

The bill may result in an increase in MTCA claims (paid out of SITF) and associated expenses. The most likely scenario under which a claim may be filed is if more people file notices of claims against the State due to findings by the board that sustain complaints of police misconduct. An increase in the number of claims may result in increased payments and higher court verdict amounts for appropriate claims. General fund expenditures may increase for any affected State agencies that experience increased SITF assessments as a result of the bill.

MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

#### *Affected State Law Enforcement Agencies*

It is assumed that State law enforcement agencies authorized in Charles County can implement the bill with existing resources.

**Local Expenditures:** Charles County expenditures increase by an estimated \$360,700 in fiscal 2022, which accounts for the bill’s October 1, 2022 effective date, and by at least

\$466,000 annually thereafter to hire two attorneys and two investigators for the board, as required by the bill. This estimate includes salaries, fringe benefits, and ongoing operating expenses, including training and rent/meeting space. To the extent the board must employ other staff, costs increase further.

In addition to board expenditures, the bill may result in an increase in claims against the county. The Local Government Torts Claim Act (LGTCA) is the local government counterpart to MTCA. LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claim that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts).

The bill may also result in a minimal increase in expenditures for the circuit court in Charles County to handle any increase in workload due to the bill.

It is assumed that affected local law enforcement agencies in Charles County can implement the bill with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Commission on Civil Rights; Charles County; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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## **Appendix**

# **Law Enforcement Officers' Bill of Rights – Current Law/Background**

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The Law Enforcement Officers' Bill of Rights (LEOBR), Title 3, Subtitle 1 of the Public Safety Article, 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 specified State and local agencies.

### **Investigation of a Complaint**

*Statute of Limitations:* Except for charges that relate to criminal activity or excessive force, the statute of limitations for a law enforcement agency to bring administrative charges against a law enforcement officer is one year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.

*Procedures:* A complaint against a law enforcement officer alleging brutality in the execution of the officer's duties may not be investigated unless the complaint is signed and sworn to, under penalty of perjury.

If an individual files a complaint alleging brutality within 366 days after the alleged brutality occurred, a law enforcement agency must investigate the matter. There is no time limitation on a law enforcement agency to launch an investigation on its own initiative. The law enforcement officer under investigation must be informed of the name, rank, and command of the law enforcement officer in charge of the investigation, the interrogating officer, and each individual present during an interrogation. Before an interrogation, the law enforcement officer under investigation must be informed in writing of the nature of the investigation. If the officer is under arrest or is likely to be placed under arrest as a result of the interrogation, the officer must be informed completely of all of the officer's rights before the interrogation begins.

Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation must be conducted at a reasonable hour, preferably when the officer is on duty. Unless otherwise authorized by the officer under investigation, the interrogation is required to take place (1) at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, or (2) at another reasonable and appropriate place.

The officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action. On request, the officer has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who must be present and available for consultation at all times during the interrogation. The interrogation must be suspended for a period of up to five business days until representation is obtained. Within that five-business day period, the chief, for good cause shown, may extend the period for obtaining representation. The officer may waive this right to representation.

A complete written, taped, or transcribed record must be kept of the entire interrogation, including all recess periods. Upon completion of the investigation, and on request, a copy of the record of the interrogation must be made available at least 10 days before a hearing.

*Testing:* The law enforcement agency may order the officer to submit to blood alcohol tests; blood, breath, or urine tests for controlled dangerous substances; polygraph examinations; or interrogations that specifically relate to the subject matter of the investigation. The results are not admissible or discoverable in a criminal proceeding against the law enforcement officer. The results of the polygraph examination may be used as evidence in an administrative hearing if the agency and the officer agree to the admission. If the officer refuses to submit to a test, polygraph examination, or interrogation, the agency may commence an action that may lead to a punitive measure as a result of the refusal.

*Investigation File:* Upon completion of an investigation and at least 10 days before a hearing, the officer must be (1) notified of the name of each witness and of each charge and specification against the officer and (2) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to execute a specified confidentiality agreement. The law enforcement officer must pay a reasonable charge for the cost of reproducing the material.

The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer (1) the identity of confidential sources; (2) nonexculpatory information; and (3) recommendations as to charges, disposition, or punishment. The agency may not insert adverse material into a file of the officer, except the file of the internal investigation or the intelligence division, unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material. The law enforcement officer may waive this right.

## **Procedures Following Recommendation for Discipline**

*Hearing Board Formation:* 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 agency's action. 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 officer of the right to a hearing by a hearing board, which includes the time and place of the hearing and the issues involved. The hearing must be open to the public unless the chief finds a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness.

A hearing board must consist of at least three voting members who are appointed by the chief and chosen from law enforcement officers within that law enforcement agency or another law enforcement agency and have had no part in the investigation or interrogation. 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.

A chief may appoint, as a nonvoting member of the hearing board, one member of the public who has received training administered by the Maryland Police Training and Standards Commission (MPTSC) on LEOBR and matters relating to police procedures. If authorized by local law, the hearing board may include up to two nonvoting or voting members of the public who have received training by MPTSC on LEOBR and matters relating to police procedures. At the Johns Hopkins University, if authorized by local law, a hearing board *must* include two voting members of the public who have received training administered by MPTSC on LEOBR and matters relating to police procedures.

*Alternative Hearing Board:* 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. Subject to certain requirements, a law enforcement officer may elect the alternative hearing method of forming a hearing board.

*Subpoenas:* In connection with a disciplinary hearing, the chief 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.

*Hearing Board Procedures:* 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. The standard of proof in a hearing before a board is preponderance of the evidence. An official record, including testimony and exhibits, must be kept of the hearing.

*Disposition:* After a disciplinary hearing and a finding of guilt, the hearing board may recommend the discipline it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar actions that is considered punitive. 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.

The decision of the hearing board as to finding of fact and any discipline 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. If the agency or the agency's superior governmental authority has *not* agreed with an exclusive collective bargaining representative that the hearing board decision is final, the discipline issued by the chief under the final order may, under certain circumstances, diverge from the discipline recommended by the hearing board. The final order may be appealed to the circuit court.

*Expungement:* On written request, a law enforcement officer may have expunged from any file the record of a formal complaint if at least three years have passed since the final disposition by the law enforcement agency or hearing board and (1) the law enforcement agency that investigated the complaint exonerated the law enforcement officer of all charges in the complaint or determined that the charges were unsustainable or unfounded or (2) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty. Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the officer is eligible for expungement of the formal complaint.

*Summary Punishment:* Summary punishment may be imposed for minor violations of law enforcement agency rules and regulations if the facts that constitute the minor violation are not in dispute, the law enforcement officer waives the hearing provided under LEOBR, and the law enforcement officer accepts the punishment imposed by the highest ranking law enforcement officer, or individual acting in that capacity, of the unit to which the law enforcement officer is attached. Summary punishment may not exceed suspension of three days without pay or a fine of \$150.

*Suspension of Police Powers:* The chief may impose emergency suspension with pay if it appears that the action is in the best interest of the public and the law enforcement agency. If the law enforcement officer is suspended with pay, the chief may suspend the police

powers of the law enforcement officer and reassign the law enforcement officer to restricted duties pending a determination by a court, with respect to a criminal violation, or a final determination by a hearing board, with respect to a law enforcement agency violation. If a law enforcement officer is charged with a *felony*, the chief may impose an emergency suspension of police powers without pay. A law enforcement officer who is suspended is entitled to a prompt hearing.

*Appeal:* 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 as to why the right should not be granted. 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. A party aggrieved by a decision of a court may appeal to the Court of Special Appeals.