

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 588 (Senator Sydnor)
 Judicial Proceedings

**Law Enforcement Officers - Creditability of Witnesses and Misconduct Database
 (Maryland Police Accountability Act of 2021)**

This bill requires (1) the State’s Attorney for each county to maintain a list of law enforcement officers who have been found to have committed or are alleged to have committed specified acts and (2) the chief of each law enforcement agency to transmit to the Maryland Police Training and Standards Commission (MPTSC) specified information about each formal complaint filed against a law enforcement officer that alleges misconduct. MPTSC must establish and maintain a database to record the information it receives. Records maintained under the bill are (1) subject to public inspection in accordance with the Maryland Public Information Act (PIA) and (2) exempt from the provisions of the Law Enforcement Officers’ Bill of Rights (LEOBR). The bill applies retroactively to all formal complaints against law enforcement officers that allege misconduct made on or after October 1, 2018.

Fiscal Summary

State Effect: General/special fund expenditures increase by at least \$155,700 in FY 2022 for MPTSC and some State law enforcement agencies to meet the bill’s requirements. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	104,600	120,500	124,000	128,500	133,100
SF Expenditure	51,100	58,800	60,500	62,700	65,000
Net Effect	(\$155,700)	(\$179,300)	(\$184,500)	(\$191,200)	(\$198,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential significant increase in local government expenditures for law enforcement agencies and State’s Attorneys to meet the bill’s requirements. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The State's Attorney for each county must maintain a list of law enforcement officers who have been found to have committed or are alleged to have committed acts that bear on credibility, integrity, honesty, or other characteristics that would constitute exculpatory or impeachment evidence in a criminal case. The placement of a law enforcement officer's name on the list is not subject to appeal. The records maintained by State's Attorneys under the bill are subject to public inspection in accordance with PIA.

The chief of each law enforcement agency must transmit to MPTSC specified information relating to each formal complaint filed against a law enforcement officer that alleges misconduct in the execution of the law enforcement officer's duties. After completion of an administrative action against the law enforcement officer, the chief must transmit to MPTSC the decision, order, or action taken as a result of the complaint, as specified.

MPTSC must (1) establish and maintain a database to record the information received for each formal complaint filed against a law enforcement officer that alleges misconduct in the execution of the law enforcement officer's duties and (2) adopt regulations establishing the procedures for the transmission of information from law enforcement agencies.

On application to MPTSC, a law enforcement agency may access the database solely for the purpose of making a hiring decision regarding a specific law enforcement officer. The details for a complaint made against a law enforcement officer may be discoverable or admissible in evidence in a judicial or administrative proceeding involving the law enforcement officer.

MPTSC may disclose general statistical data regarding the database records, as specified. The records maintained by MPTSC under the bill are subject to public inspection in accordance with PIA. The bill also alters PIA to provide that a custodian must allow inspection by a person or governmental unit requesting inspection of a public record maintained by MPTSC in accordance with the bill.

Current Law:

Maryland Public Information Act

PIA establishes that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Each governmental unit that maintains public records must identify a representative whom a member of the public may contact to request a public record. The Office of the Attorney General (OAG)

must post all such contact information on its website and in any Public Information Act Manual published by OAG.

Duties of Custodians: Generally, a custodian of a public record must permit inspection of any public record at any reasonable time. A custodian must designate types of public records that are to be made available to any applicant immediately on request and maintain a current list of the types of public records that have been so designated. Each custodian must adopt reasonable rules or regulations that, consistent with PIA, govern timely production and inspection of a public record.

Required Denials: A custodian must deny inspection of a public record or any part of a public record if (1) the public record is privileged or confidential by law or (2) the inspection would be contrary to a State statute, a federal statute or regulation, the Maryland Rules, or an order of a court of record. PIA also requires denial of inspection for personal and confidential records, including, for example, hospital and medical records, financial records, certain police and related criminal records, and licensing records.

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.

LEOBR authorizes a law enforcement agency that is required by law to disclose information for use as impeachment or exculpatory evidence in a criminal case to maintain a list of law enforcement officers who have been found or alleged to have committed acts which bear on credibility, integrity, honesty, or other characteristics that would constitute exculpatory or impeachment evidence. The list may be maintained solely for the purpose of satisfying the disclosure requirement. A law enforcement agency is prohibited from taking certain punitive action against a law enforcement officer based solely on the fact that the law enforcement officer is included on the list. A law enforcement officer whose name is placed on the list is entitled to timely notice by the law enforcement agency that maintains the list. In addition, a law enforcement officer maintains all rights of appeal provided by LEOBR.

For additional information on LEOBR, see the **Appendix – Law Enforcement Officers' Bill of Rights – Current Law/Background.**

State Expenditures: State expenditures (a combination of general fund expenditures and Transportation Trust Fund (TTF) expenditures) increase by at least \$155,698 in fiscal 2022 for specified State law enforcement agencies to report and transmit the required information to MPTSC and for MPTSC to maintain the required database. This estimate does not include any costs for any computer upgrades that may be necessary; accordingly, costs may be higher. Future year expenditures are annualized and reflect ongoing costs.

Maryland Police Training and Standards Commission

General fund expenditures for MPTSC increase by at least \$53,428 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one administrator to receive information from law enforcement agencies and to maintain the required database. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$47,847
Operating Expenses	<u>5,581</u>
Minimum FY 2022 MPTSC Expenditures	\$53,428

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Department of State Police

General fund expenditures for the Department of State Police (DSP) increase by at least \$51,135 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one administrator to gather and provide the required information to MPTSC. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$45,554
Operating Expenses	<u>5,581</u>
Minimum FY 2022 DSP Expenditures	\$51,135

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Maryland Transit Administration

TTF expenditures for the Maryland Transit Administration (MTA) Police increase by at least \$51,135 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one administrator to gather and provide the required information to MPTSC. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$45,554
Operating Expenses	<u>5,581</u>
Minimum FY 2022 MTA Expenditures	\$51,135

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Other State Law Enforcement Agencies

Most other State agencies with law enforcement units that were contacted regarding the fiscal effect of the bill indicate that they can implement the bill with existing resources. However, to the extent any other State agencies with law enforcement units need to hire additional staff to meet the bill’s requirements, costs increase.

Local Expenditures: Similar to State law enforcement agencies, local expenditures likely increase for local law enforcement agencies to hire necessary staff to report and transmit the required information to MPTSC. In addition, local expenditures likely increase for State’s Attorneys in each county to gather information and to maintain the list of law enforcement officers who have been found to have committed or are alleged to have committed specified acts. Without actual experience under the bill, it is not possible to quantify such costs, but they could be significant.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore, Garrett, and Montgomery counties; City of Laurel; Baltimore City Community College; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Comptroller’s Office; Maryland State’s Attorneys’ Association; Morgan State University; Department of Natural Resources; Department of

State Police; Department of Public Safety and Correctional Services; Department of General Services; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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rh/lgc

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Appendix

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

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.