

Maryland Senate Judicial Proceedings Committee
Police Accountability and Law Enforcement Reform
Bill Hearings

Agenda

Thursday, September 24, 2020

1:00 PM – 5:00 PM

Zoom

- I. Call to order
- II. Sponsor presentation of bills and Member Q&A (1:00 PM – 1:45 PM)
- III. Panel witnesses and Member Q&A (1:45 PM – 3:15 PM)
- IV. Public testimony (3:15 PM – 5:00 PM)
 - Individuals Registered from 3:15 PM – 3:30 PM
 - Individuals Registered from 3:30 PM – 4:00 PM
 - Individuals Registered from 4:00 PM – 4:30 PM
 - Individuals Registered from 4:30 PM – 5:00 PM
- V. Adjournment

Senate Judicial Proceedings Committee Bills and Bill Summaries on Police Accountability and Law Enforcement Reform

September 24, 2020

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JPR 14

EMERGENCY BILL

By: Senator Carter

A BILL ENTITLED

AN ACT concerning

Law Enforcement Accountability and Discipline Act of 2021

FOR the purpose of establishing that a certain record relating to a formal complaint of job-related misconduct made against a law enforcement officer is not a personnel record under certain provisions of the Public Information Act; authorizing a custodian to deny inspection of a certain record involving a complaint of job-related misconduct made against a law enforcement officer, under certain circumstances; altering the authority of the chief of a law enforcement agency to regulate the competent and efficient operation and management of a law enforcement agency; altering the circumstances under which a law enforcement officer may be required to make a certain financial disclosure; altering the circumstances for which a law enforcement officer may not be subjected to a certain unfavorable employment action; authorizing a certain civilian employee to serve as an investigating or interrogating officer during an administrative investigation of a law enforcement officer; repealing the requirement that a certain complaint alleging brutality be signed and sworn to, under penalty of perjury; altering the list of individuals who may file a certain complaint alleging brutality; altering the time period within which a certain complaint alleging brutality must be filed; requiring the disclosure of the name and qualifications of a civilian serving as an interrogating officer; altering the time period for a law enforcement officer to obtain representation prior to interrogation; authorizing a chief or the chief's designee to order a law enforcement officer to submit to interrogation under certain circumstances; requiring a record of an interrogation to be in an audiovisual format and transcribed; prohibiting the administration of a certain polygraph examination by a certain law enforcement agency; authorizing a certain investigating officer to issue certain subpoenas; providing for the issuance, execution of, and compliance with certain subpoenas; requiring that, on completion of an investigation, a law enforcement agency forward the investigatory files for certain matters to an administrative charging committee; requiring that a certain allegation proceed in accordance with the policies and procedures of a certain law enforcement agency; providing for the establishment, composition, and duties of an administrative charging committee; providing that the meetings of an administrative charging committee are not subject to the requirements of the Open Meetings Act; requiring

a certain chief to submit a certain response to a certain memorandum to certain entities at a certain time; requiring a certain chief to offer certain discipline to a certain law enforcement officer at a certain time; requiring that certain discipline be administered at a certain time under certain circumstances; specifying that acceptance of certain discipline is an admission of guilt; requiring that certain actions be taken at certain times if a law enforcement officer declines certain discipline; authorizing a certain law enforcement agency to exclude from a certain file the identity of certain sources; prohibiting a certain law enforcement agency from inserting certain material into a certain file, with a certain exception, under certain circumstances; prohibiting a certain administrative charging committee from bringing administrative charges against a certain law enforcement officer unless the charges are filed within a certain time period; altering the circumstances under which a law enforcement officer is entitled to a certain hearing by a hearing board; altering the composition of a certain hearing board; prohibiting a law enforcement agency or a certain governmental authority from negotiating with a certain representative an alternative method of forming a hearing board; authorizing an individual designated by a chief to issue subpoenas during the hearing board process; altering a certain exception to the requirement that a certain hearing be open to the public; requiring the Attorney General or the Attorney General's designee to prosecute certain cases that are before a certain hearing board; requiring that a hearing board record be audiovisual and made available as a public record; requiring a certain hearing board to allow the public to be present at a reconvened hearing board proceeding; prohibiting a law enforcement agency or a certain governmental authority from negotiating a collective bargaining clause that removes final disciplinary authority from the chief; altering the circumstances under which a law enforcement officer may have the record of a certain complaint expunged; requiring a chief to impose an emergency suspension of police powers without pay if a law enforcement officer is charged with a certain crime; altering a certain requirement that the Maryland Police Training and Standards Commission develop and administer a certain training program; requiring the Commission to maintain a roster of individuals who have undergone certain training; requiring the Commission to staff administrative charging committees and ensure that individuals are chosen from a certain roster on a rotating basis; requiring that each county establish and maintain a certain police accountability board; providing for the membership and duties of a police accountability board; requiring the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, to correct any cross-references or terminology rendered incorrect by this Act and to describe any corrections made in a certain manner; making this Act an emergency measure; providing for the effective date of certain provisions of this Act; providing for the application of this Act; defining certain terms; making conforming changes; and generally relating to the Law Enforcement Accountability and Discipline Act.

BY renumbering

Article – General Provisions

Section 4–101(e) through (j), respectively

to be Section 4–101(f) through (k), respectively

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – General Provisions

Section 4–101(a)

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY adding to

Article – General Provisions

Section 4–101(e)

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – General Provisions

Section 4–311 and 4–351

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Public Safety

Section 3–101 through 3–104, 3–106, 3–107, 3–108, 3–110, and 3–112 to be under the amended subtitle “Subtitle 1. Law Enforcement Accountability and Discipline Act”; and 3–207(g)

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – Public Safety

Section 3–105, 3–106.1, 3–109, 3–111, and 3–113

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY adding to

Article – Public Safety

Section 3–104.1 through 3–104.3 and 3–207(j); and 3–801 through 3–803 to be under the new subtitle “Subtitle 8. Police Accountability Boards”

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 4–101(e) through (j), respectively, of Article – General Provisions of the Annotated Code of Maryland be renumbered to be Section(s) 4–101(f) through (k), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – General Provisions

4–101.

(a) In this title the following words have the meanings indicated.

(E) “LAW ENFORCEMENT OFFICER” HAS THE MEANING STATED IN § 3–101 OF THE PUBLIC SAFETY ARTICLE.

4–311.

(a) Subject to [subsection] **SUBSECTIONS (b) AND (C)** of this section, a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.

(b) A custodian shall allow inspection by:

(1) the person in interest;

(2) an elected or appointed official who supervises the work of the individual; or

(3) an employee organization described in Title 6 of the Education Article of the portion of the personnel record that contains the individual’s:

(i) home address;

(ii) home telephone number; and

(iii) personal cell phone number.

(C) A RECORD RELATED TO A FORMAL COMPLAINT OF JOB-RELATED MISCONDUCT MADE AGAINST A LAW ENFORCEMENT OFFICER, INCLUDING AN INVESTIGATION RECORD, A HEARING RECORD, OR A DISCIPLINARY DECISION, IS NOT A PERSONNEL RECORD FOR THE PURPOSES OF THIS SUBTITLE.

4-351.

(a) Subject to subsection (b) of this section, a custodian may deny inspection of:

(1) records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;

(2) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; [or]

(3) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff; **OR**

(4) A RECORD RELATED TO A FORMAL COMPLAINT OF JOB-RELATED MISCONDUCT MADE AGAINST A LAW ENFORCEMENT OFFICER, INCLUDING AN INVESTIGATION RECORD, A HEARING RECORD, OR A DISCIPLINARY DECISION .

(b) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(1) interfere with a valid and proper law enforcement proceeding;

(2) deprive another person of a right to a fair trial or an impartial adjudication;

(3) constitute an unwarranted invasion of personal privacy;

(4) disclose the identity of a confidential source;

(5) disclose an investigative technique or procedure;

(6) prejudice an investigation; or

(7) endanger the life or physical safety of an individual.

SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Public Safety

Subtitle 1. Law Enforcement [Officers' Bill of Rights] ACCOUNTABILITY AND DISCIPLINE ACT.

3-101.

(a) In this subtitle the following words have the meanings indicated.

(B) “ADMINISTRATIVE CHARGING COMMITTEE” MEANS A COMMITTEE DESCRIBED UNDER § 3-104.1 OF THIS SUBTITLE.

(C) “ADMINISTRATIVELY CHARGED” MEANS THAT A LAW ENFORCEMENT OFFICER HAS BEEN FORMALLY ACCUSED OF MISCONDUCT IN AN ADMINISTRATIVE PROCEEDING.

[(b)](D) (1) “Chief” means the head of a law enforcement agency.

(2) “Chief” includes the officer designated by the head of a law enforcement agency.

(E) “CIVILIAN REPRESENTATIVE” MEANS AN INDIVIDUAL WHO IS SELECTED BY A POLICE ACCOUNTABILITY BOARD FROM A ROSTER MAINTAINED BY THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION IN ACCORDANCE WITH § 3-219 OF THIS SUBTITLE.

(F) “DEPARTMENTAL POLICY DEFICIENCY” MEANS THAT A POLICY OR PROCEDURE INSTITUTED BY A LAW ENFORCEMENT AGENCY IS FAULTY OR INADEQUATE.

(G) “EXONERATED” MEANS THAT A LAW ENFORCEMENT OFFICER ACTED IN ACCORDANCE WITH THE LAW AND AGENCY POLICY.

[(c)](H) (1) “Hearing” means a proceeding during an investigation conducted by a hearing board to take testimony or receive other evidence.

(2) “Hearing” does not include an interrogation at which no testimony is taken under oath.

[(d)](I) “Hearing board” means a board that is authorized by the chief to hold a hearing on a complaint against a law enforcement officer.

[(e)](J)

- (1) “Law enforcement officer” means an individual who:
 - (i) in an official capacity is authorized by law to make arrests; and
 - (ii) is a member of one of the following law enforcement agencies:
 1. the Department of State Police;
 2. the Police Department of Baltimore City;
 3. the Baltimore City School Police Force;
 4. the Baltimore City Watershed Police Force;
 5. the police department, bureau, or force of a county;
 6. the police department, bureau, or force of a municipal
 7. the office of the sheriff of a county;
 8. the police department, bureau, or force of a bicounty
 9. the Maryland Transportation Authority Police;
 10. the police forces of the Department of Transportation;
 11. the police forces of the Department of Natural Resources;
 12. the Field Enforcement Bureau of the Comptroller’s Office;
 13. the Field Enforcement Division of the Alcohol and Tobacco
 14. the Housing Authority of Baltimore City Police Force;
 15. the Crofton Police Department;

corporation;

agency;

Commission;

16. the police force of the Maryland Department of Health;
 17. the police force of the Maryland Capitol Police of the Department of General Services;
 18. the police forces of the University System of Maryland;
 19. the police force of Morgan State University;
 20. the office of State Fire Marshal;
 21. the Ocean Pines Police Department;
 22. the police force of the Baltimore City Community College;
 23. the police force of the Hagerstown Community College;
 24. the Internal Investigation Unit of the Department of Public Safety and Correctional Services;
 25. the Warrant Apprehension Unit of the Division of Parole and Probation in the Department of Public Safety and Correctional Services;
 26. the police force of the Anne Arundel Community College;
- or
27. the police department of the Johns Hopkins University established in accordance with Title 24, Subtitle 12 of the Education Article.

(2) “Law enforcement officer” does not include:

- (i) an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
- (ii) an individual who serves at the pleasure of the appointing authority of a charter county;

(iii) the police chief of a municipal corporation;

(iv) an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer's duties is made;

(v) a Montgomery County fire and explosive investigator as defined in § 2–208.1 of the Criminal Procedure Article;

(vi) an Anne Arundel County or City of Annapolis fire and explosive investigator as defined in § 2–208.2 of the Criminal Procedure Article;

(vii) a Prince George's County fire and explosive investigator as defined in § 2–208.3 of the Criminal Procedure Article;

(viii) a Worcester County fire and explosive investigator as defined in § 2–208.4 of the Criminal Procedure Article;

(ix) a City of Hagerstown fire and explosive investigator as defined in § 2–208.5 of the Criminal Procedure Article;

(x) a Howard County fire and explosive investigator as defined in § 2–208.6 of the Criminal Procedure Article; or

(xi) the Chief of Police of the police department of the Johns Hopkins University established in accordance with Title 24, Subtitle 12 of the Education Article.

(K) “NOT CHARGED” MEANS THAT A DETERMINATION HAS BEEN MADE NOT TO ADMINISTRATIVELY CHARGE A LAW ENFORCEMENT OFFICER IN CONNECTION WITH ALLEGED MISCONDUCT.

(L) “POLICE ACCOUNTABILITY BOARD” MEANS A BOARD ESTABLISHED IN ACCORDANCE WITH SUBTITLE 8 OF THIS TITLE.

(M) “SUPERIOR GOVERNMENTAL AUTHORITY” MEANS THE GOVERNING BODY THAT OVERSEES A LAW ENFORCEMENT AGENCY.

(N) “UNFOUNDED” MEANS THAT THE ALLEGATIONS AGAINST A LAW ENFORCEMENT OFFICER ARE NOT SUPPORTED BY FACT.

3–102.

(a) Except for the administrative hearing process under Subtitle 2 of this title that relates to the certification enforcement power of the Police Training and Standards Commission, this subtitle supersedes any other law of the State, a county, or a municipal corporation that conflicts with this subtitle.

(b) Any local law is preempted by the subject and material of this subtitle.

(c) This subtitle does not limit the authority of the chief to regulate the competent and efficient operation and management of a law enforcement agency by any reasonable means including **TERMINATION, DEMOTION**, transfer and reassignment if:

(1) that action is not punitive **OR RETALIATORY** in nature; and

(2) the chief determines that action to be in the best interests of the internal management of the law enforcement agency.

3–103.

(a) (1) Subject to paragraph (2) of this subsection, a law enforcement officer has the same rights to engage in political activity as a State employee.

(2) This right to engage in political activity does not apply when the law enforcement officer is on duty or acting in an official capacity.

(b) A law enforcement agency:

(1) may not prohibit secondary employment by law enforcement officers;
but

(2) may adopt reasonable regulations that relate to secondary employment by law enforcement officers.

(c) A law enforcement officer may not be required or requested to disclose an item of the law enforcement officer's property, income, assets, source of income, debts, or personal or domestic expenditures, including those of a member of the law enforcement officer's family or household, unless:

(1) the information is necessary to investigate a possible conflict of interest with respect to the performance of the law enforcement officer's official duties; [or]

(2) THE LAW ENFORCEMENT OFFICER IS ASSIGNED TO A SPECIALIZED OR SENSITIVE UNIT WHOSE WORK OFTEN INVOLVES THE CONFISCATION OF LARGE SUMS OF MONEY; OR

[(2)] (3) the disclosure is required by federal or State law.

(d) (1) A law enforcement officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to the law enforcement officer's employment or be threatened with that treatment because the law enforcement officer:

(i) has exercised or demanded the rights granted by this subtitle;

(ii) has lawfully exercised constitutional rights; or

(iii) has disclosed information that evidences:

1. gross mismanagement;

2. a gross waste of government resources;

3. a substantial and specific danger to public health or safety;

or

4. a violation of law **OR POLICY** committed by another law

enforcement officer.

(2) A law enforcement officer may not undertake an independent investigation based on knowledge of disclosures described in paragraph (1)(iii) of this subsection.

(e) A statute may not abridge and a law enforcement agency may not adopt a regulation that prohibits the right of a law enforcement officer to bring suit that arises out of the law enforcement officer's duties as a law enforcement officer.

(f) A law enforcement officer may waive in writing any or all rights granted by this subtitle.

3-104.

(a) 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 shall be conducted in accordance with this section.

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

(1) a sworn law enforcement officer; [or]

(2) if requested by the Governor, the Attorney General or Attorney General's designee; **OR**

(3) A CIVILIAN EMPLOYEE OF THE LAW ENFORCEMENT AGENCY OR OF THE LAW ENFORCEMENT AGENCY'S SUPERIOR GOVERNMENTAL AUTHORITY.

(c) (1) **[A]SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A** complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties [may not be investigated unless the complaint is signed and sworn to, under penalty of perjury, by]**MAY BE FILED BY ANY OF THE FOLLOWING INDIVIDUALS:**

(i) the aggrieved individual;

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

(iii) an individual with firsthand knowledge obtained because the individual:

1. was present at and observed the alleged incident; or

2. has a video recording of the incident that, to the best of the individual's knowledge, is unaltered; [or]

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

(V) AN ATTORNEY IN THEIR CAPACITY AS A PROSECUTOR OR REPRESENTATIVE OF AN AGGRIEVED PARTY; OR

(VI) THE CHAIR OF A POLICE ACCOUNTABILITY BOARD .

(2) [Unless a complaint is]**THE COMPLAINT SHALL BE** filed within [366 days]**3 YEARS** after the alleged brutality[, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken]**OCCURRED.**

(d) (1) [The]**EXCEPT AS PROVIDED UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE** law enforcement officer under investigation shall be informed of the name, rank, and command of:

- (i) the law enforcement officer in charge of the investigation;
- (ii) the interrogating officer; and
- (iii) each individual present during an interrogation.

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

(3) IF THE INTERROGATING OFFICER IS A CIVILIAN, THE LAW ENFORCEMENT OFFICER UNDER INVESTIGATION SHALL BE INFORMED OF THE INTERROGATING OFFICER'S NAME AND QUALIFICATIONS.

(e) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall

be informed completely of all of the law enforcement officer's rights before the interrogation begins.

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

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

(i) 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

(ii) at another reasonable and appropriate place.

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

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

(2) Each session of interrogation shall:

(i) be for a reasonable period; and

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

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

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

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

(2) (i) The interrogation shall be suspended for a period not exceeding **[5]3** business days until representation is obtained.

(ii) Within that **[5]3** business day period, the chief for good cause shown may extend the period for obtaining representation.

(III) IF THE LAW ENFORCEMENT OFFICER FAILS TO OBTAIN COUNSEL WITHIN 3 BUSINESS DAYS, THE OFFICER MAY BE ORDERED BY THE CHIEF OR THE CHIEF'S DESIGNEE TO SUBMIT TO INTERROGATION.

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

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

(ii) object to any question posed; and

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

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

(2) The record [may be written, taped, or]**SHALL BE RECORDED IN AN AUDIOVISUAL FORMAT AND** transcribed.

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

(l) (1) The law enforcement agency may order the law enforcement officer under investigation 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.

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

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

(4) A POLYGRAPH EXAMINATION PERFORMED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE ADMINISTERED BY THE LAW ENFORCEMENT AGENCY THAT ORDERED THE EXAMINATION.

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

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

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

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

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

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

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

(ii) 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:

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

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

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

(i) the identity of confidential sources;

(ii) nonexculpatory information; and

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

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

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

(N) (1) THE INVESTIGATING OFFICER MAY ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES AND FOR THE PRODUCTION OF

BOOKS, PAPERS, RECORDS, AND ANY OTHER DOCUMENTS AS RELEVANT OR NECESSARY.

(2) THE SUBPOENAS MAY BE SERVED WITHOUT COST IN ACCORDANCE WITH THE MARYLAND RULES THAT RELATE TO SERVICE OF PROCESS ISSUED BY A COURT.

(3) (I) IN CASE OF REFUSAL TO OBEY A SUBPOENA SERVED UNDER THIS SUBSECTION, THE INVESTIGATING OFFICER MAY APPLY WITHOUT COST TO THE CIRCUIT COURT OF A COUNTY WHERE THE SUBPOENAED PARTY RESIDES OR CONDUCTS BUSINESS FOR AN ORDER TO COMPEL THE ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE PRODUCTION OF THE BOOKS, PAPERS, RECORDS, AND DOCUMENTS.

(II) ON A FINDING THAT THE ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE PRODUCTION OF THE BOOKS, PAPERS, RECORDS, AND DOCUMENTS IS RELEVANT OR NECESSARY:

1. THE COURT MAY ISSUE WITHOUT COST AN ORDER THAT REQUIRES THE ATTENDANCE AND TESTIMONY OF WITNESSES OR THE PRODUCTION OF BOOKS, PAPERS, RECORDS, AND DOCUMENTS; AND

2. FAILURE TO OBEY THE ORDER MAY BE PUNISHED BY THE COURT AS CONTEMPT.

(O) (1) ON COMPLETION OF AN INVESTIGATION, THE LAW ENFORCEMENT AGENCY SHALL FORWARD TO AN ADMINISTRATIVE CHARGING COMMITTEE THE INVESTIGATORY FILES FOR ALL MATTERS INVOLVING:

(I) ALLEGATIONS OF MISCONDUCT MADE BY A MEMBER OF THE PUBLIC; AND

(II) ANY ALLEGATION RELATING TO DISHONESTY, THE VIOLATION OF A CRIMINAL STATUTE, SEXUAL HARASSMENT, OR RACIAL HARASSMENT.

(2) AN ALLEGATION NOT SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL PROCEED IN ACCORDANCE WITH THE POLICIES AND PROCEDURES OF THE LAW ENFORCEMENT AGENCY.

3-104.1.

(A) (1) AN ADMINISTRATIVE CHARGING COMMITTEE CONSISTS OF:

(I) THE DIRECTOR OF INTERNAL AFFAIRS OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE OFFICER WHO IS SUBJECT TO INVESTIGATION, OR THE DIRECTOR'S DESIGNEE;

(II) THE HEAD ATTORNEY FOR THE SUPERIOR GOVERNMENTAL AUTHORITY OF THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE OFFICER OR THE HEAD ATTORNEY'S DESIGNEE, IF THE DESIGNEE IS A MEMBER OF THE MARYLAND BAR;

(III) THE DISTRICT PUBLIC DEFENDER OR THE PUBLIC DEFENDER'S DESIGNEE, IF THE DESIGNEE IS A MEMBER OF THE MARYLAND BAR;

(IV) THE STATE'S ATTORNEY FOR THE JURISDICTION WHERE THE ALLEGED MISCONDUCT OCCURRED OR THE STATE'S ATTORNEY'S DESIGNEE, IF THE DESIGNEE IS A MEMBER OF THE MARYLAND BAR; AND

(V) A CIVILIAN REPRESENTATIVE SELECTED BY THE POLICE ACCOUNTABILITY BOARD FOR THE JURISDICTION WHERE THE ALLEGED MISCONDUCT OCCURRED.

(2) THE HEAD ATTORNEY FOR THE SUPERIOR GOVERNMENTAL AUTHORITY OR THE HEAD ATTORNEY'S DESIGNEE SHALL SERVE AS THE CHAIR OF AN ADMINISTRATIVE CHARGING COMMITTEE.

(B) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL:

(1) REVIEW THE FINDINGS OF A LAW ENFORCEMENT AGENCY'S INVESTIGATION CONDUCTED AND FORWARDED IN ACCORDANCE WITH § 3-104 OF THIS SUBTITLE;

(2) MAKE A DETERMINATION THAT THE LAW ENFORCEMENT OFFICER WHO IS SUBJECT TO INVESTIGATION SHALL BE:

(I) ADMINISTRATIVELY CHARGED; OR

(II) NOT CHARGED;

(3) IF THE LAW ENFORCEMENT OFFICER IS CHARGED, RECOMMEND DISCIPLINE IN ACCORDANCE WITH THE LAW ENFORCEMENT AGENCY'S DISCIPLINARY MATRIX;

(4) ISSUE A WRITTEN OPINION THAT DESCRIBES IN DETAIL ITS FINDINGS, DETERMINATIONS, AND RECOMMENDATIONS; AND

(5) FORWARD THE WRITTEN OPINION TO THE CHIEF OF THE LAW ENFORCEMENT AGENCY.

(C) IN EXECUTING ITS DUTIES IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, AN ADMINISTRATIVE CHARGING COMMITTEE MAY:

(1) REQUEST INFORMATION OR ACTION FROM THE LAW ENFORCEMENT AGENCY THAT CONDUCTED THE INVESTIGATION, INCLUDING REQUIRING ADDITIONAL INVESTIGATION AND THE ISSUANCE OF SUBPOENAS;

(2) IF THE LAW ENFORCEMENT OFFICER IS NOT CHARGED, MAKE A DETERMINATION THAT:

(I) THE ALLEGATIONS AGAINST THE LAW ENFORCEMENT OFFICER ARE UNFOUNDED; OR

(II) THE LAW ENFORCEMENT OFFICER IS EXONERATED; AND

(3) IDENTIFY DEPARTMENTAL POLICY DEFICIENCIES.

(D) NOTWITHSTANDING TITLE 3 OF THE GENERAL PROVISIONS ARTICLE, THE MEETINGS OF AN ADMINISTRATIVE CHARGING COMMITTEE ARE NOT SUBJECT TO THE REQUIREMENTS OF THE OPEN MEETINGS ACT.

3-104.2.

(A) IF AN ADMINISTRATIVE CHARGING COMMITTEE FINDS THAT A DEPARTMENTAL POLICY DEFICIENCY EXISTS, THE COMMITTEE SHALL FORWARD A WRITTEN MEMORANDUM ON THE REASONS FOR THAT FINDING TO:

(1) THE APPLICABLE COUNTY BOARD FORMED UNDER SUBTITLE 8 OF THIS TITLE;

(2) THE SUPERIOR GOVERNMENTAL AUTHORITY OF THE LAW ENFORCEMENT AGENCY; AND

(3) THE CHIEF OF THE LAW ENFORCEMENT AGENCY.

(B) THE CHIEF SHALL SUBMIT A WRITTEN RESPONSE TO A MEMORANDUM DESCRIBED IN SUBSECTION (A) OF THIS SECTION WITHIN 60 DAYS AFTER ITS RECEIPT TO:

(1) THE APPLICABLE COUNTY BOARD FORMED UNDER SUBTITLE 8 OF THIS TITLE; AND

(2) THE SUPERIOR GOVERNMENTAL AUTHORITY OF THE LAW ENFORCEMENT AGENCY.

3-104.3.

(A) (1) THE CHIEF SHALL OFFER THE RECOMMENDED DISCIPLINE TO A LAW ENFORCEMENT OFFICER WITHIN 5 BUSINESS DAYS OF RECEIPT OF:

(I) A WRITTEN OPINION OF AN ADMINISTRATIVE CHARGING COMMITTEE REQUIRED UNDER § 3-104.1 OF THIS SUBTITLE; OR

(II) CHARGES RECOMMENDED BY A LAW ENFORCEMENT AGENCY IN ACCORDANCE WITH THE POLICIES AND PROCEDURES OF THE LAW ENFORCEMENT AGENCY.

(2) IF THE LAW ENFORCEMENT OFFICER ACCEPTS THE DISCIPLINE OFFERED BY THE CHIEF UNDER PARAGRAPH (1) OF THIS SUBSECTION, OR IF THE

LAW ENFORCEMENT OFFICER IS NOT ENTITLED TO A TRIAL BOARD UNDER § 3-107 OF THIS SUBTITLE, THE DISCIPLINE SHALL BE ADMINISTERED AS SOON AS PRACTICABLE.

(3) THE ACCEPTANCE OF DISCIPLINE OFFERED IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION IS AN ADMISSION OF GUILT.

(B) EXCEPT AS PROVIDED IN § 3-111 OF THIS SUBTITLE, IF THE LAW ENFORCEMENT OFFICER DECLINES THE DISCIPLINE OFFERED BY THE CHIEF UNDER SUBSECTION (A)(1) OF THIS SECTION:

(1) THE MATTER SHALL BE SCHEDULED FOR A HEARING BOARD TO BE HELD IN ACCORDANCE WITH § 3-107 OF THIS SUBTITLE NOT LATER THAN 60 DAYS FROM THE LAW ENFORCEMENT OFFICER'S DECLINATION; AND

(2) AT LEAST 10 DAYS BEFORE THE HEARING, THE LAW ENFORCEMENT OFFICER SHALL BE:

(I) NOTIFIED OF THE NAME OF EACH WITNESS AND OF EACH CHARGE AND SPECIFICATION AGAINST THE LAW ENFORCEMENT OFFICER; AND

(II) 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:

1. EXECUTE A CONFIDENTIALITY AGREEMENT WITH THE LAW ENFORCEMENT AGENCY PROHIBITING THE DISCLOSURE OF ANY MATERIAL CONTAINED IN THE INVESTIGATORY FILE OR EXCULPATORY INFORMATION FOR ANY PURPOSE OTHER THAN TO DEFEND THE LAW ENFORCEMENT OFFICER; AND

2. PAY A REASONABLE CHARGE FOR REPRODUCING THE MATERIAL.

(3) THE LAW ENFORCEMENT AGENCY MAY EXCLUDE FROM THE INVESTIGATORY FILE THE IDENTITY OF CONFIDENTIAL SOURCES.

(C) (1) THE LAW ENFORCEMENT AGENCY MAY NOT INSERT ADVERSE MATERIAL INTO A FILE OF THE LAW ENFORCEMENT OFFICER, EXCEPT THE FILE OF

THE INTERNAL INVESTIGATION OR THE INTELLIGENCE DIVISION, UNLESS THE LAW ENFORCEMENT OFFICER HAS AN OPPORTUNITY TO REVIEW, RECEIVE A COPY OF, ACKNOWLEDGE RECEIPT OF BY SIGNATURE, AND COMMENT IN WRITING ON THE ADVERSE MATERIAL.

(2) THE LAW ENFORCEMENT OFFICER MAY WAIVE THE RIGHT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

3–105.

(a) A law enforcement officer who is denied a right granted by this subtitle 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.

(b) The law enforcement officer may apply for the show cause order:

(1) either individually or through the law enforcement officer's certified or recognized employee organization; and

(2) at any time prior to the beginning of a hearing by the hearing board.

(c) On a finding that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by this subtitle, the court shall grant appropriate relief.

3–106.

(a) Subject to subsection (b) of this section, a law enforcement agency or **AN ADMINISTRATIVE CHARGING COMMITTEE** may not bring administrative charges against a law enforcement officer unless [the agency files] the charges **ARE FILED** within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.

(b) The 1–year limitation of subsection (a) of this section does not apply to charges that relate to criminal activity or excessive force.

3–106.1.

(a) A law enforcement agency required by law to disclose information for use as impeachment or exculpatory evidence in a criminal case, solely for the purpose of satisfying the disclosure requirement, may 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.

(b) A law enforcement agency may not, based solely on the fact that a law enforcement officer is included on the list maintained under subsection (a) of this section, take punitive action against the law enforcement officer, including:

- (1) demotion;
- (2) dismissal;
- (3) suspension without pay; or
- (4) reduction in pay.

(c) A law enforcement agency that maintains a list of law enforcement officers under subsection (a) of this section shall provide timely notice to each law enforcement officer whose name has been placed on the list.

(d) A law enforcement officer maintains all rights of appeal provided in this subtitle.

3-107.

(a) (1) Except as provided in paragraph (2) of this subsection and § 3-111 of this subtitle, if the [investigation or interrogation of a law enforcement officer results in a recommendation of]**CHARGES BROUGHT AGAINST A LAW ENFORCEMENT OFFICER COULD RESULT IN** 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 before the law enforcement agency takes that action.

(2) A law enforcement officer [who has been convicted of a felony]**WHO PLED GUILTY, RECEIVED PROBATION BEFORE JUDGMENT, OR WAS CONVICTED OF MISDEMEANOR ASSAULT, MISDEMEANOR THEFT, OR A FELONY IN CONNECTION**

WITH THE MATTER FOR WHICH THE LAW ENFORCEMENT OFFICER IS FACING ADMINISTRATIVE CHARGES is not entitled to a hearing under this section.

(b) (1) The law enforcement agency shall give notice to the law enforcement officer of the right to a hearing by a hearing board under this section.

(2) The notice required under this subsection shall state the time and place of the hearing and the issues involved.

(c) [(1) Except as provided in paragraph (5) of this subsection and in § 3-111 of this subtitle, the hearing board authorized under this section shall consist of at least three voting members who:

(i) are appointed by the chief 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

(ii) have had no part in the investigation or interrogation of the law enforcement officer.

(2) At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint is filed.]

(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION , THE HEARING BOARD AUTHORIZED UNDER THIS SECTION SHALL CONSIST OF THE FOLLOWING VOTING MEMBERS:

(I) ONE LAW ENFORCEMENT OFFICER WHO IS:

1. APPOINTED BY THE CHIEF;

2. EMPLOYED BY THE LAW ENFORCEMENT AGENCY; AND

3. OF THE SAME RANK AS THE LAW ENFORCEMENT OFFICER AGAINST WHOM THE COMPLAINT IS FILED;

(II) TWO LAW ENFORCEMENT OFFICERS WHO ARE:

1. APPOINTED BY THE CHIEF; AND

2. EMPLOYED BY ANOTHER LAW ENFORCEMENT AGENCY, PROVIDED THAT THE CHIEF OF THE OTHER LAW ENFORCEMENT AGENCY APPROVES THE APPOINTMENT; AND

(III) TWO CIVILIAN REPRESENTATIVES SELECTED BY THE POLICE ACCOUNTABILITY BOARD FOR THE COUNTY WHERE THE ALLEGED MISCONDUCT OCCURRED.

(2) (I) AN INDIVIDUAL APPOINTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE FROM THE ROSTER MAINTAINED IN ACCORDANCE WITH § 3-207(G) OF THIS TITLE.

(II) A HEARING BOARD MAY NOT INCLUDE ANY INDIVIDUAL WHO TOOK PART IN THE INVESTIGATION, INTERROGATION, OR CHARGING OF THE LAW ENFORCEMENT OFFICER WHO IS THE SUBJECT OF THE HEARING BOARD.

(3) [(i) Subject to subparagraphs (ii) and (iii) of this paragraph, 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 on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.

(ii) If authorized by local law, a hearing board formed under paragraph (1) of this subsection may include up to two voting or nonvoting members of the public who have received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.

(iii) At the Johns Hopkins University, if authorized by local law, a hearing board formed under paragraph (1) of this subsection shall include two voting members of the public who have received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.

(4)] (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State shall function as the law enforcement officer of the same rank on the hearing board.

(ii) If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iii) If the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iv) If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor, or that official's designee, shall function as the chief for purposes of this subtitle.

[(5) (i) 1.](4) A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may **NOT** negotiate with the representative an alternative method of forming a hearing board.

[2. A hearing board formed under this paragraph may include up to two voting or nonvoting members of the public, appointed by the chief, who have received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Officers' Bill of Rights and matters relating to police procedures.

(ii) A law enforcement officer may elect the alternative method of forming a hearing board if:

1. the law enforcement officer works in a law enforcement agency described in subparagraph (i) of this paragraph; and

2. the law enforcement officer is included in the collective bargaining unit.

(iii) The law enforcement agency shall notify the law enforcement officer in writing before a hearing board is formed that the law enforcement officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.

(iv) If the law enforcement officer elects the alternative method, that method shall be used to form the hearing board.

(v) An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing board.

(vi) If the law enforcement officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.

(vii) If authorized by local law, this paragraph is subject to binding arbitration.]

(d) (1) In connection with a disciplinary hearing, the chief, **AN INDIVIDUAL DESIGNATED BY THE CHIEF**, or A 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.

(2) The subpoenas may be served without cost in accordance with the Maryland Rules that relate to service of process issued by a court.

(3) Each party may request the chief or hearing board to issue a subpoena or order under this subtitle.

(4) In case of disobedience or refusal to obey a subpoena served under this subsection, the chief or hearing board may apply without cost to the circuit court of a county where the subpoenaed party resides or conducts business, for an order to compel the attendance and testimony of the witness or the production of the books, papers, records, and documents.

(5) On a finding that the attendance and testimony of the witness or the production of the books, papers, records, and documents is relevant or necessary:

(i) the court may issue without cost an order that requires the attendance and testimony of witnesses or the production of books, papers, records, and documents; and

(ii) failure to obey the order may be punished by the court as contempt.

(e) (1) The hearing shall be:

(i) conducted by a hearing board; and

(ii) 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.

(2) The hearing board shall give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved.

(3) The law enforcement agency and law enforcement officer may be represented by counsel.

(4) Each party has the right to cross-examine witnesses who testify and each party may submit rebuttal evidence.

(5) THE ATTORNEY GENERAL OR THE ATTORNEY GENERAL'S DESIGNEE SHALL PROSECUTE CASES OF ALLEGED LAW ENFORCEMENT OFFICER MISCONDUCT THAT ARE BEFORE THE HEARING BOARD UNDER THIS SECTION.

(f) (1) Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect.

(2) The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) Each record or document that a party desires to use shall be offered and made a part of the record.

(4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(g) (1) The hearing board may take notice of:

(i) judicially cognizable facts; and

(ii) general, technical, or scientific facts within its specialized knowledge.

(2) The hearing board shall:

(i) notify each party of the facts so noticed either before or during the hearing, or by reference in preliminary reports or otherwise; and

(ii) give each party an opportunity and reasonable time to contest the facts so noticed.

(3) The hearing board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(h) (1) With respect to the subject of a hearing conducted under this subtitle, the chief shall administer oaths or affirmations and examine individuals under oath.

(2) In connection with a disciplinary hearing, the chief or a hearing board may administer oaths.

(i) (1) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

(2) Witness fees, mileage, and the actual expenses necessarily incurred in securing the attendance of witnesses and their testimony shall be itemized and paid by the law enforcement agency.

(j) An official **AUDIOVISUAL** record, including testimony and exhibits, shall be kept of the hearing **AND MADE AVAILABLE AS A PUBLIC RECORD**.

3–108.

(a) (1) A decision, order, or action taken as a result of a hearing under § 3–107 of this subtitle shall be in writing and accompanied by findings of fact.

(2) The findings of fact shall consist of a concise statement on each issue in the case.

(3) A finding of not guilty terminates the action.

(4) If the hearing board makes a finding of guilt, the hearing board shall:

(i) reconvene the hearing;

(ii) receive evidence; [and]

(iii) consider the law enforcement officer's past job performance and other relevant information as factors before making recommendations to the chief; **AND**

(IV) ALLOW THE PUBLIC TO BE PRESENT AT THE RECONVENED HEARING.

(5) A copy of the decision or order, findings of fact, conclusions, and written recommendations for action shall be delivered or mailed promptly to:

(i) the law enforcement officer or the law enforcement officer's counsel or representative of record; and

(ii) the chief.

(b) (1) After a disciplinary hearing and a finding of guilt, the hearing board may recommend the penalty it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar action that is considered punitive.

(2) The recommendation of a penalty shall be in writing.

(c) (1) Notwithstanding any other provision of this subtitle, the decision of the hearing board as to findings of fact and any penalty is final if:

(i) a chief is an eyewitness to the incident under investigation; or

(ii) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative recognized or certified under applicable law that the decision is final.

(2) The decision of the hearing board then may be appealed in accordance with § 3-109 of this subtitle.

(3) If authorized by local law, paragraph (1)(ii) of this subsection is subject to binding arbitration.

(d) (1) Within 30 days after receipt of the recommendations of the hearing board, the chief shall:

(i) review the findings, conclusions, and recommendations of the hearing board; and

(ii) issue a final order.

(2) The final order and decision of the chief is binding and then may be appealed in accordance with § 3-109 of this subtitle.

(3) The recommendation of a penalty by the hearing board is not binding on the chief.

(4) The chief shall consider the law enforcement officer's past job performance as a factor before imposing a penalty.

(5) The chief may increase the recommended penalty of the hearing board only if the chief personally:

(i) reviews the entire record of the proceedings of the hearing board;

(ii) meets with the law enforcement officer and allows the law enforcement officer to be heard on the record;

(iii) discloses and provides in writing to the law enforcement officer, at least 10 days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and

(iv) states on the record the substantial evidence relied on to support the increase of the recommended penalty.

(6) A LAW ENFORCEMENT AGENCY OR THE AGENCY'S SUPERIOR GOVERNMENTAL AUTHORITY THAT HAS RECOGNIZED AND CERTIFIED AN EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE MAY NOT NEGOTIATE A COLLECTIVE BARGAINING CLAUSE THAT REMOVES FINAL AUTHORITY FROM THE CHIEF.

3–109.

(a) An appeal from a decision made under § 3–108 of this subtitle shall be taken to the circuit court for the county in accordance with Maryland Rule 7–202.

(b) A party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals.

3–110.

(a) **[On]EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION,** ON written request, a law enforcement officer may have expunged from any file the record of a formal complaint made against the law enforcement officer if:

(1) (i) the **ADMINISTRATIVE CHARGING COMMITTEE OR** law enforcement agency that investigated the complaint:

1. exonerated the law enforcement officer of all charges in the complaint; or

2. determined that the charges were [unsustained or] unfounded; or

(ii) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty; and

(2) at least [3]5 years have passed since the final disposition by the law enforcement agency, **ADMINISTRATIVE CHARGING COMMITTEE**, or hearing board.

(b) Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the complaint resulted in an outcome listed in subsection (a)(1) of this section.

(C) A FORMAL COMPLAINT INVOLVING EXCESSIVE USE OF FORCE, DISCOURTESY, RACIAL HARASSMENT, SEXUAL HARASSMENT, OR A VIOLATION OF A CRIMINAL STATUTE IS NOT ELIGIBLE UNDER THIS SECTION FOR EXPUNGEMENT.

3–111.

(a) This subtitle does not prohibit summary punishment by higher ranking law enforcement officers as designated by the chief.

(b) (1) Summary punishment may be imposed for minor violations of law enforcement agency rules and regulations if:

(i) the facts that constitute the minor violation are not in dispute;

(ii) the law enforcement officer waives the hearing provided under this subtitle; and

(iii) 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.

(2) Summary punishment imposed under this subsection may not exceed suspension of 3 days without pay or a fine of \$150.

(c) (1) If a law enforcement officer is offered summary punishment in accordance with subsection (b) of this section and refuses:

(i) the chief may convene a hearing board of one or more members;
and

(ii) the hearing board has only the authority to recommend the sanctions provided in this section for summary punishment.

(2) If a single member hearing board is convened:

(i) the member need not be of the same rank as the law enforcement officer; but

(ii) all other provisions of this subtitle apply.

3–112.

(a) This subtitle does not prohibit emergency suspension by higher ranking law enforcement officers as designated by the chief.

(b) (1) 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.

(2) 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:

(i) a determination by a court with respect to a criminal violation;
or

(ii) a final determination by a hearing board with respect to a law enforcement agency violation.

(3) A law enforcement officer who is suspended under this subsection is entitled to a prompt hearing.

(c) (1) If a law enforcement officer is charged with **MISDEMEANOR ASSAULT, MISDEMEANOR THEFT, OR** a felony, the chief [may]**SHALL** impose an emergency suspension of police powers without pay.

(2) A law enforcement officer who is suspended under paragraph (1) of this subsection is entitled to a prompt hearing.

3–113.

(a) A person may not knowingly make a false statement, report, or complaint during an investigation or proceeding conducted under this subtitle.

(b) A person who violates this section is subject to the penalties of § 9–501 of the Criminal Law Article.

3–207.

(g) The Commission shall:

(1) develop and administer a training program on the Law Enforcement [Officers' Bill of Rights] **ACCOUNTABILITY AND DISCIPLINE ACT** and matters relating to police procedures for [citizens who intend]**CIVILIANS AND LAW ENFORCEMENT OFFICERS** to qualify to participate as a member of **AN ADMINISTRATIVE CHARGING COMMITTEE OR** a hearing board under [§ 3–107]**SUBTITLE 1** of this title;

(2) **MAINTAIN A ROSTER OF THOSE CIVILIANS AND LAW ENFORCEMENT OFFICERS WHO HAVE UNDERGONE THE TRAINING UNDER PARAGRAPH (1) OF THIS SUBSECTION; AND**

(3) **ENSURE THAT CIVILIANS AND LAW ENFORCEMENT OFFICERS WHO HAVE UNDERGONE THE TRAINING UNDER PARAGRAPH (1) OF THIS SUBSECTION ARE CHOSEN TO SERVE ON ADMINISTRATIVE CHARGING COMMITTEES AND HEARING BOARDS ON A ROTATING BASIS.**

(j) **THE COMMISSION SHALL PROVIDE STAFF TO AN ADMINISTRATIVE CHARGING COMMITTEE FORMED IN ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE.**

SUBTITLE 8. POLICE ACCOUNTABILITY BOARDS.

3-801.

EACH COUNTY SHALL ESTABLISH AND MAINTAIN A POLICE ACCOUNTABILITY BOARD.

3-802.

(A) A MAJORITY OF THE MEMBERS OF A POLICE ACCOUNTABILITY BOARD SHALL BE CIVILIANS.

(B) TO THE EXTENT PRACTICABLE, A POLICE ACCOUNTABILITY BOARD SHALL REFLECT THE RACIAL, GEOGRAPHIC, ETHNIC, CULTURAL, AND GENDER DIVERSITY OF THE COUNTY.

3-803.

(A) A BOARD SHALL:

(1) ADVISE THE COUNTY ON POLICING MATTERS;

(2) MAKE RECOMMENDATIONS REGARDING POLICING BEST PRACTICES;

(3) SUBJECT TO SUBSECTION (B) OF THIS SECTION:

(I) RECOMMEND TO THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION CIVILIANS TO SERVE ON THE ROSTER MAINTAINED IN ACCORDANCE WITH § 3-207(G) OF THIS TITLE; AND

(II) APPOINT CIVILIANS FROM THE ROSTER MAINTAINED IN ACCORDANCE WITH § 3-207(G) OF THIS TITLE TO SERVE ON ADMINISTRATIVE CHARGING COMMITTEES AND HEARING BOARDS UNDER SUBTITLE 1 OF THIS TITLE; AND

(4) TAKE ANY OTHER ACTIONS THAT THE COUNTY DEEMS NECESSARY.

(B) THE CIVILIANS RECOMMENDED UNDER SUBSECTION (A)(3)(I) OF THIS SUBSECTION MAY NOT BE CURRENT OR FORMER EMPLOYEES OF:

(1) THE COUNTY; OR

(2) A LAW ENFORCEMENT AGENCY.

SECTION 4. AND BE IT FURTHER ENACTED, That Sections 1 and 2 of this Act shall be construed to apply retroactively and prospectively to all records related to formal complaints of job–related misconduct made against law enforcement officers filed prior to, on, and after the effective date of this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to:

(1) any bona fide collective bargaining agreement entered into on or before June 30, 2021 for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original contract; or

(2) a disciplinary matter against a law enforcement officer based on alleged misconduct occurring before the effective date of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That the publisher of the Annotated Code of Maryland, in consultation with and subject to the approval of the Department of Legislative Services, shall correct, with no further action required by the General Assembly, cross–references and terminology rendered incorrect by this Act. The publisher shall adequately describe any correction that is made in an editor’s note following the section affected.

SECTION 7. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect July 1, 2021.

SECTION 8. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and, except as provided in Section 7 of this Act, shall take effect from the date it is enacted.

JPR 14
Law Enforcement Accountability and Discipline Act of 2021
Department of Legislative Services – Office of Policy Analysis

Summary of Draft Bill

Law Enforcement Accountability and Discipline Act of 2021 Overview

The draft Law Enforcement Accountability and Discipline Act of 2021 (LEAD Act) alters and expands (1) a number of requirements and procedures under the Law Enforcement Officers' Bill of Rights (LEOBR); (2) the duties for the Maryland Police Training and Standards Commission (MPTSC); and (3) provisions relating to the disclosure of certain law enforcement personnel records under the Maryland Public Information Act (MPIA).

Provisions relating to MPIA take effect on an emergency basis and apply retroactively and prospectively to all records related to formal complaints of job-related misconduct made against law enforcement officers filed prior to, on, and after the effective date of the bill. Provisions relating to LEAD Act and MPTSC take effect July 1, 2021, and apply only prospectively but *may not* be applied or interpreted to have any effect on or application to:

- any bona fide collective bargaining agreement entered into on or before June 30, 2021, for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original contract; or
- a disciplinary matter against a law enforcement officer based on alleged misconduct occurring before the effective date of the bill's provisions.

Changes to the Law Enforcement Officers' Bill of Rights

LEOBR provides uniform administrative protections to law enforcement officers in two major components of the disciplinary process: (1) measures for 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. The draft bill renames LEOBR as LEAD Act and makes modifications to the complaint process, the investigation and interrogation process, and the hearing board and discipline process. In addition, the draft bill creates administrative charging committees and police accountability boards and defines specified terms.

Complaint Process

The draft bill makes a number of changes to the process for filing a formal complaint against a law enforcement officer alleging brutality. Specifically, the draft bill:

- removes the requirement that a complaint be signed and sworn to by the complainant under the penalty of perjury;
- authorizes the chair of a police accountability board or an attorney in the attorney's capacity as a prosecutor or representative of an aggrieved party to file a complaint; and
- extends from 366 days to three years, the complaint filing deadline triggering the requirement that a law enforcement agency investigate the matter.

Investigation and Interrogation Process

The draft bill makes the following changes to the process for investigating and interrogating a law enforcement officer:

- A civilian employee of a law enforcement agency or of the law enforcement agency's superior governmental authority is authorized to serve as the investigating officer or interrogating officer, and if the interrogating officer is a civilian, the law enforcement officer under investigation must be informed of the interrogating officer's name and qualifications. Under current law, only sworn officers or, if requested by the Governor, the Attorney General or a designee of the Attorney General may serve as the investigating or interrogating officer.
- For a law enforcement officer under investigation, the time period for retaining an attorney for the internal investigation and disciplinary process is reduced from five business days to three business days. If the law enforcement officer fails to obtain counsel within the three-business day period, the chief or the chief's designee may order the officer to submit to interrogation.
- The record of an interrogation must be recorded in an audiovisual format and transcribed (instead of being authorized to be written, taped, or transcribed).
- The law enforcement agency that orders a polygraph examination on a law enforcement officer subject to investigation may not administer the polygraph examination. Under current law, the polygraph examination may be administered by the law enforcement agency that ordered the examination.
- The investigating officer may issue subpoenas to compel the attendance and testimony of witnesses and for the production of books, papers, records, and any other documents as relevant or necessary (similar to a hearing board under current law in connection with a disciplinary hearing). The subpoenas may be served without cost and failure to comply may be punished by the court as contempt, as specified.
- On completion of an investigation, the law enforcement agency must forward to an administrative charging committee the investigatory files for matters involving

(1) allegations of misconduct made by a member of the public and (2) any allegation, regardless of the complainant, related to, dishonesty, violations of a criminal statute, or sexual or racial harassment. Other matters, such as insubordination, must proceed in accordance with the law enforcement agency's policies and procedures.

The draft bill establishes administrative charging committees and provisions governing committee membership and duties. The committees must:

- review the findings of a law enforcement agency's investigation, as specified;
- make a determination regarding whether a law enforcement officer is administratively charged or not charged;
- if the law enforcement officer is charged, recommend discipline, as specified;
- issue a written opinion describing in detail its findings, determinations, and recommendations; and
- forward the written opinion to the chief of the law enforcement agency.

The committees may:

- request additional information from the law enforcement agency that conducted the investigation, as specified;
- identify departmental policy deficiencies and, if applicable, forward a written memorandum on the reasons for the finding to the applicable police accountability board, the superior governmental authority of the law enforcement agency, and the chief of the law enforcement agency who must respond as specified; and
- if the law enforcement officer is not charged, make a determination that the allegations are unfounded or the officer is exonerated.

On receipt of a written opinion of an administrative charging committee or charges recommended by a law enforcement agency, the chief must offer the recommended discipline to the law enforcement officer within five business days. Except for charges that relate to criminal activity or excessive force, the statute of limitations for an administrative charging committee to bring 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. This provision is identical to the limitations provision that exists in current law for a law enforcement agency to bring administrative charges.

If the law enforcement officer accepts the discipline offered, the acceptance is an admission of guilt and the officer is not entitled to a hearing board as specified. The discipline must be administered as soon as practicable.

If the law enforcement officer declines the discipline offered, within 60 days, the matter must be scheduled for a hearing board, and at least 10 days before the hearing, the law enforcement officer must be notified of specified information regarding each witness, charge, and specification against the officer and provided a copy of the investigatory file and any exculpatory information, as specified. The law enforcement agency may exclude the identity of confidential sources from the investigatory file. Unless waived by the law enforcement officer, with specified exceptions, the law enforcement agency may not insert adverse material into a file of the law enforcement officer.

Hearing Board and Discipline Process

The draft bill makes a number of changes to the hearing board and discipline process. Specifically, the draft bill:

- expands the circumstances under which a law enforcement officer is not entitled to a hearing board to include when the officer pled guilty, received probation before judgment, or was convicted of misdemeanor assault, misdemeanor theft, or a felony in connection with a matter for which the law enforcement officer is facing administrative charges;
- requires the Attorney General or the Attorney General's designee to prosecute cases of alleged law enforcement officer misconduct that are before a hearing board;
- repeals provisions related to the composition of hearing boards and instead requires all hearing boards be composed of three officers appointed by the chief – one officer who is employed by the law enforcement agency and of the same rank and file as the officer against whom the complaint is filed and two officers who are employed by another law enforcement agency – and two civilian representatives appointed by the appropriate police accountability board;
- prohibits a collective bargaining agreement from including a provision that provides for alternative hearing boards or a provision that removes final authority from the chief;
- requires that an official audiovisual record be kept of the hearing and made available as a public record (instead of the requirement to keep an official record of the hearing); and
- requires the hearing board to allow the public to be present at the reconvened hearing if the hearing board makes a finding of guilt, in addition to current law requirements to reconvene the hearing, receive evidence, and consider specified information regarding the law enforcement officer.

Termination and Suspension

The draft bill expressly authorizes the chief of a law enforcement agency to terminate and demote an employee in order to regulate the competent and efficient operation and management of the law enforcement agency. It also expressly specifies that an action taken by the chief may

not be retaliatory in nature. The chief is also required to impose an emergency suspension of police powers without pay if a law enforcement officer is charged with misdemeanor assault, misdemeanor theft, or a felony.

Expungement

The draft bill prohibits the expungement of a formal complaint against a law enforcement officer that were unsustainable (the equivalent of “not charged” under LEAD Act) or involving excessive use of force, discourtesy, racial harassment, sexual harassment, or a violation of a criminal statute. In addition, the waiting period before a law enforcement officer may have an eligible formal complaint expunged is increased from three years to five years.

Disclosure by Law Enforcement Officer

The draft bill expands the exceptions to the prohibition against a law enforcement agency requiring or requesting a law enforcement officer to disclose an item of the law enforcement officer’s property, income, assets, source of income, debts, or personal or domestic expenditures, to include an officer assigned to a specialized or sensitive unit whose work often involves the confiscation of large sums of money. Under current law, an agency may only request this information to investigate possible conflicts of interest with respect to the performance of the officer’s official duties or if the disclosure is required by federal or State law.

In addition, the draft bill expands the prohibition against specified disciplinary treatment against a law enforcement officer to include when the law enforcement officer has disclosed information that evidences a violation of policy committed by another law enforcement officer.

Police Accountability Boards

The draft bill requires each county to establish and maintain a police accountability board. A majority of the members of a police accountability board must be civilians and, to the extent practicable, a police accountability board must reflect the diversity of the county that establishes it. A board must advise the county on policing matters, make recommendations regarding policing best practices, make recommendations and appointments of civilians to serve on the roster maintained by MPTSC and to serve on administrative charging committees and hearing boards under LEAD Act, and take any other actions that the county deems necessary. Recommended civilians may not be current or former employees of the county or a law enforcement agency.

Defined Terms

Among other terms, the draft bill defines the following terms:

- “Administratively charged” means that a law enforcement officer has been formally accused of misconduct in an administrative proceeding.

- “Exonerated” means that a law enforcement officer acted in accordance with the law and agency policy.
- “Not charged” means that a determination has been made not to administratively charge a law enforcement officer in connection with alleged misconduct.
- “Unfounded” means that the allegations against a law enforcement officer are not supported by fact.

Maryland Police Training and Standards Commission

MPTSC is an independent commission within the State’s Department of Public Safety and Correctional Services. Under current law, MPTSC has a number of duties, including the certification of law enforcement officers and the training of civilians to serve on hearing boards.

The draft bill alters and expands the duties of MPTSC regarding training for citizen participation on a hearing board. Instead of MPTSC only being required to develop and administer training for citizens who intend to participate as a member of a hearing board under LEOBR, MPTSC must develop and administer a training program on LEAD Act and matters relating to police procedures for civilians and law enforcement officers to qualify to participate as a member of an administrative charging committee or a hearing board. In addition, MPTSC must (1) maintain a roster of civilians and law enforcement officers who have undergone the training; (2) ensure that individuals who have undergone the training are chosen to serve on administrative charging committees and hearing boards on a rotating basis; and (3) provide staff to an administrative charging committee formed in accordance with the draft bill.

Disclosure of Records under the Maryland Public Information Act

MPIA provides that all persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees. Personnel records, however, are generally exempt from disclosure under MPIA.

The draft bill establishes that a record related to a formal complaint of job-related misconduct made against a law enforcement officer, including an investigation record, a hearing record, or a disciplinary decision, is not a personnel record and thus not subject to mandatory denial of inspection under MPIA. Instead, a custodian of a public record may, subject to specified existing conditions, deny the inspection of a record generally relating to the investigation, hearings, or decisions involving a complaint of job-related misconduct made against a law enforcement officer.

JPR 15

By: **Senator Carter**

A BILL ENTITLED

AN ACT concerning

**Law Enforcement Officers' Bill of Rights – Repeal
(Maryland Police Accountability Act of 2021)**

FOR the purpose of repealing the Law Enforcement Officers' Bill of Rights; providing for the application of this Act; and generally relating to the repeal of the Law Enforcement Officers' Bill of Rights.

BY repealing

Article – Public Safety

Section 3–101 through 3–113 and the subtitle “Subtitle 1. Law Enforcement Officers' Bill of Rights”

Annotated Code of Maryland

(2018 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 3–101 through 3–113 and the subtitle “Subtitle 1. Law Enforcement Officers' Bill of Rights” of Article – Public Safety of the Annotated Code of Maryland be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any investigation or disciplinary proceeding initiated before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

JPR 15
Law Enforcement Officers’ Bill of Rights – Repeal
(Maryland Police Accountability Act of 2021)
Department of Legislative Services – Office of Policy Analysis

Summary of Draft Bill

Repeal of Law Enforcement Officers’ Bill of Rights

This draft bill repeals the Law Enforcement Officers’ Bill of Rights (LEOBR), which provides uniform administrative protections to law enforcement officers in two major components of the disciplinary process: (1) measures for 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. The draft bill has prospective application and only affects investigations and disciplinary proceedings initiated on or after the draft bill’s October 1, 2021 effective date.

The protections provided by LEOBR under current law are summarized below.

Investigation of a Complaint

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. The one-year limitation does not apply to charges that relate to criminal activity or excessive force.

The investigating officer or interrogating officer must be a sworn law enforcement officer or, if requested by the Governor, the Attorney General or a designee of the Attorney General. 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, by (1) the aggrieved individual; (2) a member of the aggrieved individual’s immediate family; (3) an individual with firsthand knowledge obtained because the individual was present at and observed the alleged incident or has a video recording of the incident that, to the best of the individual’s knowledge, is unaltered; or (4) if the alleged incident involves a minor child, the parent or guardian of the child.

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 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.

All questions directed to the officer under interrogation must be asked by and through one interrogating officer. Each interrogation session must be for a reasonable period, allowing for personal necessities and rest periods as reasonably necessary.

The officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action. On request, the officer under interrogation 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 days until representation is obtained. Within that five-day period, the chief, for good cause shown, may extend the period for obtaining representation. The officer may waive this right to representation. During the interrogation, the officer's counsel or representative may (1) request a recess at any time to consult with the officer; (2) object to any question posed; and (3) state on the record outside the presence of the law enforcement officer the reason for the objection.

A complete record must be kept of the entire interrogation, including all recess periods, of the law enforcement officer. This record may be written, taped, or transcribed. Upon completion of the investigation, and on request of the officer under investigation or the officer's counsel or representative, a copy of the record of the interrogation must be made available at least 10 days before a hearing.

The law enforcement agency may order the officer under investigation 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. If the law enforcement agency orders the officer to submit to a test, examination, or interrogation and the officer refuses to do so, the agency may commence an action that may lead to a punitive measure as a result of the refusal. If the law enforcement agency orders the officer to submit to a test, examination, or interrogation, the results are not admissible or discoverable in a criminal proceeding against the law enforcement officer.

If the law enforcement agency orders the officer to submit to a polygraph examination, the results of the examination may not be used as evidence in an administrative hearing unless the agency and the officer agree to the admission of the results. The officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner if (1) the questions to be asked are reviewed with the counsel or representative before the administration of the examination; (2) the counsel or representative is allowed to

observe the administration of the examination; and (3) a copy of the final report of the examination by the examiner is made available to the officer or the officer's counsel or representative within a reasonable time, up to 10 days, after completion of the examination.

Upon completion of an investigation and at least 10 days before a hearing, the officer under investigation 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 confidentiality agreement with the law enforcement agency not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer. 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

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. Unless the chief finds that a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness, the hearing must be open to the public.

With specified exceptions, hearing boards 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.

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.

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.

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.

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.

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.

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. An official record, including testimony and exhibits, must be kept of the hearing.

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. 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/representative and the chief of the law enforcement agency.

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.

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 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.

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.

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.

A party aggrieved by a decision of a court may appeal to the Court of Special Appeals.