

Department of General Services Police

Law Enforcement Officer's Bill of Rights

Disciplinary Hearing

Guide

October 1998

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THE ANNOTATED CODE OF MARYLAND
Article 27, Sections 727 through 734D
subtitled
LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

§ 727. Definitions; hearing boards.

- (a) In general. - as used in this subtitle, the following words have the meanings indicated.
- (b) Law enforcement officer. - "Law enforcement officer" means any person who, in an official capacity, is authorized by law to make arrests and who is a member of one of the following law enforcement agencies:
- (1) The Department of State Police;
 - (2) The Baltimore City Police Department;
 - (3) The Baltimore City School Police Force;
 - (4) The police department, bureau, or force of any county;
 - (5) The police department, bureau, or force of any incorporated city or town;
 - (6) The office of the sheriff of any county;
 - (7) The police department, bureau, or force of any bicounty agency or the University of Maryland;
 - (8) The Police Forces of the Department of Transportation;
 - (9) The police officers of the Department of Natural Resources;
 - (10) The Investigative Services Unit of the Comptroller's Office;
 - (11) Housing Authority of Baltimore City Police Force;
 - (12) The Crofton Police Department;
 - (13) The Police Officers of the Department of Health and Mental Hygiene;
 - (14) The Police Officers of the Department of General Services;

- (15) The Police Officers of the Department of Labor, Licensing, and Regulation; or
- (16) Full-Time Investigative Assistants and Inspection Assistants in the State Fire Marshal's Office.
- (c) Exceptions from definition of law enforcement officer. - "Law enforcement officer" does not include an officer serving in a probationary status except when allegations of brutality in the execution of his or her duties are made involving an officer who is in a probationary status. The provisions of this subtitle do not apply to persons serving at the pleasure of the Police Commissioner of Baltimore City or the appointing authority of a charter county or to a police chief of any incorporated city or town. The term "probationary status" includes only an officer who is in that status upon initial entry into the Department.
- (d) Hearing Board. - "Hearing board" means:
- (1) A board which is authorized by the chief to hold a hearing on a complaint against a law enforcement officer and which consists of not less than three members, except as provided in paragraphs (2) and (3) of this subsection, all to be appointed by the chief and selected from law enforcement officers within that agency, or law enforcement officers of another agency with the approval of the chief of the other agency, and who have had no part in the investigation or interrogation of the law enforcement officer. At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint has been filed.
 - (2)
 - (i) The provisions of this paragraph may not be the subject of binding arbitration.
 - (ii) An agency or an agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the exclusive collective bargaining representative an alternate method of forming a hearing board.
 - (iii) A law enforcement officer may elect the alternate method of forming a hearing board instead of the method described in paragraph (1) of this subsection if the law enforcement officer works within an agency described in sub-paragraph (ii) of this paragraph and the law enforcement officer is included in the collective bargaining unit.
 - (iv) An agency described in subparagraph (ii) of this paragraph shall notify the law enforcement officer in writing before the formation of the hearing board that the law enforcement officer may elect an alternate method of forming a hearing board if one has been negotiated under this paragraph.

- (v) If the law enforcement officer elect an alternate method of forming a hearing board under this paragraph, the alternate method shall be used to form the hearing board.
 - (vi) An agency or an exclusive collective bargaining representative may not require a law enforcement officer to elect an alternate method of forming a hearing board under this paragraph.
 - (vii) If the law enforcement officer has been offered summary punishment, an alternate method of forming a hearing board may not be used.
- (3) If a law enforcement officer is offered summary punishment imposed pursuant to §734A and refuses, the chief may convene a one-member or more hearing board and the hearing board shall have only the authority to recommend the sanctions as provided in this subtitle for summary punishment. If a single member hearing board is convened, that member need not be of the same rank. However, all other provisions of this subtitle shall apply.
- (e) **Hearing.** - "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation, at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or adducing testimony or receiving other evidence.
 - (f) **Summary punishment.** - "Summary punishment" is punishment imposed by the highest ranking officer of a unit or member acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days suspension without pay or a fine of \$150.
 - (g) **Chief.** - "Chief" means the superintendent, commissioner, chief of police, or sheriff of a law enforcement agency, or the officer designated by the official.
 - (h) **Interrogating officer; investigating officer.** - "Interrogating officer", "investigating officer", and all other forms of those terms mean:
 - (1) Any sworn law enforcement officer; or
 - (2) If requested by the Governor, the Attorney General of Maryland or the Attorney General's designee.

§ 728. Right to engage in political activity; investigation or interrogation of officer; officer's right to sue; adverse material in officer's file.

- (a) **Right to engage in political activity.** - A law enforcement officer has the same rights to engage in political activity as are afforded to any State employee. This right to engage in

political activity shall not apply to any law enforcement officer when he is on duty or when he is acting in his official capacity.

- (b) Procedure to be followed at interrogation or investigation; record; representation by counsel; statute or regulation abridging right to sue; insertion of adverse material into officer's file; chief under investigation; polygraph examination. - Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:
- (1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.
 - (2) The interrogation shall take place either 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, unless otherwise waived by the law enforcement officer, or at any other reasonable and appropriate place.
 - (3) The law enforcement officer under investigation shall be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator during any one interrogating session consistent with the provisions of subsection (b) (6) of this section.
 - (4) A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint be duly sworn to by the aggrieved person, a member or the aggrieved person's immediate family, or by any person with firsthand knowledge obtained as a result of the presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child before an official authorized to administer oaths. An investigation which could lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken unless the complaint is filed within 90 days of the alleged brutality.
 - (5)
 - (i) The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation.
 - (ii) Upon completion of the investigation, the law enforcement officer shall be notified of the name of any witness and all charges and specifications against the officer not less than 10 days prior to any hearing.

- (iii) In addition, the law enforcement officer under investigation shall be furnished with a copy of the investigatory file and any exculpatory information, but excluding:
 - 1. The identify of confidential sources;
 - 2. Any nonexculpatory information; and
 - 3. Recommendations as to charges, disposition, or punishment.
- (iv) The law enforcement officer under investigation shall be furnished with a copy of the investigatory file and the exculpatory information described under subparagraph (iii) of this paragraph not less than 10 days before any hearing if the officer and the officer's representative agree:
 - 1. To execute a confidentiality agreement with the law enforcement agency to not disclose any of the material contained in the record for any purpose other than to defend the officer; and
 - 2. To pay any reasonable charge for the cost of reproducing the material involved.
- (6) Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.
- (7) (i) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.
- (ii) This subtitle does not prevent any law enforcement agency from requiring a law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law enforcement agency from commencing any action which may lead to a punitive measure as a result of a law enforcement officer's refusal to submit to a blood alcohol test, blood, breath, or urine tests for controlled dangerous substances, polygraph examination, or interrogation, after having been ordered to do so by the law enforcement agency. The results of any blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examination, or interrogation, may be required by the law enforcement agency under this subparagraph are not admissible or discoverable in any criminal proceedings against the law enforcement officer when the law enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law enforcement officer has been ordered to submit to a polygraph examination by the law enforcement agency unless the agency and the law enforcement officer agree to the admission of the results at the administration hearing.

- (8) A complete record, either written, taped, or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. Upon completion of the investigation, and upon request of the law enforcement officer under investigation or his counsel, a copy of the record of his interrogation shall be made available not less than ten days prior to any hearing.
- (9) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.
- (10) At the request of any law enforcement officer under interrogation, the officer shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present and available for consultation at all times during the interrogation, unless waived by the law enforcement officer. The interrogation shall be suspended for a period of time not to exceed ten days until representation is obtained. However, the chief may, for good cause shown, within that ten-day period, extend that period of time.
- (11) A statute may not abridge and a law enforcement agency may not adopt any regulation which prohibits the right of a law enforcement officer to bring suit arising out of his duties as a law enforcement officer.
- (12) (i) A law enforcement agency may not insert any adverse material into any 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 upon the adverse material, unless the officer waives these rights.
- (ii) A law enforcement officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:
1. The law enforcement agency investigating the complaint has exonerated the officer of all charges in the complaint, or determined that the charges were unsustainable or unfounded, or an administrative hearing board acquits, dismisses, or makes a finding of not guilty; and
 2. 3 years have passed since the findings by the law enforcement agency or administrative hearing board.
- (13) (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in this 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 as the law enforcement officer of the same rank on the hearing board.
 - (iii) If the chief of a county or municipal law enforcement agency is under investigation, the official who may appoint the chief's successor shall appoint the chief of another law enforcement agency as the officer of the same rank on the hearing board.
 - (iv) If the chief of a State law enforcement agency or the chief of a county or municipal law enforcement agency is under investigation, the official who may appoint the chief's successor, or that official's designee, shall function as chief for the purposes of this subtitle.
- (14) The law enforcement officer's representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner, if the questions to be asked are reviewed with the law enforcement officer or his representative prior to the administration of the examination, the representative is allowed to observe the administration of the polygraph examination, and if a copy of the final report of the examination by the certified polygraph operator is made available to the law enforcement officer or his representative within a reasonable time, not to exceed ten days, after the completion of the examination.
- (c) Effect of subtitle on chief's authority. - 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 but not limited to, transfer and reassignment where that action is not punitive in nature and where the chief determines that action to be in the best interests of the internal management of the law enforcement agency.

§ 729. Disclosure by officer of property, income, etc.

A law enforcement officer may not be required or requested to disclose any item of his property, income, assets, sources of income, debts, or personal or domestic expenditures (including those of any member of his family or household) unless that information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, or unless such disclosure is required by State or federal law.

§ 729A. Regulation of secondary employment.

A law enforcement agency may not prohibit secondary employment but may promulgate reasonable regulations as to a law enforcement officer's secondary employment.

§ 730. Hearing before demotion, dismissal, transfer, etc.; limitation of actions.

- (a) **Notice; record.** - If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, except as provided under subsection (c) of this section and except in the case of summary punishment or emergency suspension as allowed by § 734A of this subtitle and before taking that action, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing.
- (b) **Limitation of actions.**
- (1) Administrative charges may not be brought against a law enforcement officer unless filed within 1 year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.
 - (2) The 1-year limitation of paragraph (1) of this subsection does not apply to charges related to criminal activity or excessive force.
- (c) **Hearings for convicted felons.** - A law enforcement officer is not entitled to a hearing under this section if the law enforcement officer has been charged and convicted of a felony.
- (d) **Conduct of hearing.** - The hearing shall be conducted by a hearing board. Both the law enforcement agency and the law enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel.
- (e) **Evidence.** - Evidence which possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs shall be admissible and shall be given probative effect. The hearing board conducting the hearing shall give effect to the rules of privilege recognized by law, and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. All records and documents which any party desires to use shall 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.
- (f) **Cross-examination and rebuttal of witnesses.** - Every party has the right of cross-examination of the witnesses who testify, and may submit rebuttal evidence.
- (g) **Judicial notice.** - The hearing board conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity and reasonable time to contest the facts so noticed. A

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

- (h) Oaths or affirmations. - With respect to the subject of any hearing conducted pursuant to this subtitle, the chief or the officer designated by the chief shall administer oaths or affirmations and examine any individual under oath.
- (i) Witness fees and expenses. - Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the law enforcement agency.
- (j) Summonses.
 - (1) The chief, or hearing board, as the case may be, shall in connection with any disciplinary hearing have the power to administer oaths and to issue summonses to compel the attendance and testimony of witnesses, and the production of books, papers, records, and documents as may be relevant or necessary. These summonses may be served in accordance with the Maryland Rules of Procedure pertaining to service of process issued by a court, without cost. Any party may request the chief or hearing board to issue a summons or order under the provisions of this subtitle.
 - (2) In case of disobedience or refusal to obey any of these summonses, the chief, or hearing board, may apply to the circuit court of any county where the summoned party resides or conducts business, or any order requiring the attendance and testimony of the witness and the production of books, papers, records, and documents, without cost. Upon a finding that the attendance and testimony of the witness, or the production of the books, papers, records, and documents sought is relevant or necessary, the court may issue an order requiring the attendance, testimony, or production of books, papers, records, and documents without cost, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

§ 731. Decision or order; findings of fact; recommendations for action; procedure following finding of guilt; punishment; final order or decision.

- (a) Decision or order; findings of fact; recommendations for action; procedures generally. - Any decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A finding of not guilty terminates the action. If a finding of guilt is made, the hearing board shall reconvene the hearing, receive evidence, and consider the law enforcement officer's past job performance and other relevant information as factors before making its recommendations to the chief. A copy of the decision or order and accompanying

findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record and to the chief. The person who may take any disciplinary action following any hearing in which there is a finding of guilt shall consider the law enforcement officer's past job performance as factor before he imposes any penalty.

(b) **Recommendation of punishment.** - After the disciplinary hearing and a finding of guilt, the hearing board may recommend punishment as it deems appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment, or other similar action which would be considered a punitive measure.

(c) **Review by chief, final order by chief.** - The written recommendations as to punishment are not binding upon the chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall review the findings, conclusions, and recommendations of the hearing board and then the chief shall issue a final order. The chief's final order and decision is binding and may be appealed in accordance with this subtitle. Before the chief may increase the recommended penalty of the hearing board, the chief personally shall:

(1) Review the entire record of the hearing board proceedings;

(2) Meet with the law enforcement officer and permit the law enforcement officer to be heard on the record;

(3) Disclose and provide to the officer in writing at least 10 days prior to the meeting any oral or written communication not included in the hearing board record on which the decision to consider increasing the penalty is based, in whole or in part; and

(4) State on the record the substantial evidence relied on to support the increase of the recommended penalty.

(d) **When order or decision of hearing board is final.**

(1) Notwithstanding any other provisions of this subtitle, the decision of the hearing board, both as to findings of fact and punishment, if any, is final:

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

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

(2) The provisions of paragraph (1) (ii) of this subsection may not be the subject of binding arbitration.

- (3) the decision then may be appealed in accordance with §732 of this subtitle.

§ 732. Appeals.

Appeal from decisions rendered in accordance with §731 shall be taken to the circuit court for the county pursuant to Maryland Rule B2. Any party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals.

§ 733. Retaliation for exercising rights.

A law enforcement officer may not be discharged, disciplined; demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to his employment or be threatened with any such treatment, by reason of his exercise of or demand for the rights granted in this subtitle, or by reason of the lawful exercise of his constitutional rights.

§ 734. Application to court for show cause order.

Any law enforcement officer who is denied any right afforded by this subtitle may apply at any time prior to the commencement of the hearing before the hearing board, either individually or through his certified or recognized employee organization, to the circuit court of the county where he is regularly employed for any order directing the law enforcement agency to show cause why the right should not be afforded.

§ 734A. Summary punishment or emergency suspension.

The provisions of this subtitle are not intended to prohibit summary punishment or emergency suspension by higher ranking law enforcement officers as may be designated by the head of a law enforcement agency.

- (1) Summary punishment may be imposed for minor violations of departmental rules and regulations when:
 - (i) the facts which constitute the minor violation are not in dispute;
 - (ii) the officer waives the hearing provided by this subtitle; and
 - (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached.
- (2)
 - (i) Emergency suspension with pay may be imposed by the chief when it appears that the action is in the best interest of the public and the law enforcement agency.
 - (ii) If the officer is suspended with pay, the chief may suspend the police powers

of the officer and reassign the officer to restricted duties pending a determination by a court of competent jurisdiction with respect to any criminal violation or final determination by an administrative hearing board as to any departmental violation.

- (iii) Any person so suspended shall be entitled to a prompt hearing.
- (3) (i) Emergency suspension of police powers without pay may be imposed by the chief if a law enforcement officer has been charged with the commission of a felony.
- (ii) Any person so suspended shall be entitled to a prompt hearing.

§ 734B. Conflicting law, ordinance or regulation; preemption of local legislation.

Except for the administrative hearing process provided for in Article 41, § 4-201 concerning the certification enforcement power of the Police Training Commission, the provisions of this subtitle shall supersede any State, county or municipal law, ordinance, or regulation that conflicts with the provisions of this subtitle, and any local legislation shall be preempted by the subject and material of this subtitle.

§ 734C. False statement, report or complaint.

Any person who knowingly makes a false statement, report, or complaint in the course of an investigation or any proceeding conducted under the provisions of this subtitle is subject to the same penalties as provided in § 150 of this article.

§ 734D. Waiver of rights.

Any officer may waive in writing any or all rights provided in this subtitle.