

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1179

(Senator Conway)(By Request - Baltimore City
Administration) and Senator McFadden

Judicial Proceedings

Baltimore City - Law Enforcement Officers' Bill of Rights - Hearing Board

This bill modifies provisions of the Law Enforcement Officers' Bill of Rights (LEOBR) relating to hearings by a hearing board. The bill's provisions apply prospectively and may not be applied or interpreted to have any effect on or application to an exclusive bargaining agreement in effect before the bill's October 1, 2018 effective date.

Fiscal Summary

State Effect: The Maryland Police Training and Standards Commission (MPTSC) can likely handle the bill's requirements with existing budgeted resources, as discussed below. Revenues are not affected.

Local Effect: None. The changes are procedural and do not directly affect governmental finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that a law enforcement officer who receives probation before judgment for a felony or for a misdemeanor charge carrying a potential sentence of imprisonment for more than one year is not entitled to a hearing by a hearing board.

Baltimore City is excluded from provisions of LEOBR authorizing an alternative method for forming a hearing board for an administrative action when the alternative method has been agreed to under a specified exclusive collective bargaining agreement. Instead, in

Baltimore City, the hearing board must consist of any odd number of voting members appointed by the Chief of the Baltimore Police Department (BPD) who:

- are sworn law enforcement officers of a law enforcement agency in the State or civilians trained by MPTSC on the procedures of LEOBR and matters relating to law enforcement procedure; and
- have had no part in the investigation or interrogation of the law enforcement officer.

In addition, the bill excludes Baltimore City from provisions of LEOBR requiring that the disposition of an administrative action is final if a law enforcement agency or the agency's superior governmental authority has agreed with a specified exclusive collective bargaining representative that the decision is final. Instead, in Baltimore City, the Chief of Baltimore Police Department is authorized to review the findings, conclusions, and recommendations of a hearing board and accept, reject, or otherwise modify the findings, conclusions, and recommendations as the chief determines, in the chief's full discretion, to be appropriate based on the evidence. The decision of the chief may be appealed.

Current Law: LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies. It does not grant collective bargaining rights. The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal must be conducted in accordance with LEOBR.

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

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

Hearing boards for LEOBR purposes must consist of at least three voting 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.

Chapter 519 of 2016 authorizes the chief to appoint, as a nonvoting member, one member of the public who has received training by MPTSC on LEOBR and matters relating to police procedures. If authorized by local law or collectively bargained, 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.

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

A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board that, if authorized by local law, is subject to binding arbitration. A hearing board formed through the alternative method may also include up to two voting or nonvoting members of the public, appointed by the chief, who have received training administered by MPTSC on LEOBR and matters relating to police procedures.

A law enforcement officer may elect the alternative method of forming a hearing board if the officer works in a law enforcement agency that has negotiated with a collective bargaining unit for an alternative method of forming a hearing board and the law enforcement officer is included in the collective bargaining unit. The law enforcement agency must 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.

If the law enforcement officer elects the alternative method, that method must be used to form the hearing board. An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing

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

The decision of the hearing board as to findings of fact and any penalty is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The decision of the hearing board may then be appealed. Within 30 days after receipt of the recommendations of the hearing board, the chief must review the findings, conclusions, and recommendations of the hearing board and issue a final order. The final order may be appealed.

Background: Although BPD is a State agency, the State does not control the appointment or removal of the police commissioner and is not responsible for providing funding for the operations of the police department. However, the State retains the ability to amend the law relating to the department in order to implement policy changes.

State Expenditures: MPTSC advises that it needs to hire either a new employee or a consultant to develop and administer a program to train civilians who may serve as members of a hearing board in Baltimore City, as provided by the bill. The Department of Legislative Services (DLS) disagrees. Chapter 519 of 2016 required MPTSC to develop and administer a training program on LEOBR and matters relating to police procedures for citizens who intend to qualify to participate as a member of a hearing board. MPTSC advises that a determination was made after the passage of Chapter 519 that such training would be made available only to individuals who were sponsored by a law enforcement agency and upon request of the agency. To date, there have not been any requests for the training. At this time, it is not known to what extent there will be requests for the training in the future. Thus, DLS advises that the bill's requirements can likely be handled with existing resources. Should civilians request training and BPD is unwilling to sponsor the individual, general fund expenditures for MPTSC may increase minimally.

Additional Information

Prior Introductions: SB 545 of 2017, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1023, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: HB 1740 (Delegate Anderson)(By Request - Baltimore City Administration) - Rules and Executive Nominations.

Information Source(s): Baltimore City; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510