

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 601 (Senator Smith)
Judicial Proceedings

Public Safety – Required Drug and Alcohol Testing for Law Enforcement
Officers

This bill requires a law enforcement agency to direct, as soon as is practicable, a law enforcement officer employed by the agency to submit to drug and alcohol testing if the officer, in the course of the officer's official duties, engages in conduct that results in the death of or serious bodily injury to another or discharges a firearm. However, unless the firearm discharge results in death or serious bodily injury, the requirement does not apply to the discharge of a firearm by a law enforcement officer (1) as part of a training exercise or demonstration or (2) if the ammunition discharged is not designed to cause death or serious bodily injury. The bill establishes requirements related to the conducting of testing and the distribution of testing results.

Fiscal Summary

State Effect: Since it is assumed that the bill applies in a limited number of cases, the bill's requirements can likely be absorbed within existing budgeted resources.

Local Effect: Since it is assumed that the bill applies in a limited number of cases, the bill's requirements can likely be absorbed within existing local government resources.

Small Business Effect: None.

Analysis

Bill Summary: A law enforcement officer who engages in conduct that results in the death of or serious bodily injury to another or discharges a firearm must submit to drug and

alcohol testing as directed. Otherwise, if the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure.

Requirements for Conducting the Testing and the Distribution of Results

A law enforcement agency must direct that the drug and alcohol testing be performed by qualified medical personnel and that copies of the results be sent to the head of the law enforcement agency (or designee) and the internal affairs division of the law enforcement agency promptly after becoming available. Also, within five days after receiving testing results, a law enforcement agency must send copies of the results to (1) any person whose name and contact information is known to the law enforcement agency and who was injured as a result of the act resulting in drug and alcohol testing; (2) the legal representative of any person who was killed as a result of the act resulting in drug and alcohol testing; and (3) the law enforcement officer subject to drug and alcohol testing.

Definitions

“Drug and alcohol testing” means (1) a test of a law enforcement officer’s breath or of one specimen of an officer’s blood to determine alcohol concentration and (2) a test or tests of one specimen of an officer’s blood to determine the drug or controlled dangerous substance content of the officer’s blood. “Specimen of blood” means one sample of blood that is taken, in a single procedure, in two or more portions in two or more separate vials.

Current Law: An 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 specified procedural requirements as set forth under the Law Enforcement Officer’s Bill of Rights (LEOBR).

A law enforcement agency may order a law enforcement officer under investigation to submit to blood alcohol tests, or blood, breath, or urine tests for controlled dangerous substances. If the law enforcement officer refuses the test, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal.

If a law enforcement agency orders a law enforcement officer to submit to a test as specified above, the results are not admissible or discoverable in a criminal proceeding against the officer.

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

Additional Comments: The Department of Natural Resources (DNR) advises that the bill does not specifically exempt from the bill’s alcohol and drug testing requirements instances

in which a firearm is discharged to euthanize a sick or injured animal. According to DNR, in 2020, Natural Resources Police responded to more than 2,400 calls for service involving sick or injured animals. To the extent that the bill's requirements apply to the discharge of a firearm in such instances, DNR expenditures increase, potentially significantly, to meet the bill's testing requirements.

In addition, Anne Arundel County advises that additional litigation may arise due to the bill's provisions relating to the distribution of testing results. To the extent that the bill results in additional litigation, State and local government expenditures may increase due to increased litigation costs. Any such impact, however, cannot be reliably predicted. For purposes of this fiscal and policy note, it is assumed that the bill's requirements apply in a limited number of cases and thus, State and local government finances are not materially affected.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): St. Mary's College of Maryland; Department of General Services; Department of Natural Resources; Department of State Police; Anne Arundel, Charles, Frederick, and Prince George's counties; City of Havre de Grace; Department of Legislative Services

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rh/lgc

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Appendix

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

The Law Enforcement Officers' Bill of Rights (LEOBR), Title 3, Subtitle 1 of the Public Safety Article, was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of specified State and local agencies.

Investigation of a Complaint

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

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

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

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

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

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

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

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

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

Procedures Following Recommendation for Discipline

Hearing Board Formation: If the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay,

reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board to contest the agency's action. A law enforcement officer who has been convicted of a felony is not entitled to a hearing.

The law enforcement agency must give notice to the officer of the right to a hearing by a hearing board, which includes the time and place of the hearing and the issues involved. The hearing must be open to the public unless the chief finds a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness.

A hearing board must consist of at least three voting members who are appointed by the chief and chosen from law enforcement officers within that law enforcement agency or another law enforcement agency and have had no part in the investigation or interrogation. At least one member of the hearing board must be of the same rank as the law enforcement officer against whom the complaint is filed.

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

Alternative Hearing Board: A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board. Subject to certain requirements, a law enforcement officer may elect the alternative hearing method of forming a hearing board.

Subpoenas: In connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.

Hearing Board Procedures: The hearing board must give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved. Each party may be represented by counsel, has the right to cross-examine witnesses who testify, and may submit rebuttal evidence. The standard of proof in a hearing before a board is preponderance of the evidence. An official record, including testimony and exhibits, must be kept of the hearing.

Disposition: After a disciplinary hearing and a finding of guilt, the hearing board may recommend the discipline it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar actions that is considered punitive. The decision, order, or action taken as a result of a hearing must be in writing and accompanied by findings of fact, including a concise statement on each issue in the case.

The decision of the hearing board as to finding of fact and any discipline is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The decision of the hearing board may then be appealed.

Within 30 days after receipt of the recommendations of the hearing board, the chief must review the findings, conclusions, and recommendations of the hearing board and issue a final order. If the agency or the agency's superior governmental authority has *not* agreed with an exclusive collective bargaining representative that the hearing board decision is final, the discipline issued by the chief under the final order may, under certain circumstances, diverge from the discipline recommended by the hearing board. The final order may be appealed to the circuit court.

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

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

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

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

Appeal: A law enforcement officer who is denied a right granted by LEOBR may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause as to why the right should not be granted. The court must grant appropriate relief if the court finds that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by LEOBR. A party aggrieved by a decision of a court may appeal to the Court of Special Appeals.