

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 627

(Senator Carter)

Judicial Proceedings

Judiciary

Maryland Police Accountability Act of 2021 - Law Enforcement Officers' Bill of Rights - Repeal and Procedures for Discipline

This emergency bill (1) repeals the Law Enforcement Officers’ Bill of Rights (LEOBR) and establishes procedures as the exclusive methods for disciplining specified law enforcement officers;(2) requires the Maryland Police Training and Standards Commission (MPTSC) to develop and administer a training program relating to police misconduct investigations, as specified; (3) requires the chief of a law enforcement agency to transmit specified information to the Governor’s Office of Crime Prevention, Youth, and Victim Services (GOCPYVS) regarding specified investigations of alleged misconduct or disciplinary action; and (4) requires GOCPYVS to report the information collected to the General Assembly.

Fiscal Summary

State Effect: No effect in FY 2021. General fund expenditure increase by \$88,400 in FY 2022 for MPTSC; future years reflect ongoing costs. In addition, there is likely a significant operational impact and potential minimal increase in general fund expenditures for State agencies with law enforcement units. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	88,400	79,500	81,900	84,800	87,800
Net Effect	(\$88,400)	(\$79,500)	(\$81,900)	(\$84,800)	(\$87,800)

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

Local Effect: Significant operational impact and potential minimal increase in local government expenditures for law enforcement agencies and the circuit courts. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A law enforcement officer may be disciplined only for cause. 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 (1) has exercised or demanded the rights granted by the bill or (2) has lawfully exercised constitutional rights.

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. A law enforcement officer may waive, in writing, any or all rights granted by the bill.

Discipline: Generally, before imposing any disciplinary action related to misconduct by a law enforcement officer, (1) the law enforcement agency must investigate the alleged misconduct; (2) the chief or the chief's designee must review the entire investigative file and provide specified information related to the offense, investigation, and disciplinary actions to the law enforcement officer; and (3) the law enforcement officer must be given opportunity to object to the investigative findings and, under specified circumstances, may, with representation, meet with the chief or the chief's designee. The requirements do not apply when (1) the law enforcement officer has been convicted of or received probation before judgment for a criminal offense committed in the execution of the law enforcement officer's duties or that bears on the law enforcement officer's credibility, integrity, or honesty and (2) the misconduct for which the officer is subject to discipline relates to the criminal offense for which the officer was convicted or received probation before judgment.

A chief or a chief's designee may:

- suspend a law enforcement officer with pay on an emergency basis if the suspension appears to be in the best interest of the public and the law enforcement agency;
- suspend the police powers of a law enforcement officer and reassign the officers to restricted duties pending a determination by a court as to the law enforcement officer's guilt in a criminal proceeding or by the chief as to the disciplinary action to be imposed against the law enforcement officer; or
- suspend a law enforcement officer without pay and suspend the law enforcement officer's police powers on an emergency basis if the officer is charged with a crime.

If a law enforcement officer is suspended with or without pay, the officer is entitled to the prompt completion of disciplinary proceedings.

Investigation: An investigation of alleged misconduct may be performed by a sworn law enforcement officer or a person who is not a sworn law enforcement officer if the person has received training administered by MPTSC on the investigation of misconduct committed by law enforcement officers. With specified exceptions and requirements, the chief or the chief's designee must provide the law enforcement officer with a copy of the investigatory file and any exculpatory information.

Hearing Required: If the law enforcement officer requests a hearing, the chief must order a hearing to make findings of fact and recommend the discipline, if any, to be imposed by the chief in the matter. The bill sets forth (1) the process for the appointment of individuals to a hearing board, including required training by MPTSC and entitlement to reimbursement for expenses, as specified, and (2) the required duties of the hearing board. In addition, the bill establishes the process and requirements for the hearing. Witness fees, mileage, and the actual expenses necessarily incurred for securing the attendance of witnesses must be paid by the law enforcement agency. Fees and expenses claimed must be itemized.

After the hearing has concluded, the hearing board must prepare and provide written findings of fact, including notice of any recommended disciplinary action, to the law enforcement officer and the chief. Within 60 days after receiving the findings of fact and any recommended disciplinary action, the chief must review the findings and any recommended disciplinary action, determine the appropriate discipline to be imposed, and provide the law enforcement officer with a written decision relating to the disciplinary action, as specified. A chief may not alter findings of fact determined by the hearing board.

Subpoena: Subpoenas may be issued by the chief, an investigator, or the hearing board, depending on the phase of the disciplinary process, in furtherance of an investigation or to make a determination on a contested issue. Generally, before an investigator or hearing officer may issue a subpoena, the chief must make a finding that the subpoena is necessary or relevant for making a determination on a contested issue of fact or in furtherance of the investigation. Subpoenas must be served in accordance with the Maryland Rules. If a person fails to comply with a subpoena, on petition to a circuit court of competent jurisdiction, the circuit court may compel compliance with the subpoena.

Representation: A law enforcement officer may have representation at a meeting or hearing held relating to the disciplinary process.

Statute of Limitations: With specified exceptions, a law enforcement officer may not be subject to a disciplinary action for an offense *unless* the chief or the chief's designee

provides specified notice to the law enforcement officer within one year after the law enforcement agency became aware of the act that gave rise to the disciplinary action. Exceptions that allow for a law enforcement officer to be subjected to disciplinary action outside the one-year period include (1) an offense relating to criminal conduct or the use of excessive force, which can occur at any time; (2) an offense that is the subject of a civil suit, which can occur within one year after final disposition of the civil suit; or (3) an offense reasonably requiring more than one year to investigate, which can occur promptly after the investigation is completed.

The parties may also agree to waive or extend any time stated within the bill's provisions.

Conviction or Probation Before Judgment: If a law enforcement officer has been convicted of or received probation before judgment for a criminal offense, as specified, and the disciplinary action sought to be imposed against the officer relates to the criminal offense, (1) the chief or the chief's designee may impose a disciplinary action against the law enforcement officer without first conducting an investigation and may rely on the conviction or entry of probation before judgment for the crime as the basis for imposing a disciplinary action and (2) the law enforcement officer is not entitled to a hearing, but may appeal to the circuit court.

Right to Appeal: With specified exceptions, a law enforcement officer may appeal a decision made by the chief or the chief's designee in the circuit court. If a law enforcement officer fails to appeal a decision, the law enforcement officer is considered to have accepted the decision. A failure to decide an appeal is considered a denial from which an appeal may be made.

Burden of Proof: Generally, the law enforcement agency has the burden of proof by a preponderance of the evidence at any proceeding relating to discipline of an officer under the bill's provisions.

Conflicts: A law enforcement agency or the agency's superior governing authority and a collective bargaining unit may not enter into an agreement that (1) is inconsistent with the provisions of the bill or (2) relates to discipline of law enforcement officers or the investigation, interrogation, polygraphing, or drug and alcohol testing of a law enforcement officer by a law enforcement agency in association with a disciplinary proceeding. Generally, when a conflict exists, the bill's provisions supersede any other law of the State, a county, or a municipal corporation. Generally, the subject and material of the bill preempts any local law; however, a county or political subdivision may enact a local law governing the investigation, interrogation, polygraphing, and drug and alcohol testing of a law enforcement officer by a law enforcement agency that does not conflict with the subject and material of the bill's provisions.

Expungement: 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:

- the law enforcement agency that investigated the complaint (1) 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; and
- at least three years have passed since the final disposition by the law enforcement agency or hearing board.

Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the complaint resulted in any of the outcomes listed above.

Other Rights: Except when a law enforcement officer is on duty or acting in an official capacity, a law enforcement officer has the same rights to engage in political activity as a State employee. In addition, a law enforcement agency may not prohibit secondary employment by law enforcement officers but may adopt reasonable regulations that relate to secondary employment by law enforcement officers.

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, as specified, 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) federal or State law requires the disclosure.

Required Report: For each investigation of alleged misconduct or disciplinary action taken against a law enforcement officer under the bill, the chief must transmit to GOCPYVS specified information relating to the law enforcement officer, the alleged misconduct, and any disciplinary action taken. GOCPYVS must (1) develop a standardized format for use in reporting the required information by law enforcement agencies and (2) by December 31 each year, report the information collected to the General Assembly.

Application of the Bill: The bill applies 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 the bill's emergency effective date, 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 bill's emergency effective date if a hearing board has been convened in the matter.

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 specified State and local agencies but does not extend to any correctional officers in the State. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. For additional information on LEOBR, see the **Appendix – Law Enforcement Officers’ Bill of Rights – Current Law/Background.**

State/Local Expenditures:

Maryland Police Training and Standards Commission

General fund expenditures for MPTSC increase by \$88,367 in fiscal 2022, which accounts for the bill’s emergency status but assumes an implementation date of July 1, 2021. This estimate reflects the cost for MPTSC to hire a researcher/curriculum developer to develop and administer the required training relating to police misconduct investigations. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$82,622
Operating Expenses	<u>5,745</u>
Total FY 2022 MPTSC Expenditures	\$88,367

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

Governor’s Office of Crime Prevention, Youth, and Victim Services

GOCPYVS did not respond to requests for information regarding the fiscal effect of the bill. However, the duties required under the bill are similar to current duties conducted by the office; therefore, it is assumed that GOPYVS can handle the bill’s requirements with existing budgeted resources.

State and Local Law Enforcement Agencies

Repealing LEOBR and replacing it with the procedures established under the bill has a significant operational impact on State and local law enforcement agencies. Since 1974, law enforcement officers have been disciplined under LEOBR procedures. Due to the bill’s emergency status, law enforcement agencies will not have sufficient time to adjust their procedures, timelines, and staffing to meet the bill’s requirements. While the bill’s changes

are mostly procedural and can generally be implemented with minimal costs, the bill represents a significant shift in how law enforcement agencies function without providing much time to adjust.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): City of College Park; Harford, Montgomery, and Wicomico counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of General Services; Department of Public Safety and Correctional Services; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Baltimore City Community College; Morgan State University; University System of Maryland; Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2021
rh/lgc Third Reader - March 23, 2021
Revised - Amendment(s) - March 23, 2021
Revised - Updated Information - March 23, 2021

Analysis by: Shirleen M. E. Pilgrim

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

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.