HB 384

Department of Legislative Services

Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 384 (Delegate Anderson, *et al.*) (By Request - Baltimore City Administration)

Appropriations

Law Enforcement Officers' Bill of Rights - Conviction - Not Entitled to a Hearing

This bill expands the circumstances under which a law enforcement officer is not entitled to a hearing under the Law Enforcement Officers' Bill of Rights (LEOBR). Under current law, the entitlement to a hearing does not apply to an officer who has been convicted of a felony. Under the bill, an officer who has had a conviction set aside for a felony or who has had a conviction for a misdemeanor punishable by an imprisonment term of one year or more is also not entitled to a hearing.

Fiscal Summary

State Effect: The bill's changes to LEOBR are largely procedural in nature and are not expected to have a significant impact on the finances of State law enforcement agencies.

Local Effect: The bill's changes to LEOBR are largely procedural in nature and are not expected to have a significant impact on the finances of local law enforcement agencies.

Small Business Effect: None.

Analysis

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 23 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.

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 sworn to, before an official authorized to administer oaths, 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 (4) if the alleged incident involves a minor child, the parent or guardian of the child.

Unless a complaint is filed within 90 days after the alleged brutality, an investigation that may lead to disciplinary action for brutality may not be initiated and an action may not be taken. 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. 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 investigation may waive the right to have the interrogation take place 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.

All questions directed to the officer under interrogation must be asked by and through one interrogating officer during any one session of interrogation. This requirement must be consistent with a requirement that each interrogation session 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 10 days until representation is obtained. Within that 10-day period, the chief for good cause shown may extend the period for obtaining representation. The officer may waive this right to counsel. 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 or 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 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 and 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.

When a LEOBR investigation or interrogation 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 prior to the imposition of the disciplinary action. An officer who has been convicted of a felony is not entitled to a hearing.

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. 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 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 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. Chapter 165 of 2014 shifted primary responsibility for remedying investigative violations under LEOBR from the administrative hearing officer to the circuit court.

Chapter 234 of 2014 authorized a law enforcement agency that is required by law to disclose information for use as impeachment or exculpatory evidence in a criminal case, to 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. The list may be maintained solely for the purpose of satisfying the disclosure requirement. A law enforcement agency is prohibited from taking certain punitive action against a law enforcement officer based solely on the fact that the law enforcement officer is included on the list.

Background: The number of law enforcement officers convicted of a felony or a misdemeanor in a year, statewide, is not tracked by the Maryland State Commission on Criminal Sentencing Policy or the annual Uniform Crime Reports compiled by the Department of State Police.

According to the Baltimore City Police Department, there are currently 21 officers on suspension because of criminal misdemeanor charges. Of that number, 7 have been found guilty, 2 not guilty, 1 on the stet docket, and the remaining 11 are pending adjudication.

Reports from across the nation on the use of excessive force by police officers against members of the public (some of which have been videotaped and seen publicly) have received much attention from news and social media outlets over the past several months. Escalated tensions have spurred numerous protests held in the months since the killings of African American men in Missouri and New York. In Maryland, confrontations between law enforcement officers and citizens (some videotaped) have brought additional scrutiny to how allegations of excessive force by police officers are handled by State and local law enforcement.

When a complaint against a police officer is sustained by an internal investigation, LEOBR entitles the officer to a hearing before a board of sworn officers selected by the chief. (For minor offenses, the board may be a single officer.) Police agencies and officers may enter into collective bargaining agreements that allow an alternate method of forming the hearing board.

Citizen activists have long criticized internal reviews of law enforcement officer behavior in the State as ineffective, since they, at least in part due to the restrictions set forth in LEOBR, are only authorized to review cases after the law enforcement agency has already completed its own internal probe and rendered a decision on the merits of the charge as well as appropriate punishment, if any. The general charge is that these proceedings are invariably stacked in a police department's favor and against residents who lodge complaints.

In October 2014, Baltimore City's Mayor and Police Commissioner outlined a plan to reduce police brutality, which was outlined in a report titled *Preventing Harm*. Among other recent efforts to improve the oversight of alleged misconduct by officers, the plan calls for (1) an increase in staff for the internal affairs division, which handles allegations of misconduct; (2) working with the police department's Professional Standards and Accountability Bureau to oversee improvements in training, policies, and internal issues; (3) computerized tracking of lawsuits alleging police brutality; (4) monitoring injuries from arrests, citizen complaints, and use of force reports; and (5) studying the use of body cameras by officers in the field. Additionally, in response to a request by the Baltimore

City administration, the U.S. Department of Justice will conduct a collaborative review of citizen complaints about police conduct.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, cities of Bowie and Takoma Park, Baltimore City Community College, Department of Natural Resources, Department of General Services, Department of Health and Mental Hygiene, Department of State Police, Department of Public Safety and Correctional Services, Maryland Department of Transportation, University System of Maryland, Maryland State Commission on Criminal Sentencing Policy, *Baltimore Sun*, Department of Legislative Services

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