

SENATE BILL 655

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2002 Regular Session
2lr1646
CF 2lr1654

By: **Senators Exum, Currie, and Pinsky**
Introduced and read first time: February 1, 2002
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers' Bill of Rights Act of 2002**

3 FOR the purpose of altering the Law Enforcement Officers' Bill of Rights to authorize
4 the Governor and certain local executives to appoint a certain member of a
5 hearing board to hear administrative charges of the use of excessive force by
6 certain law enforcement officers; repealing a certain condition for the conduct of
7 a certain investigation or interrogation of a law enforcement officer; altering the
8 length of time the interrogation of a law enforcement officer may be suspended
9 in a case involving the officer and a discharge of a weapon or the death of an
10 individual while in the custody of the officer; repealing the authority of a law
11 enforcement officer to have a record of a formal complaint expunged under
12 certain conditions; repealing a certain provision prohibiting a law enforcement
13 officer from being required or requested to disclose certain information;
14 authorizing a citizens' review board to issue a subpoena under certain
15 circumstances; authorizing the Police Training Commission to recall a certain
16 certificate under certain circumstances; making a certain provision of law
17 regarding the expungement of certain records inapplicable to law enforcement
18 officers; defining certain terms; and generally relating to the Law Enforcement
19 Officers' Bill of Rights.

20 BY repealing and reenacting, without amendments,
21 Article 27 - Crimes and Punishments
22 Section 727(a)
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 2001 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article 27 - Crimes and Punishments
27 Section 727(d)(1) and (h) and 728(b)(10) and (12)
28 Annotated Code of Maryland
29 (1996 Replacement Volume and 2001 Supplement)

30 BY adding to
31 Article 27 - Crimes and Punishments

1 Section 727(d)(4) and (i) and 730(k)
2 Annotated Code of Maryland
3 (1996 Replacement Volume and 2001 Supplement)

4 BY repealing
5 Article 27 - Crimes and Punishments
6 Section 728(b)(4) and 729
7 Annotated Code of Maryland
8 (1996 Replacement Volume and 2001 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article 41 - Governor - Executive and Administrative Departments
11 Section 4-201(d)
12 Annotated Code of Maryland
13 (1997 Replacement Volume and 2001 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article 41 - Governor - Executive and Administrative Departments
16 Section 4-201(l)
17 Annotated Code of Maryland
18 (1997 Replacement Volume and 2001 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Criminal Procedure
21 Section 10-105
22 Annotated Code of Maryland
23 (2001 Volume)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article 27 - Crimes and Punishments**

27 727.

28 (a) As used in this subtitle, the following words have the meanings indicated.

29 (d) "Hearing board" means:

30 (1) A board which is authorized by the chief to hold a hearing on a
31 complaint against a law enforcement officer and which consists of not less than three
32 members, except as provided in paragraphs (2), [and] (3), AND (4) of this subsection,
33 all to be appointed by the chief and selected from law enforcement officers within that
34 agency, or law enforcement officers of another agency with the approval of the chief of
35 the other agency, and who have had no part in the investigation or interrogation of

1 the law enforcement officer. At least one member of the hearing board shall be of the
2 same rank as the law enforcement officer against whom the complaint has been filed.

3 (4) TO HEAR ADMINISTRATIVE CHARGES OF THE USE OF EXCESSIVE
4 FORCE BY A LAW ENFORCEMENT OFFICER, ONE MEMBER OF A HEARING BOARD WHO
5 IS NOT A LAW ENFORCEMENT OFFICER MAY BE APPOINTED BY:

6 (I) THE GOVERNOR, IF THE CHARGES ARE AGAINST A MEMBER OF
7 A STATE LAW ENFORCEMENT AGENCY; OR

8 (II) A LOCAL EXECUTIVE, IF THE CHARGES ARE AGAINST A
9 MEMBER OF A COUNTY OR MUNICIPAL LAW ENFORCEMENT AGENCY.

10 (h) "Interrogating officer", "investigating officer", and all other forms of those
11 terms mean:

12 (1) Any sworn law enforcement officer; [or]

13 (2) If requested by the Governor, the Attorney General of Maryland or
14 the Attorney General's designee;

15 (3) IF REQUESTED BY A LOCAL EXECUTIVE, A SPECIAL INVESTIGATOR;
16 OR

17 (4) IF A LOCAL GOVERNMENT HAS ESTABLISHED A CITIZENS' REVIEW
18 BOARD WITH OVERSIGHT AUTHORITY FOR COMPLAINT AGAINST LAW ENFORCEMENT
19 OFFICERS, A MEMBER OF THE BOARD.

20 (I) "LOCAL EXECUTIVE" MEANS:

21 (1) FOR BALTIMORE CITY, THE MAYOR;

22 (2) FOR A COMMISSION COUNTY, THE CHAIRMAN OR PRESIDENT
23 OF THE BOARD OF COUNTY COMMISSIONERS;

24 (3) FOR A CHARTER COUNTY, THE ELECTED EXECUTIVE OR, IF THE
25 COUNTY DOES NOT HAVE AN ELECTED EXECUTIVE, THE CHAIRMAN OR PRESIDENT
26 OF THE COUNTY COUNCIL;

27 (4) FOR A CODE HOME RULE COUNTY, THE CHAIRMAN OR
28 PRESIDENT OF THE BOARD OF COUNTY COMMISSIONERS; OR

29 (5) FOR A MUNICIPAL CORPORATION, THE MAYOR, OR IF THE
30 MUNICIPAL CORPORATION DOES NOT HAVE A MAYOR, THE CHAIRMAN OR PRESIDENT
31 OF THE MUNICIPAL GOVERNING BODY.

32 728.

33 (b) Whenever a law enforcement officer is under investigation or subjected to
34 interrogation by a law enforcement agency, for any reason which could lead to

1 disciplinary action, demotion or dismissal, the investigation or interrogation shall be
2 conducted under the following conditions:

3 [(4) A complaint against a law enforcement officer, alleging brutality in
4 the execution of his duties, may not be investigated unless the complaint be duly
5 sworn to by the aggrieved person, a member of the aggrieved person's immediate
6 family, or by any person with firsthand knowledge obtained as a result of the presence
7 at and observation of the alleged incident, or by the parent or guardian in the case of
8 a minor child before an official authorized to administer oaths. An investigation
9 which could lead to disciplinary action under this subtitle for brutality may not be
10 initiated and an action may not be taken unless the complaint is filed within 90 days
11 of the alleged brutality.]

12 (10) (i) At the request of any law enforcement officer under
13 interrogation, the officer shall have the right to be represented by counsel or any
14 other responsible representative of his choice who shall be present and available for
15 consultation at all times during the interrogation, unless waived by the law
16 enforcement officer.

17 (ii) Counsel or any other responsible representative of a law
18 enforcement officer under interrogation as provided under subparagraph (i) of this
19 paragraph, may:

20 1. Request a recess at any point during the interrogation for
21 consultation with the officer;

22 2. Enter an objection to any question posed during the
23 interrogation; and

24 3. State on the record the reason for an objection outside the
25 presence of the officer.

26 (iii) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (IV) OF THIS
27 PARAGRAPH, THE interrogation shall be suspended for a period of time not to exceed
28 ten days until representation is obtained. However, the chief may, for good cause
29 shown, within that ten-day period, extend that period of time.

30 (IV) THE INTERROGATION OF A LAW ENFORCEMENT OFFICER MAY
31 BE SUSPENDED ONLY FOR A PERIOD OF TIME NOT TO EXCEED 3 DAYS IN A CASE
32 INVOLVING:

33 1. THE LAW ENFORCEMENT OFFICER AND THE DISCHARGE
34 OF THE LAW ENFORCEMENT OFFICER'S WEAPON; OR

35 2. THE DEATH OF AN INDIVIDUAL WHILE IN CUSTODY OF
36 THE LAW ENFORCEMENT OFFICER.

37 (12) [(i)] A law enforcement agency may not insert any adverse material
38 into any file of the officer, except the file of the internal investigation or the
39 intelligence division, unless the officer has an opportunity to review, sign, receive a

1 copy of, and comment in writing upon the adverse material, unless the officer waives
2 these rights.

3 (ii) A law enforcement officer, upon written request, may have any
4 record of a formal complaint made against him expunged from any file if:

5 1. The law enforcement agency investigating the complaint
6 has exonerated the officer of all charges in the complaint, or determined that the
7 charges were unsustainable or unfounded, or an administrative hearing board acquits,
8 dismisses, or makes a finding of not guilty; and

9 2. 3 years have passed since the findings by the law
10 enforcement agency or administrative hearing board.]

11 [729.

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

18 730.

19 (K) (1) IF A LOCAL GOVERNMENT HAS ESTABLISHED A CITIZENS' REVIEW
20 BOARD WITH OVERSIGHT AUTHORITY FOR COMPLAINT AGAINST LAW ENFORCEMENT
21 OFFICERS, THE REVIEW BOARD MAY ISSUE A SUBPOENA SIGNED BY THE CHAIR OF
22 THE BOARD TO COMPEL:

23 (I) THE ATTENDANCE AND TESTIMONY OF A WITNESS; OR

24 (II) THE PRODUCTION OF A DOCUMENT OR OTHER ITEM.

25 (2) ON PETITION OF THE BOARD, A COURT OF COMPETENT
26 JURISDICTION MAY ISSUE AN ORDER REQUIRING COMPLIANCE WITH THE SUBPOENA
27 IF THE COURT FINDS THAT THE ATTENDANCE AND TESTIMONY OF THE PERSON OR
28 THE PRODUCTION OF A DOCUMENT OR OTHER ITEM IS RELEVANT AND NECESSARY.

29 (3) A COURT OF COMPETENT JURISDICTION MAY HOLD A PERSON WHO
30 FAILS TO OBEY AN ORDER IN CONTEMPT OF COURT.

31 **Article 41 - Governor - Executive and Administrative Departments**

32 4-201.

33 (d) Subject to the authority of the Secretary of Public Safety and Correctional
34 Services, the Commission is vested with the following authority, responsibility and
35 duty:

1 (1) To prescribe standards for the approval and continuation of approval
2 of entrance-level and in-service schools at which police training courses required by
3 this section shall be conducted, including but not limited to present existing State,
4 regional, county, and municipal police training schools;

5 (2) To approve and issue certificates of approval to such training schools,
6 to inspect such schools from time to time, and to revoke for cause any approval or
7 certificate issued to such school;

8 (3) To prescribe the curriculum, the minimum courses of study,
9 attendance requirements, eligibility to attend, equipment and facilities, and
10 standards of operation for such training schools, and to require that the curriculum
11 and minimum courses of study for entry police training and, at least every 3 years, for
12 in-service level police training conducted by the State and all county and municipal
13 police training schools include special training, attention to, and study of the
14 application and the enforcement of the criminal laws concerning rape and sexual
15 offenses, including the sexual abuse of children, related evidentiary procedures, and
16 also the contact with and treatment of victims of these crimes;

17 (4) To prescribe minimum qualifications for instructors at such schools
18 and to certify, as qualified, instructors for approved training schools and to issue
19 appropriate certificates to such instructors;

20 (5) To verify that officers have satisfactorily completed training
21 programs and to issue diplomas to those officers;

22 (6) To certify persons as police officers who have:

23 (i) Satisfactorily met the Commission's standards; or

24 (ii) Provided the Commission with sufficient evidence that he or
25 she has satisfactorily completed a training program in another state of equal quality
26 and content as required by the Commission;

27 (7) To suspend or revoke the certification, provided for in paragraph (6)
28 of this subsection, if the police officer has violated or has failed to meet the
29 Commission's standards, including having knowingly failed to report suspected child
30 abuse in violation of § 5-704 of the Family Law Article;

31 (8) To conduct and operate approved police training schools as defined in
32 this subtitle;

33 (9) To appoint, with the approval of the Secretary of Public Safety and
34 Correctional Services, an executive director, a deputy director, and such other
35 employees as it shall deem necessary, to serve at its pleasure, who shall perform
36 general administrative and training management functions, and to fix their
37 compensation;

1 (10) To employ such other persons as may be necessary to carry out the
2 provisions of this section, upon approval of the Secretary of Public Safety and
3 Correctional Services and the legislature;

4 (11) To make such rules and regulations as may be reasonably necessary
5 or appropriate to accomplish the purposes and objectives of this section;

6 (12) To make a continuous study of entrance-level and in-service training
7 methods and procedures and to consult with and accept the cooperation of any
8 recognized federal, State, or municipal law enforcement agency or educational
9 institution;

10 (13) To consult and cooperate with universities, colleges and institutions
11 in the State for the development of specialized courses of study for police officers in
12 police science and police administration;

13 (14) To consult and cooperate with other departments and agencies of the
14 State concerned with police training;

15 (15) To adopt regulations to establish and enforce standards for prior
16 substance abuse by persons applying for certification as a police officer; and

17 (16) To perform such other acts as may be necessary or appropriate to
18 carry out its functions and duties as set forth in this section.

19 (l) The Commission may recall the certificate, provided for in subsection (d)(6)
20 of this section, if it is suspended or revoked for any of the following reasons:

21 (1) The certificate was issued by administrative error;

22 (2) The certificate was obtained through misrepresentation or fraud;

23 (3) The holder has been convicted of a felony; [or]

24 (4) The holder has been convicted of a misdemeanor for which a sentence
25 of imprisonment for more than 1 year may be imposed; OR

26 (5) THE HOLDER HAS BEEN DISQUALIFIED FROM COURT TESTIMONY
27 BECAUSE OF A POLICE ADMINISTRATIVE FINDING THAT THE HOLDER HAS
28 KNOWINGLY MADE A FALSE STATEMENT IN THE PERFORMANCE OF THE HOLDER'S
29 DUTIES AS A LAW ENFORCEMENT OFFICER.

30 **Article - Criminal Procedure**

31 10-105.

32 (a) THIS SECTION DOES NOT APPLY TO A PERSON WHO IS SERVING OR HAS
33 SERVED AS A LAW ENFORCEMENT OFFICER AS DEFINED IN ARTICLE 27, § 727 OF THE
34 CODE.

1 (B) A person who has been charged with the commission of a crime, including
2 a violation of the Transportation Article for which a term of imprisonment may be
3 imposed, may file a petition listing relevant facts for expungement of a police record,
4 court record, or other record maintained by the State or a political subdivision of the
5 State if:

6 (1) the person is acquitted;

7 (2) the charge is otherwise dismissed;

8 (3) a probation before judgment is entered, unless the person is charged
9 with a violation of § 21-902 of the Transportation Article or Article 27, § 388A or §
10 388B of the Code;

11 (4) a nolle prosequi is entered;

12 (5) the court indefinitely postpones trial of a criminal charge by marking
13 the criminal charge "stet" on the docket;

14 (6) the case is compromised under Article 27, § 12A-5 of the Code;

15 (7) the charge was transferred to the juvenile court under § 4-202 of this
16 article; or

17 (8) the person:

18 (i) is convicted of only one criminal act, and that act is not a crime
19 of violence; and

20 (ii) is granted a full and unconditional pardon by the Governor.

21 [(b)] (C) (1) Except as provided in paragraphs (2) and (3) of this subsection,
22 a person shall file a petition in the court in which the proceeding began.

23 (2) If the proceeding began in one court and was transferred to another
24 court, the person shall file the petition in the court to which the proceeding was
25 transferred.

26 (3) (i) If the proceeding in a court of original jurisdiction was appealed
27 to a court exercising appellate jurisdiction, the person shall file the petition in the
28 appellate court.

29 (ii) The appellate court may remand the matter to the court of
30 original jurisdiction.

31 [(c)] (D) (1) A petition for expungement based on an acquittal, a nolle
32 prosequi, or a dismissal may not be filed within 3 years after the disposition, unless
33 the petitioner files with the petition a written general waiver and release of all the
34 petitioner's tort claims arising from the charge.

1 (2) A petition for expungement based on a probation before judgment
2 may not be filed until either:

3 (i) the petitioner has been discharged from probation; or

4 (ii) 3 years have passed since the probation was granted.

5 (3) A petition for expungement based on a full and unconditional pardon
6 by the Governor may not be filed earlier than 5 years or later than 10 years after the
7 pardon was signed by the Governor.

8 (4) A petition for expungement based on a stet or a compromise under
9 Article 27, § 12A-5 of the Code may not be filed within 3 years after the stet or
10 compromise.

11 (5) A court may grant a petition for expungement at any time on a
12 showing of good cause.

13 [(d)] (E) (1) The court shall have a copy of a petition for expungement
14 served on the State's Attorney.

15 (2) Unless the State's Attorney files an objection to the petition for
16 expungement within 30 days after the petition is served, the court shall pass an order
17 requiring the expungement of all police records and court records about the charge.

18 [(e)] (F) (1) If the State's Attorney files a timely objection to the petition, the
19 court shall hold a hearing.

20 (2) If the court at the hearing finds that the person is entitled to
21 expungement, the court shall order the expungement of all police records and court
22 records about the charge.

23 (3) If the court finds that the person is not entitled to expungement, the
24 court shall deny the petition.

25 (4) The person is not entitled to expungement if:

26 (i) the petition is based on the entry of probation before judgment,
27 a nolle prosequi, or a stet, or the grant of a pardon by the Governor; and

28 (ii) the person:

29 1. since the full and unconditional pardon or entry, has been
30 convicted of a crime other than a minor traffic violation; or

31 2. is a defendant in a pending criminal proceeding.

32 [(f)] (G) Unless an order is stayed pending an appeal, within 60 days after
33 entry of the order, every custodian of the police records and court records that are
34 subject to the order of expungement shall advise in writing the court and the person
35 who is seeking expungement of compliance with the order.

1 [(g)] (H) (1) The State's Attorney is a party to the proceeding.

2 (2) A party aggrieved by the decision of the court is entitled to appellate
3 review as provided in the Courts Article.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2002.