

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 389

(Senator Jackson)

Judicial Proceedings

Judiciary

Public Safety - Maryland Police Accountability Act Revisions and Clarifications

This bill modifies requirements relating to the disciplinary process for police officers established by Chapter 59 of 2021 (the Maryland Police Accountability Act of 2021). Among other things, the bill (1) requires all complaints of police misconduct *involving a member of the public* to be forwarded to the appropriate administrative charging committee regardless of whether the complaint originated from within the law enforcement agency or from an external source; (2) requires each law enforcement agency to adopt the uniform State disciplinary matrix for *all* matters that may result in discipline of a police officer; (3) modifies the composition of a trial board for a statewide or bi-county law enforcement agency, except for the Baltimore City Police Department; (4) modifies the duties and requirements for specified members of a trial board; (5) modifies the appeal process after a decision of a trial board; (5) prohibits the use of collective bargaining to establish or alter any aspect of the disciplinary process for police officers; and (6) delays the implementation of specified provisions of Chapter 59 from July 1, 2022, to October 1, 2022. **The bill takes effect June 1, 2022; the bill's changes to the disciplinary process established by Chapter 59 take effect October 1, 2022, contingent on the taking effect of specified provisions of Chapter 59 (modified by the bill to take effect October 1, 2022).**

Fiscal Summary

State Effect: The effect on State expenditures due to the delayed implementation of provisions of Chapter 59 cannot be reliably estimated at this time; however, the bill's modifications to the disciplinary process for police officers are not anticipated to materially affect State finances.

Local Effect: The effect on local expenditures due to the delayed implementation of provisions of Chapter 59 cannot be reliably estimated at this time; however, the bill's modifications to the disciplinary process for police officers are not anticipated to materially affect local finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill:

- requires a trial board for a statewide or bi-county law enforcement agency to be composed of (1) an actively serving or retired administrative law judge appointed by the Chief Administrative Law Judge of the Maryland Office of Administrative Hearings; (2) a civilian who is not a member of an administrative charging committee or the Maryland Police Training and Standards Commission (MPTSC), as specified; and (3) a police officer of equal rank to the police officer who is accused of misconduct appointed by the head of the law enforcement agency;
- requires that the actively serving or retired administrative law judge or retired judge of the District Court or circuit court who serves on a trial board be the chair of the trial board, be responsible for ruling on all motions before the trial board, and prepare the written decision of the trial board, as specified;
- requires a trial board to issue a written decision reflecting the findings, conclusions, and recommendations of a majority of the trial board within 45 days after the final hearing by the trial board; and
- authorizes the decision of a trial board for a statewide or bi-county law enforcement agency to be appealed by the police officer to a circuit court in a county in which the incident that gave rise to the disciplinary proceeding occurred.

The provisions of Chapter 59 that, under the bill, take effect October 1, 2022 (instead of July 1, 2022) are described below under the Current Law section of this fiscal and policy note.

Current Law:

Accountability during Traffic Stops

Absent exigent circumstances, at the commencement of a traffic stop or other stop, a police officer must (1) display proper identification to the stopped individual and (2) provide specified identifying information regarding the officer and the reason for the traffic stop or other stop. A police officer's failure to comply with the requirements (1) may be grounds for administrative disciplinary action against the officer and (2) may not serve as the basis for the exclusion of evidence under the exclusionary rule. A police officer may not prohibit or prevent a citizen from recording the police officer's actions if the citizen is otherwise acting lawfully and safely.

Maryland Loan Assistance Repayment Program

Chapter 59 established the Maryland Loan Assistance Repayment Program (LARP) for Police Officers in the State. The Office of Student Financial Assistance (OSFA) must distribute funds from the program to assist in the repayment of a “higher education loan” owed by a police officer who (1) receives a graduate, professional, or undergraduate degree from a public college or university in the State; (2) obtains “eligible employment”; and (3) satisfies any other criteria established by the office. OSFA must (1) adopt regulations to implement the program, which must include a limit on the total amount of assistance provided by the office in repaying the loan of an eligible individual, based on the individual’s total income and outstanding higher education loan balance and (2) by January 1 each year, report to the General Assembly on the implementation of the program. The Governor must include an annual appropriation of at least \$1.5 million in the State budget for the program. The fiscal 2023 budget bill (Senate Bill 290), as it passed the Senate and the House, includes \$1.5 million for the program.

“Eligible employment” means to work as a police officer in the State for at least two years. “Higher education loan” means a loan that is obtained for tuition for undergraduate study leading to a degree in criminal law, criminology, or criminal justice.

Maryland Police Officers Scholarship Program

Chapter 59 also established the Maryland Police Officers Scholarship Program to provide tuition assistance for students (1) attending a degree program that would further the student’s career in law enforcement at an “eligible institution” with the intent to be a police officer after graduation or (2) who are currently police officers attending a degree program that would further the police officer’s career in law enforcement at an eligible institution. OSFA must (1) publicize the availability of the scholarship; (2) annually select eligible students and offer a scholarship to each student selected to be used at an eligible institution of the student’s choice; and (3) to the extent practicable, award scholarships under the program in a manner that reflects ethnic, gender, racial, and geographic diversity.

A recipient of a scholarship must (1) be a Maryland resident or have graduated from a Maryland high school; (2) be accepted for admission or currently enrolled at an eligible institution as a full-time or part-time undergraduate or graduate student, as specified; (3) sign a letter of intent to perform the service obligation on completion of the recipient’s required studies; and (4) satisfy any additional criteria the Maryland Higher Education Commission (MHEC) may establish. A current police officer that meets the eligibility criteria is also eligible for a scholarship. A recipient of a scholarship must repay MHEC the funds received if the recipient does not (1) satisfy the degree requirements of the course of study or program or fulfill other specified requirements or (2) perform the service

obligation to work as a police officer for at least five years during the eight-year period after graduation.

The annual scholarship award must be 50% of the equivalent annual tuition and mandatory fees of a resident undergraduate student at the eligible institution. The Governor must include in the annual budget bill an appropriation of at least \$8.5 million to MHEC to award scholarships, and MHEC must use (1) \$6.0 million for scholarships to students intending to become police officers after graduation and (2) \$2.5 million for scholarships to existing police officers to attend an eligible institution and remain a police officer after graduation. The fiscal 2023 budget bill (Senate Bill 290), as it passed the Senate and the House, includes \$8.5 million for the program.

“Eligible institution” means a public senior (four-year) higher education institution in the State.

Civil Liability

Chapter 59 increased the limits on civil liability for claims subject to the Maryland Tort Claims Act (MTCA) and the Local Government Tort Claims Act (LGTCa) that arise from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer. Accordingly, the limit is generally \$890,000 for both economic and noneconomic damages for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award. For MTCA, the limit is increased from \$400,000 to a single claimant for injuries arising from a single incident or occurrence, and for LGTCa, the limit is increased from \$400,000 per an individual claim and \$800,000 per total claims that arise from the same occurrence.

However, in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation (specifically \$1,335,000), regardless of the number of claimants or beneficiaries who share in the award. These provisions apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from a tortious act or omission committed by a law enforcement officer on or before June 30, 2022.

Repeal of the Law Enforcement Officers’ Bill of Rights and Establishment of New Accountability and Discipline Process for Police Officers

Chapter 59 repealed the Law Enforcement Officers’ Bill of Rights in its entirety and established new provisions relating to police accountability and discipline, discussed below. A law enforcement agency may not negate or alter any of the requirements relating to specified police officer accountability and discipline through collective bargaining. Provisions relating to the accountability and discipline process and administrative charging

committees apply prospectively and may not be applied or interpreted to have any effect or application to (1) any *bona fide* collective bargaining agreement entered into by June 30, 2022, 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 July 1, 2022.

Police Accountability Boards: Each county must have a police accountability board to:

- hold quarterly meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the county government to improve matters of policing;
- appoint civilian members to charging committees and trial boards;
- receive complaints of police misconduct filed by members of the public;
- on a quarterly basis, review outcomes of disciplinary matters considered by charging committees; and
- by December 31 each year, submit a report to the governing body of the county that identifies any trends in the disciplinary process of police officers in the county and makes recommendations on changes to policy that would improve police accountability in the county.

The local governing body must (1) establish the membership of and the budget and staff for a police accountability board; (2) appoint a chair for a police accountability board, as specified; and (3) establish the procedures for record keeping by a police accountability board. An active police officer may not be a member, and to the extent practicable, the membership must reflect the racial, gender, and cultural diversity of the county.

Administrative Charging Committees: Each county must have one administrative charging committee to serve countywide law enforcement agencies and local law enforcement agencies in the county, and there must be at least one statewide administrative charging committee to serve statewide and bi-county law enforcement agencies. An administrative charging committee must (1) review the findings of a law enforcement agency's investigation; (2) make a determination as to whether or not to administratively charge the police officer who is the subject of the investigation; (3) if the police officer is charged, recommend discipline in accordance with the law enforcement agency's disciplinary matrix, as specified; (4) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct; (5) authorize a police officer called to appear before an administrative charging committee to be accompanied by a representative; (6) issue a written opinion that describes in detail its findings, determinations, and recommendations; and (7) forward the written opinion to the chief of the law enforcement agency, the police officer, and the complainant. An administrative charging committee may request specified information and make specified determinations.

Chapter 59 also established requirements regarding the composition of a county and statewide administrative charging committee. An individual must receive training on matters relating to police procedures from MPTSC before serving as a member of an administrative charging committee.

Investigation of Citizen Complaints: An individual may file a complaint of police misconduct with a police accountability board or the law enforcement agency that employs the police officer who is the subject of the complaint. A complaint of police misconduct filed with a police accountability board or the law enforcement agency must include specified information but need not be notarized. If filed with a police accountability board, the complaint must be forwarded to the appropriate law enforcement agency within three days of receipt, and each such complaint by a member of the public must be immediately reviewed by the investigating unit of the law enforcement agency.

On completion of an investigation, the law enforcement agency must forward the investigatory files for the complaint to the appropriate administrative charging committee. The administrative charging committee must review and make a determination or ask for further review within 30 days after completion of the investigating unit's review. The process for review by the investigating unit through disposition by the administrative charging committee must be completed within one year and one day after the filing of a complaint by a citizen.

Disciplinary Matrix: MPTSC must develop and adopt, by regulation, a model uniform disciplinary matrix for use by each law enforcement agency in the State, and each law enforcement agency must adopt the matrix.

Within 15 days after an administrative charging committee issues an administrative charge against a police officer, the chief of the law enforcement agency must offer discipline to the police officer who has been administratively charged in accordance with the disciplinary matrix. The chief may offer the same discipline that was recommended by the administrative charging committee or a higher degree of discipline within the applicable range of the disciplinary matrix but may not deviate below the discipline recommended by the administrative charging committee. If the police officer accepts the chief's offer of discipline, the offered discipline must be imposed. However, if the police officer does not accept the chief's offer of discipline, the matter must be referred to a trial board. At least 30 days before a trial board proceeding begins, the police officer must be provided a copy of the investigatory record and notified of the charges against the police officer and the recommended disciplinary action.

Trial Board Process: Each law enforcement agency must establish a trial board process to adjudicate matters for which a police officer is subject to discipline; however, a small law enforcement agency may use the trial board process of another law enforcement agency by

mutual agreement. An individual, before serving as a member of a trial board, must receive training on matters relating to police procedures from MPTSC.

A trial board must be composed of (1) an actively serving or retired administrative law judge or a retired judge of the District Court or a circuit court, appointed by the chief executive officer of the county; (2) a civilian who is not a member of an administrative charging committee, appointed by the county's police accountability board; and (3) a police officer of equal rank to the police officer who is accused of misconduct, appointed by the head of the law enforcement agency.

With specified exceptions, proceedings of a trial board must be open to the public. A trial board may administer oaths and issue subpoenas as necessary to complete its work. A complainant has the right to be notified of a trial board hearing and, with specified exceptions, the right to attend a trial board hearing. A police officer may be disciplined only for cause; with specified exceptions, a law enforcement agency has the burden of proof by a preponderance of the evidence.

Within 30 days after the date of issuance of a decision of a trial board, the decision may be appealed by the employee, as specified. An appeal taken from a trial board decision must be on the record, and a trial board decision that is not appealed is final.

Suspensions and Terminations: Pending an investigatory, administrative charging committee, and trial board process, the chief may impose an emergency suspension with pay or, for at most 30 days, without pay if the chief determines that such a suspension is in the best interest of the public. If an administrative charging committee determines not to administratively charge a police officer in connection with the matter on which a suspension without pay is based, the police officer is entitled to receive back pay.

A chief or a chief's designee may suspend a police officer without pay and suspend the police officer's police powers on an emergency basis if the police officer is charged with specified crimes. A police officer who was suspended without pay is entitled to receive back pay if the criminal charge or charges against the police officer result in a finding of not guilty, an acquittal, a dismissal, or a *nolle prosequi*.

The chief must terminate the employment of a police officer who is convicted of a felony and may terminate the employment of a police officer who (1) receives a probation before judgment for a felony or (2) is convicted of a misdemeanor committed in the performance of duties as a police officer, misdemeanor second-degree assault, or a misdemeanor involving dishonesty, fraud, theft, or misrepresentation.

In connection with a disciplinary matter, a police officer may be required 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 a police officer is required to submit to a test, examination, or interrogation and the police officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal. However, if a police officer is required to submit to a test, examination, interrogation, or polygraph examination, the results are not admissible or discoverable in a criminal proceeding against the police officer.

Victims' Rights Advocates: A law enforcement agency must designate an employee as a victims' rights advocate to act as the contact for the public within the agency on matters related to police misconduct. A victims' rights advocate must (1) explain to the complainant specified information regarding the disciplinary process; (2) provide a complainant with an opportunity to review a police officer's statement, if any, before completion of an investigation by a law enforcement agency's investigative unit; (3) notify a complainant of the status of the case at every stage of the process; and (4) provide a case summary to a complainant within 30 days after final disposition of the case.

Database to Track Complaints: Each law enforcement agency must create a database that enables a complainant to enter the complainant's case number to follow the status of the case, as specified.

Police Officer Rights: Both a police officer who is the subject of a complaint of police misconduct and a complainant may have the assistance of a representative in connection with disciplinary proceedings.

A police officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against or threatened in regard to the police officer's employment because the police officer (1) disclosed information that evidences mismanagement, a waste of government resources, a danger to public health or safety, or a violation of law or policy committed by another police officer or (2) lawfully exercised constitutional rights. A police officer may not be denied the right to bring suit arising out of the police officer's official duties and has the same rights to engage in political activity as a State employee, except when on duty. A law enforcement agency may not prohibit secondary employment by a police officer but may adopt reasonable regulations that relate to secondary employment by a police officer.

Expungement and Destruction of Records: A record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, may not be expunged or destroyed by a law enforcement agency.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Commission on Civil Rights; Baltimore, Garrett, and Howard counties; cities of Greenbelt and Laurel; Comptroller's Office; Governor's Office of Crime Prevention, Youth, and Victim Services; Baltimore City Community College; University System of Maryland; Morgan State University; Department of General Services; Maryland Department of Health; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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