



LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

A BRIEF PRESENTATION REGARDING THE PROTECTIONS AFFORDED UNDER
MD CODE ANN., PUBLIC SAFETY § 3-101, ET. SEQ. (THE “LEOBR”)

What is LEOBR?

- ▶ LEOBR is a statutory section contained within the Maryland Public Safety Article.
- ▶ The purpose of LEOBR is to provide law enforcement officers with certain procedural protections in disciplinary matters.
- ▶ A “disciplinary matter” is not criminal in nature. The LEOBR does not directly apply to criminal prosecutions. Rather, the LEOBR sets forth the procedures for conducting administrative investigations into violations of departmental policy (i.e, damage to agency equipment, inaccurate and/or false reporting, conduct-related offenses, such as discourtesy or use of profanity, etc.). Additionally, LEOBR provides officers accused of policy violations the ability to contest agency findings and recommended discipline via an Administrative Hearing Board.

Additional Protections

- ▶ While the primary focus of LEOBR is to provide officers, and their respective agencies, with a framework for conducting investigations and contesting discipline, the statute does address the following secondary issues:
 - ▶ The right of an officer to engage in political activity while off-duty
 - ▶ Protection for officers involved in whistle-blower actions
 - ▶ Confidentiality of officers' personal financial information, though this is not absolute as certain investigations may require such disclosures
 - ▶ The right of an officer to participate in secondary employment, though such employment may be reasonably regulated by the employing agency

Agency Protections and Privileges

- ▶ Though the purpose of LEOBR is to protect individual officers, the statute also provides law enforcement agencies with various options for addressing even alleged misconduct.
 - ▶ The head of an agency may suspend with pay any officer who is alleged to have committed a policy violation if the suspension is in the best interests of the agency and the public
 - ▶ The heads of an agency shall suspend without pay any officer who is charged with a felony offense.
 - ▶ The agency is permitted to maintain a list of officers alleged or found to have committed violations bearing on their integrity to the extent that such violations may be used as evidence in court proceedings.
 - ▶ The agency may charge any officer making a false statement during an administrative investigation with a violation of MD Code Ann., Criminal Law § 9-501 (False Statement to a Law Enforcement Officer).

The Investigative Process: Preliminary Procedures

- ▶ A formal investigation against an officer can be initiated in a number of ways. A Complaint Against Police Practices form may be filed by a citizen with the agency's Internal Affairs Division, a supervising officer may request Internal Affairs open an investigation against a subordinate officer, or a supervising officer may conduct an investigation at the District level if the alleged offense is minor in nature.
- ▶ Once the case is opened, the officer will be notified in writing of the nature of the investigation. This notification does not provide any specific facts regarding the allegations but, instead, is required only to disclose the date, time, location and a brief description of the offense.
- ▶ Additionally, the notification will provide the officer with an order to submit to a recorded interrogation concerning the alleged offense(s).
- ▶ Upon receiving the notification, the officer is provided five (5) business days to obtain the services of counsel.

The Investigative Process: Interrogation Procedures

- ▶ Prior to the interrogation, the respondent is permitted to review any statements they have previously made in connection with the alleged violation(s).
- ▶ During the interrogation, the respondent is permitted to have counsel present.
- ▶ The interrogation should take place during the respondent's working hours unless the circumstances of the complaint demand immediate action.
- ▶ The attorney may object to any questions posed; however, the investigator may order the respondent to answer all questions regardless of objections.
- ▶ The respondent may consult with their attorney at any time during the interrogation.
- ▶ The interrogation must be audio recorded or written.

What the Respondent is NOT Entitled to Prior to an Interrogation

- ▶ Generally, all witnesses and respondents involved in an investigation are provided with a “Do Not Discuss Order”, which prohibits the parties from discussing any aspect of the alleged violations with one another.
- ▶ Respondents are not entitled to review the statements of other parties to the investigation prior to an interrogation: LEOBR does not provide respondents with the opportunity to tailor their official statements to the evidence that has already been reviewed by the investigator.
- ▶ Similarly, respondents are not entitled to review any of the evidence that has been obtained by the investigator unless that evidence contains a prior statement of the respondent.
- ▶ Respondents are not entitled to review the investigator’s questions prior to an interrogation.

Post-Interrogation Process

- ▶ Once all witnesses and respondents have been interviewed and all other relevant evidence has been obtained, the investigator prepares a “Report of Investigation” detailing their factual findings.
- ▶ The investigator will recommend the following dispositions regarding the allegations: “sustained”, “non-sustained”, “unfounded” and “exonerated.”
- ▶ Sustained = there is sufficient evidence to suggest that the respondent committed the alleged violation(s).
- ▶ Non-Sustained = there is insufficient evidence to suggest that the respondent committed the alleged violation(s).
- ▶ Unfounded = the evidence does not demonstrate a violation of policy.
- ▶ Exonerated = the evidence disproves the allegations.

Post-Interrogation Process (Cont'd)

- ▶ If allegations are sustained, the Report of Investigation is submitted through the investigator's chain of command for review.
- ▶ Ultimately, the Report of Investigation reaches the Chief's Office where a disciplinary recommendation is reached.
- ▶ The record of the investigation, as well as the disciplinary recommendation, is provided to the Citizen's Complaint Oversight Panel ("CCOP") for review. The CCOP may pose questions and make independent recommendations for discipline.
- ▶ Following CCOP review, the Chief may amend the disciplinary recommendation. Once a conclusion is reached as to the specific charges and related discipline for each, a Disciplinary Action Recommendation is issued and served on the respondent.
- ▶ The respondent may accept or reject discipline. If discipline is rejected, an administrative hearing board will be scheduled.

Limitations on Administrative Charges

- ▶ Administrative Charges must be filed against the respondent within one (1) year of the agency being notified of the allegations.
- ▶ This statute of limitations is considered met on the date that the Report of Investigation is issued.
- ▶ The one (1) year limitations period does not apply to allegations of brutality (no statute of limitations) or criminal misconduct (the one year period does not begin until the related criminal matter is dismissed by local prosecution or adjudicated in State or Federal Court).

The Administrative Hearing Board

- ▶ If a respondent rejects the disciplinary recommendation of the agency, an administrative hearing board will be scheduled for a future date.
- ▶ The administrative hearing board is composed of three (3) members: one of these members must be of the same rank as the respondent. Agencies are not required to have their own employees serve on boards and may seek the assistance of outside departments to form a board.
- ▶ For minor disciplinary infractions, agencies are permitted to create their own procedures for hearings (i.e., using one (1) person boards).
- ▶ There is no limitations period for conducting a hearing: in other words, it may be years before a hearing occurs depending upon the number of administrative cases an individual agency has.

The Administrative Hearing Board (Cont'd)

- ▶ During a hearing, virtually all evidence is admissible. Rules of evidence are relaxed to the extent that the board must only abide by the general tenet that relevant evidence should be admitted.
- ▶ The agency bears the burden of proving the respondent's guilt by a preponderance of the evidence, which is the lowest burden of proof recognized under the law.
- ▶ The board may issue subpoenas for witnesses and documentary items of evidence.
- ▶ All hearings are open to the public.
- ▶ The respondent and the agency may both be represented by counsel.
- ▶ The hearing process is very similar to any judicial proceeding: the parties are given the opportunity to present opening statements, the agency then proceeds with its case-in-chief, followed by the respondent presenting a rebuttal case.

The Administrative Hearing Board

(Cont'd)

- ▶ Both parties are entitled to cross-examine live witnesses.
- ▶ At the close of the respondent's case, the agency may call upon additional witnesses in rebuttal.
- ▶ Both parties are provided the opportunity to provide closing statements prior to the Board's deliberations.
- ▶ During closed deliberations, the Board must reach a majority vote as to the disposition of the charges.
- ▶ If the respondent is found guilty of any charges, a character hearing is available. During the character hearing, the respondent may call upon witnesses and present evidence regarding their contributions to the agency, work record, and good conduct.
- ▶ Following the character hearing, the Board will deliberate a second time to consider the appropriate disciplinary recommendation.

Post-Hearing Process

- ▶ In the event of a guilty finding as to any charges, the Board is required to issue a report and recommendations to the Chief within 30 days.
- ▶ The Chief has the ultimate authority to issue final discipline and is not bound by the recommendations of the Board. However, if the Chief intends to increase the discipline recommended by the Board, they must review the entire record of the proceedings and afford the respondent the opportunity to be heard on-the-record.
- ▶ Final discipline is ultimately issued and served upon the respondent. If the respondent disagrees with the findings of the Board or the Final Disciplinary Action, they are permitted to seek Judicial Review in the Circuit Court of the county they reside in.