

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Douville at _____
Chairperson

9:00 a.m. ~~XXX~~ on March 1, 1985 in room 526-S of the Capitol.

All members were present except: Representative Friedeman, excused

Committee staff present:

All present except Beth James, secretary
Thelma Canaday substituting as secretary

Conferees appearing before the committee:

Terry Stevens, Topeka Fraternal Order of Police

Chairman Douville called the meeting to order. He asked Rep. Snowbarger to speak to his proposed amendment to H.B. 2084 per the handout each member had. Rep. Patrick then suggested incorporating these additional words into the amendment"or any employee of the construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project". Rep. Snowbarger's amendment was then voted on and passed. A motion was made by R. D. Miller and seconded by Dorothy Nichols that H.B. 2084 be passed out of committee. After further discussion a vote was taken and the motion carried.

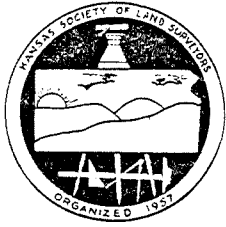
Chairman Douville called for H.B. 2238 to be heard. Terry Stevens spoke for the bill saying it was needed to establish a uniform system throughout the state in the protection of law enforcement officers rights when it pertains to non-criminal prosecution. (See attachment #1). A lengthy question and answer period followed and Chairman Douville concluded the meeting by announcing further testimony on H.B. 2238 would be heard at next Tuesday's meeting.

The meeting was adjourned at 9:55.

Labor & Industry

3-1-85

| | | |
|------------------|------------------------------|------------------|
| Ruth Wilbur | AAOP | Topeka |
| Hannes Zuchanics | Lawrence | City of Lawrence |
| Faith Loretta | Dept. of Ed. M. | Topeka |
| TERRY STEVENS | F.O.P. | TOPEKA |
| Phil Klein | KCE-KES | Ovland Park |
| Ray Samson | Kansas Society of Architects | Topeka |
| George Barber | KS Consulting Engrs | Topeka |
| Bill Henry | KS Engineering Society | Topeka |
| Jean Sagan | KS Bd of Regents | Topeka |
| Loren Taylor | K.C.K. Police Dept | K.C. |
| David L. Yeagle | KCKS Police Dept | K.C. |
| TOM BARRETT | PARSONS Police Dept | PARSONS |
| JAMES R BROWNING | Merriam P.D | Merriam |
| Richard Lammiman | Wichita Police | Wichita |



KANSAS SOCIETY OF LAND SURVEYORS

Affiliated With the American Congress on Surveying and Mapping

February 20, 1985

Honorable Arthur Douville, Chairperson
Labor and Industry Committee
State House
Topeka, KS 66612

Dear Sir:

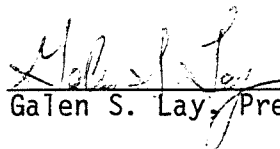
As President of the Kansas Society of Land Surveyors, I am encouraging you to support the passage of House Bill 2084, an act concerning Workman's Compensation.

I feel that without the enactment of House Bill 2084, the professional construction groups in the areas of surveying, engineering and architecture have very little protection from what seems to me to be a tremendous financial liability. I feel that when construction design professionals are liable to "any third party for any injury or death of an employee which is caused under circumstances creating a legal liability against a third party, and for which Workman's Compensation is payable to such employer", that said design professional liability is excessive.

I would urge you to support House Bill 2084, and vote for its passage!

Sincerely yours,

Kansas Society of Land Surveyors



Galen S. Lay, President

cc: Mick Quinn
Gene Sickmon

GSL:vb

TO: Chairman Douville and Members,
House Labor and Industry Committee

FROM: E. Edward Johnson, City Attorney, Topeka

RE: Suggested Modification of Amendment to HB 2084

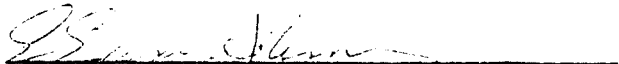
DATE: February 22, 1985

It is respectfully suggested that the proposed amendment to HB 2084 (on page 2) be modified as follows:

Line 0071-delete the words, "is retained to" after the word "who" and change the word "perform" to "performs".

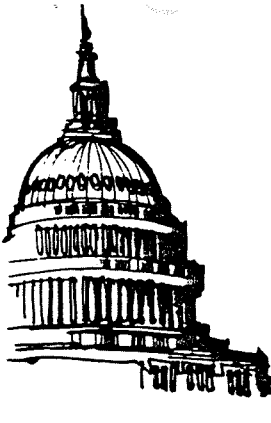
Line 0073-delete the words "of a construction design professional".

This modification would provide for an inclusion of city or municipally-employed engineers within the scope of the amendment.



E. Edward Johnson
City Attorney

EEJ:rps



Heart of America Architects & Engineers Legislative Council

MEMBER ORGANIZATIONS

Chairman — Larry Drbal

P. O. Box 8405

Kansas City, Missouri 64114

913/967-2198

American Institute
of Architects
Kansas City Chapter

American Planning
Association
Missouri Chapter

American Public Works
Association
Kansas City
Metropolitan Chapter

American Nuclear
Society
Mo-Kan Section

American Society
of Civil Engineers
Kansas City Section

American Society
of Heating, Refrigerating
and Air Conditioning
Engineers
Kansas City Chapter

American Society
of Landscape Architects
Prairie Gateway Chapter

American Society of
Mechanical Engineers
Kansas City Chapter

Construction
Specifications Institute
Kansas City Chapter

Institute of Electrical
and Electronics Engineers, Inc.
Kansas City Section

Kansas Engineering
Society
Eastern Chapter

Missouri Association
of Landscape Architects

Missouri Society of
Professional Engineers
Western Chapter

Society of Fire
Protection Engineers
Mo-Kan Chapter

Society of Women
Engineers
Kansas City Section

Representing over
6,000 Members

February 21, 1985

The Honorable Arthur Douville
Chairperson, Labor and
Industry Committee
State Capitol Building
Room 115 S
Topeka, Kansas 66212

Dear Mr. Douville:

The Heart of America Architects and Engineers Legislative Council supports legislation such as H.B. 2084 which protects construction design professionals against claims of liability for injuries compensable by workers' compensation. HAALEC further recognizes and supports the exclusion (within an act) of any negligent preparation of design, plans, or specifications.

Sincerely,

Larry Drbal, P.E.
Chairman, HAAELC

es

cc: Walt Bury
Herman Dillon
Mike Hayden
Dorothy Nichols
Kerry Patrick
Burr Sifers
Vincent Snowbarger

February 19, 1985

Representative Arthur Douville
Room 115-S
State Capitol, Topeka, KS. 66612

Re: HB-2084 Workers Compensation Act

Dear Rep. Douville,

It has been brought to my attention that the above bill is scheduled to be presented before committee hearing. I hope it will be brought before both houses for ratification.

The State of Kansas Workers Compensation Act as it exists is unfairly written. The design professionals (Engineers and Architects) are a part of the overall team involved in the evolution of a project. The laws as they are written, protect the owner and contractors but excluded the design professionals and their employees in the event of a lawsuit by an injured party or surviving relative.

The existing law assumes the design professional has the responsibility and authority to provide for workers safety. This by contract is not the case. Kansas remains as one of the two states in this country which maintains this inequitable law.

The limits of this inequity were enforced when in 1984 the courts ruled against a Topeka Architectural /Engineering firm because they had an employee on site when a fatal accident occurred. Damages were awarded the widow of the accident victim even though the contract documents clearly stated that the contractor had responsibility for safety.

As an Architect I respectfully request your attention in correcting this unjust law.


Ward Simpson, AIA

STATE OF KANSAS



DEPARTMENT OF ADMINISTRATION
Division of Architectural Services

JOHN CARLIN,
Governor
JOHN B. HIPPI,
Director

625 Polk
Topeka, Kansas 66603
(913) 233-9367

February 21, 1985

The Honorable Arthur Douville
Chairman, House Labor & Industry Committee
Room 115-S, Statehouse
Topeka, Kansas

RE: House Bill 2084: Hearing 2-22-85

Dear Chairman Douville:

Thank you for taking the time today to let me share my views in support of House Bill 2084. As I told you, I am unable to appear before your committee, but I support the bill and urge its favorable report.

As the state agency responsible for contracting for professional architect and engineer services for the design and contract administration of approximately \$25,000,000 of annual capital improvement projects, we feel the bill affords a positive response to a genuine concern. Our contract conditions establish contractual relationships between contractor, agency and design professionals and those conditions would be compatible with the proposed bill.

It would be appropriate that the language of the bill include state-employed professional architects and engineers to supplement the existing Tort Claims Act.

Thank you for your consideration.

Sincerely,

JOHN B. HIPPI, AIA
Director

JBH:gk

charles anthony chapman III architects, aia

4330 west 70th street
prairie village, kansas 66208
telephone 913 • 677-5870

February 22, 1985

The Honorable Arthur Douville, Chairperson
Labor, Industry and Small Business Committee
House of Representatives
Room 115-S
State Capitol
Topeka, KS 66612

Dear Representative Douville:

I am writing to thank you for the concern that you have shown for the design professions by introducing House Bill 2084, modifying existing workers' compensation laws.

I have written a letter to each member of the Labor, Industry and Small Business Committee expressing my view about the impact of your bill. I am enclosing a copy of that letter for your information.

Again, thank you for your support.

Sincerely,



Charles Anthony Chapman III, AIA

CAC/jep/REC002

Enclosure

architecture, interior design, passive and active solar design

KANSAS DEPARTMENT OF TRANSPORTATION

STATE OFFICE BUILDING—TOPEKA, KANSAS 66612



JOHN B. KEMP, Secretary of Transportation

JOHN CARLIN, Governor

MEMORANDUM TO: HOUSE LABOR AND INDUSTRY COMMITTEE

FROM: MIKE LACKEY
DIRECTOR OF OPERATIONS, KDOT

REGARDING: HOUSE BILL 2084

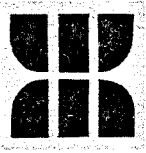
DATE: FEBRUARY 22, 1985

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS MIKE LACKEY, I AM THE DIRECTOR OF OPERATIONS FOR THE KANSAS DEPARTMENT OF TRANSPORTATION.

THE BILL BEFORE YOU THIS MORNING SEEKS TO ESTABLISH A LIABILITY LIMIT FOR PROFESSIONAL CONSTRUCTION DESIGN AND INSPECTION PERSONNEL ON CONSTRUCTION SITE ACCIDENTS. THE BILL DOES NOT PROVIDE IMMUNITY FROM NEGLIGENCE.

THE BILL WOULD APPEAR TO INCLUDE GOVERNMENT PERSONNEL UNDER THE DEFINITION ON PAGE FIVE OF THE BILL IN PARAGRAPH (K). HOWEVER, PARAGRAPH (F) ON PAGE TWO OF THE BILL, SPEAKS ONLY OF THOSE CONSTRUCTION DESIGN PROFESSIONALS "RETAINED" TO PERFORM PROFESSIONAL SERVICES. IF THE COMMITTEE'S DESIRE IS TO COVER ALL SUCH PROFESSIONALS BY THESE PROVISIONS, THE COMMITTEE MAY WISH TO AMEND LINE 71 TO READ "...CONSTRUCTION DESIGN PROFESSIONAL WHO IS RETAINED OR EMPLOYED..." SUCH PROVISIONS WOULD COVER NOT ONLY PRIVATE CONSULTANTS BUT GOVERNMENT EMPLOYEES AS WELL.

I AM AVAILABLE FOR QUESTIONS.



WOLFENBARGER AND McCULLEY • ARCHITECTS, P.A.

800 POYNTZ AVENUE BOX 830 MANHATTAN, KANSAS 66502 913 537-0438

February 13, 1985

The Honorable Arthur Douville, Chairman
House of Representatives, Labor, Industry & Small Business
Room 115-S, State Capitol
Topeka, KS 66612

Re: House Bill No. 2084

Dear Mr. Douville:

Please accept congratulations for your authorship and introduction of the referenced bill. As you are no doubt aware, it is considered by Design Professionals throughout the State of Kansas as a very important piece of legislation.

Traditionally, the Contract Documents for construction projects have imposed responsibility for project site safety on the Contractor. Contractors have accepted that responsibility and have provided evidence to the Owner of insurance coverage as required by Contract Documents prior to the commencement of any work at the project site.

Design professionals traditionally have no contractual relationship with the Contractor, his work force, his subcontractors or their work forces. Consequently, in a legal and common sense, they have no responsibility for project site safety. Recent court decisions in Kansas seem to have overturned tradition in spite of Contract Document wording, which is generally very clear on that subject.

This piece of legislation hopefully will make straight this recent, erroneous judicial detour. I wholeheartedly support passage of House Bill No. 2084; please convey these sentiments to the other members of your committee.

Through copy of this letter, we are advising our own District Representatives of our sentiments, and requesting that they give this legislation their strong support.

Sincerely,

Charles F. McCarthy, LA/CCS
Registration No. 25

CFM:js

Copy: Representative Joe Knopp
Representative Ivan Sand

University of Baltimore Law Review. For comment, "Rights of the Maryland Probationer: A Primer for the Practitioner," see 11 U. Balt. L. Rev. 272 (1982).

Rehabilitation Centers
Participation of participation in and

— A person may be placed in a center in the county in which the center is located, or in any county comprising the region; on the sentence or less than 6 months; or on a sentence of 3 years or less; and after review of the staff member and after screening by the advisory board, the center director and the center shall include a presentence investigation of previous convictions. — The center shall be closed if the person violates the rules established by the center director with the

today; transfer to Maryland Division of Correction if the person is detained in or sentenced to a county operating the jail or detention center, and that judge is unable to act, then any judge during the period of confinement at the center provided that the center shall be closed if the person is placed in the center in violation of the procedures for the center. — The judge ordering the confinement, or if the committing court may order the center's director makes the recommendation for the person's participation in the center if the center is closed. Based on the center's performance in the program, the judge of the center shall recommend for revocation, the judge of the Maryland Division of Correction as the term of the person's confinement

advisory board. — The director shall submit a report to the community advisory board periodically. (1976, ch. 234, § 2; 1980, chs.

Effect of amendments. The 1982 amendment, effective July 1, 1982, added a subsection (b), relating to persons in centers for women located in Baltimore City, and redesignated the succeeding subsections.

The 1983 amendment, effective July 1, 1983, deleted the subsection (b) which had been added by the 1982 amendment and redesignated the succeeding subsections.

CONVICT ROAD FORCE

§ 715. Per diem payments for State convicts; disposition.

The county roads board using State convicts as provided in § 713 of this article is hereby authorized and directed to pay to the Division of Correction the amount contractually agreed upon between the county roads board and the Division of Correction per day for each and every day that each and every State convict works upon the public roads or bridges as provided herein. The Division of Correction shall hold these payments to the credit of each convict under applicable law and regulations. (An. Code, 1951, § 803; 1939, § 802; 1924, § 715; 1916, ch. 211, § 4; 1983, ch. 148.)

Effect of amendment. — The 1983 amendment, effective July 1, 1983, rewrote the section.

COMMUNITY SERVICE PROGRAMS

§ 726A. Community service programs.

University of Baltimore Law Review. — For comment, "Rights of the Maryland Probationer: A Primer for the Practitioner," see 11 U. Balt. L. Rev. 272 (1982).

LAW-ENFORCEMENT OFFICERS' BILL OF RIGHTS

§ 727. Definitions.

(c) "Law-enforcement officer" does not include an officer serving in a probationary status except when allegations of brutality in the execution of his or her duties are made involving an officer who is in a probationary status. The provisions of this subtitle do not apply to persons serving at the pleasure of the Police Commissioner of Baltimore City or the appointing authority of a charter county or to a police chief of any incorporated city or town. The term "probationary status" includes only an officer who is in that status upon initial entry into the Department. (1982, ch. 204.)

Effect of amendment. The 1982 amendment, effective July 1, 1982, added "or to a police chief of any incorporated city or town" at the end of the second sentence in subsection (c).

As the other subsections were not affected by the amendment, they are not set forth above.

Quoted in Mayor of Westernport v. Duckworth, 49 Md. App. 236, 431 A.2d 709 (1981).

Cited in Soper v. Montgomery County, 294 Md. 331, 449 A.2d 1158 (1982); Montgomery County Dep't of Police v. Lumpkin, 51 Md. App. 557, 444 A.2d 469 (1982).

copy 1983
supp
N.C. 7.0

§ 728. Right to engage in political activity; investigation or interrogation of officer; officer's right to sue; adverse material in officer's file.

(b) *Procedure to be followed at interrogation or investigation; record; representation by counsel; statute or regulation abridging right to sue; insertion of adverse material into officer's file; chief under investigation; polygraph examination.* — Whenever a law-enforcement officer is under investigation or subjected to interrogation by a law-enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

(5) The law-enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. Upon completion of the investigation, the law-enforcement officer shall be notified of the name of any witness and all charges and specifications against the officer not less than ten days prior to any hearing.

(10) At the request of any law-enforcement officer under interrogation, the officer shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present and available for consultation at all times during the interrogation, unless waived by the law-enforcement officer. The interrogation shall be suspended for a period of time not to exceed ten days until representation is obtained. However, the chief may, for good cause shown, within that ten day period, extend that period of time.

(1983, chs. 489, 660.)

Effect of amendments.

Chapter 489, Acts 1983, effective July 1, 1983, inserted "and all charges and specifications against the officer" in the second sentence in paragraph (5) of subsection (b).

Chapter 660, Acts 1983, effective July 1, 1983, substituted "the officer" for "he" near the beginning of the first sentence in paragraph (10) in subsection (b) and inserted "and available for consultation" in that sentence.

As the remainder of the section was not affected by the amendments, it is not set forth above.

Purpose of subtitle.

In accord with original. See *Montgomery County Dep't of Police v. Lumpkin*, 51 Md. App. 557, 444 A.2d 469 (1982).

The purpose of this subtitle was to guarantee to those law-enforcement officers embraced by it procedural safeguards during investigation and hearing of matters concerned with disciplinary action against the officer. *Nichols v. Baltimore Police Dep't*, 53 Md. App. 623, 455 A.2d 446 (1983).

This subtitle provides protection during inquiry.

In accord with original. See *Mayor of West-ernport v. Duckworth*, 49 Md. App. 236, 431 A.2d 709 (1981).

Due process not offended so long as no criminal charges emanate from interrogation. — So long as no criminal charge emanates from the interrogation, there is no violation of the officer's Fourteenth Amendment due process right. *Nichols v. Baltimore Police Dep't*, 53 Md. App. 623, 455 A.2d 446 (1983).

Where threshold investigation or interrogation resulting in recommendation of punitive action prerequisite to hearing. — In the absence of the applicability of § 733 of this article, there must be a threshold investigation or interrogation of a law-enforcement officer which results in the recommendation of some action such as demotion, dismissal, transfer, loss of pay, or reassignment, which would be considered a punitive measure, before the officer is entitled to a hearing board as provided in §§ 730 and 731 of this article. *Montgomery County Dep't of Police v. Lumpkin*, 51 Md. App. 557, 444 A.2d 469 (1982).

Jencks principles applicable to hearing board proceedings. — The underlying principles of *Jencks v. United States*, 353 U.S. 657, 77 S. Ct. 1007, 1 L. Ed. 2d 1103 (1957), apply not only to criminal cases, but to adversary proceedings of administrative agencies, including Law-Enforcement Officers' Bill of Rights hearing boards. *Chief, Montgomery County*

Dep't of Police v. Jacocks, 50 Md. App. 132, 436 A.2d 930 (1981).

Subtitle does not require or deny access to prehearing statements of witnesses. There is nothing in the Law-Enforcement Officers' Bill of Rights either expressly requiring or expressly denying access to statements given to the internal affairs office by persons who are ultimately to testify as witnesses. *Chief, Montgomery County Dep't of Police v. Jacocks*, 50 Md. App. 132, 436 A.2d 930 (1981).

Disclosure of prehearing statements after witness has testified not precluded. — Subsection (b) (12) of this section does not preclude the disclosure of prehearing statements taken by the internal affairs office in connection with its investigation after a witness has testified at the administrative hearing. *Chief, Montgomery County Dep't of Police v. Jacocks*, 50 Md. App. 132, 436 A.2d 930 (1981).

But disclosure limited to matters to which witness testified. — Only those

§ 730. Hearing before de

(h) *Summonses.*

(2) In case of disobedience or refusal of chief, or hearing board, may apply to the summonsed party resides or cannot attend and testimony of the records, and documents, without the testimony of the witness, or the documents sought is relevant or requiring the attendance, testimony and documents without cost, and the witness may be punished by the court as a contemnor. (1982, ch. 820, § 1.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, deleted "the Baltimore City Court or" preceding "the circuit" and "as the case may be" following "county" in paragraph (2) of subsection (h).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 5, ch. 820 of the 1982 Code, provides that "the provisions of this section are intended solely to correct references to the circuit court and delete surplus language and provisions which are not intended to revise or otherwise amend the law that is the subject of other acts, which those acts were signed by the Governor or after the signing of this act."

Section 6 of ch. 820 provides that "it is the intent of this act that the Circuit Court of Baltimore City is for all purposes to be and shall continue to be as the circuit court for a county."

tical activity; investigation of officer; officer's right to sue; in officer's file.

rogation or investigation; record; reputation abridging right to sue; insertion chief under investigation; polygraph
 ment officer is under investigation or enforcement agency, for any reason which tion or dismissal, the investigation or the following conditions:

er investigation shall be informed in ion prior to any interrogation. Upon enforcement officer shall be notified of s and specifications against the officer ring.

ement officer under interrogation, the nted by counsel or any other responsi- all be present and available for con- terrogation, unless waived by the on shall be suspended for a period of atation is obtained. However, the chief ten day period, extend that period of

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Where threshold investigation or interrogation resulting in recommendation of punitive action prerequisite to hearing. — In the absence of the applicability of § 733 of this article, there must be a threshold investigation or interrogation of a law-enforcement officer which results in the recommendation of punitive action such as demotion, dismissal, transfer, loss of pay, or reassignment, which would be considered a punitive measure, before the officer is entitled to a hearing board as provided in §§ 730 and 731 of this article. *Montgomery County Dep't of Police v. Lumpkin*, 51 Md. App. 557, 444 A.2d 469 (1982).

Jencks principles applicable to hearing board proceedings. — The underlying principles of *Jencks v. United States*, 353 U.S. 657, 16 S.Ct. 1007, 1 L.Ed. 2d 1103 (1957), apply not only to criminal cases, but to adversary proceedings of administrative agencies, including Law-Enforcement Officers' Bill of Rights hearing boards. *Chief, Montgomery County*

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Disclosure of prehearing statements after witness has testified not precluded. — Subsection (b) (12) of this section does not preclude the disclosure of prehearing statements taken by the internal affairs office in connection with its investigation after the witness has testified at the administrative hearing. *Chief, Montgomery County Dep't of Police v. Jacocks*, 50 Md. App. 132, 436 A.2d 930 (1981).

But disclosure limited to matters about which witness testified. — Only those por-

tions of pretrial statements pertaining to matters about which a prosecution witness before a Law-Enforcement Officers' Bill of Rights hearing board has testified are subject to disclosure. *Chief, Montgomery County Dep't of Police v. Jacocks*, 50 Md. App. 132, 436 A.2d 930 (1981).

Action held non-punitive and within authority of chief of police. — Where, before any officer was affected, the police department made a management decision to reduce the size of a unit, the subsequent determination of the specific officers involved in the reduction and transfer was within the powers and authority granted the chief of police under subsection (c) of this section, and was not a punitive action entitling the complainants to a hearing under this subtitle. *Montgomery County Dep't of Police v. Lumpkin*, 51 Md. App. 557, 444 A.2d 469 (1982).

§ 730. Hearing before demotion, dismissal, transfer, etc.

(h) *Summonses.*

(2) In case of disobedience or refusal to obey any of these summonses, the chief, or hearing board, may apply to the circuit court of any county where the summonsed party resides or conducts business, for an order requiring the attendance and testimony of the witness and the production of books, papers, records, and documents, without cost. Upon a finding that the attendance and testimony of the witness, or the production of the books, papers, records, and documents sought is relevant or necessary, the court may issue an order requiring the attendance, testimony, or production of books, papers, records and documents without cost, and any failure to obey an order of the court may be punished by the court as a contempt thereof. (1982, ch. 820, § 1.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, deleted "the Baltimore City Court or" preceding "the circuit" and "as the case may be" following "county" in paragraph (2) of subsection (h).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 5, ch. 820, Acts 1982, provides that "the provisions of this act are intended solely to correct references and delete surplus language and provisions and there is no intent to revise or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this act."

Section 6 of ch. 820 provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

Law-enforcement officers entitled to hearing before dismissal for disciplinary reasons. — Read as a whole this subtitle manifests a legislative intent that every law-enforcement officer covered by this subtitle is entitled to a hearing before dismissal for disciplinary reasons. *Mayor of Westernport v. Duckworth*, 49 Md. App. 236, 431 A.2d 709 (1981).

This section should not be read as establishing exclusive sine qua non conditions to right to hearing before disciplinary sanctions are imposed. *Mayor of Westernport v. Duckworth*, 49 Md. App. 236, 431 A.2d 709 (1981).

Where threshold investigation or interrogation resulting in recommendation of punitive action prerequisite to hearing. In the absence of the applicability of § 733 of this article, there must be a threshold inves-

preclude the disclosure of statements taken by the internal affairs witness has testified at the hearing. Chief, Montgomery County Dep't of Police v. Jacocks, 50 Md. App. 132, 436 A.2d 469 (1981).

But disclosure limited to matters about which witness testified. — Only those portions of pretrial statements pertaining to matters about which a prosecution witness before a Law-Enforcement Officers' Rights hearing board has testified are subject to disclosure. Chief, Montgomery County Dep't of Police v. Jacocks, 50 Md. App. 132, 436 A.2d 469 (1981).

Action held non-punitive and within authority of chief of police. — Where, before any officer was affected, the police department made a management decision to reduce the size of a unit, the subsequent determination of the specific officers involved in the reduction and transfer was within the powers and authority granted the chief of police under § 728 (c) of this article, and was not a punitive action entitling the complainants to a hearing under this subtitle. Montgomery County Dep't of Police v. Lumpkin, 51 Md. App. 557, 444 A.2d 469 (1982).

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ure following finding of guilt;
order or decision.

officer which results in the recommendation of some action such as demotion, dismissal, transfer, loss of pay, or reassignment, which would be considered a punitive measure, before the officer is entitled to a hearing board as provided in § 730 of this article and this section. Montgomery County Dep't of Police v. Lumpkin, 51 Md. App. 557, 444 A.2d 469 (1982).

dance with § 731 shall be taken to to Maryland Rule B2. Any party s subtitle may appeal to the Court . 366; 1982, ch. 820, § 1.)

Court" in the first sentence.
itor's note. — Section 5, ch. 820, Acts provides that "the provisions of this act

intended solely to correct references and delete surplus language and provisions and there is no intent to revise or otherwise affect that is the subject of other acts, whether the acts were signed by the Governor prior to after the signing of this act."

Section 6 of ch. 820 provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

733. Retaliation for exercising rights.

Where threshold investigation or interrogation resulting in recommendation of punitive action prerequisite to hearing. — In the absence of the applicability of this section, there must be a threshold investigation or interrogation of a law-enforcement officer which results in the recommendation of some

action such as demotion, dismissal, transfer, loss of pay, or reassignment, which would be considered a punitive measure, before the officer is entitled to a hearing board as provided in §§ 730 and 731 of this article. Montgomery County Dep't of Police v. Lumpkin, 51 Md. App. 557, 444 A.2d 469 (1982).

§ 734. Application to court for show cause order.

Any law-enforcement officer who is denied any right afforded by this subtitle may apply at any time prior to the commencement of the hearing before the hearing board, either individually or through his certified or recognized employee organization, to the circuit court of the circuit where he is regularly employed for any order directing the law-enforcement agency to show cause why the right should not be afforded. (1974, ch. 722; 1977, ch. 366; 1982, ch. 820, § 1.)

Effect of amendment. — The 1982 amendment, effective Jan. 1, 1983, deleted "or the Baltimore City Court" preceding "where" near the middle of the section.

those acts were signed by the Governor prior to or after the signing of this act."

Editor's note. — Section 5, ch. 820, Acts 1982, provides that "the provisions of this act are intended solely to correct references and delete surplus language and provisions and there is no intent to revise or otherwise affect law that is the subject of other acts, whether

Section 6 of ch. 820 provides that "it is the intent of this act that the Circuit Court for Baltimore City is for all purposes to be treated as the circuit court for a county."

Applied in Chief, Montgomery County Dep't of Police v. Jacocks, 50 Md. App. 132, 436 A.2d 930 (1981).

§ 734A. Summary punishment or emergency suspension.

Clear legislative intent of this section is that (1) even summary punishment may be imposed only if the "officer waives the hearing provided" in § 730 of this article; (2) even after an emergency suspension the suspended officer is entitled to a hearing on the issue of suspension; and (3) that in all other cases where any disciplinary sanction is contemplated, a hearing is required before that action may be taken. Mayor of Westernport v. Duckworth, 49

Md. App. 236, 431 A.2d 709 (1981).

Hearing not conditioned upon previous investigation or interrogation. — Nothing in subsection (2) of this section suggests that the "prompt hearing" to which a suspended officer is entitled is conditioned upon a previous investigation or interrogation by anyone. Mayor of Westernport v. Duckworth, 49 Md. App. 236, 431 A.2d 709 (1981).

HOUSE BILL No. 1375

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~~SECTION 2.~~ AND BE IT FURTHER ENACTED, That this Act shall
take effect July 1, 1983.

HOUSE OF DELEGATES

3lr2594

No. 1375

10

By: Delegates Rymer and Hagner
Introduced and read first time: February 16, 1983
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 Law Enforcement Officers - Right to Counsel

3 FOR the purpose of providing that a law enforcement officer shall
4 have the right to have counsel, or another responsible
5 representative of the officer's choice, available for
6 consultation at all times during an interrogation; and
7 clarifying language.

8 BY repealing and reenacting, with amendments,

9 Article 27 - Crimes and Punishments
10 Section 728(b)(10)
11 Annotated Code of Maryland
12 (1982 Replacement Volume and 1982 Supplement)

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

15 Article 27 - Crimes and Punishments

16 728.

17 (b) Whenever a law-enforcement officer is under
18 investigation or subjected to interrogation by a law-enforcement
19 agency, for any reason which could lead to disciplinary action,
20 demotion or dismissal, the investigation or interrogation shall
21 be conducted under the following conditions:

22 (10) [At the request of any] A law-enforcement
23 officer under interrogation[, he] shall have the right to be
24 represented by counsel or any other responsible representative of
25 his choice who shall be present AND AVAILABLE FOR CONSULTATION at
26 all times during the interrogation, unless waived by the
27 law-enforcement officer. The interrogation shall be suspended for
28 a period of time not to exceed ten days until representation is
29 obtained. However, the chief may, for good cause shown, within
30 that ten day period, extend that period of time.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

HOUSE OF DELEGATES

3lr2595

No. 1376

10

By: Delegates Rymer and Hagner
Introduced and read first time: February 16, 1983
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 Law Enforcement Officers -
3 Charges and Specifications

4 FOR the purpose of providing that law enforcement officers who
5 are under certain investigations are to be notified of the
6 charges and specifications against them; and generally
7 relating to investigations and interrogations of law
8 enforcement officers.

9 BY repealing and reenacting, with amendments,

10 Article 27 - Crimes and Punishments
11 Section 728(b)(5)
12 Annotated Code of Maryland
13 (1982 Replacement Volume and 1982 Supplement)

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

16 Article 27 - Crimes and Punishments

17 728.

18 (b) Whenever a law-enforcement officer is under
19 investigation or subjected to interrogation by a law-enforcement
20 agency, for any reason which could lead to disciplinary action,
21 demotion or dismissal, the investigation or interrogation shall
22 be conducted under the following conditions:

23 (5) The law-enforcement officer under investigation
24 shall be informed in writing of the nature of the investigation
25 prior to any interrogation. Upon completion of the investigation,
26 the law-enforcement officer shall be notified of the name of any
27 witness AND ALL CHARGES AND SPECIFICATIONS AGAINST THE OFFICER
28 not less than ten days prior to any hearing.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall
30 take effect July 1, 1983.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

| | |
|---|----------------------|
| Annotated Code of Maryland (1971 Replacement Volume and 1974 Supplement) | 71 72 |
| BY adding to | 75 |
| Article 27 - Crimes and Punishments | 78 |
| Section 735 | 80 |
| Annotated Code of Maryland | 82 |
| (1971 Replacement Volume and 1974 Supplement) | 83 |
| SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Sections 727 and 730 of Article 27 - Crimes and Punishments, of the Annotated Code of Maryland (1971 Replacement Volume and 1974 Supplement) be and they are hereby repealed and re-enacted, with amendments, to read as follows: | 87 90 91 93 |
| Article 27 - Crimes and Punishments | 96 |
| 727. | 99 |
| (a) As used in the subtitle, the following words have the meanings indicated. | 102 103 |
| (b) "Law-enforcement officer" means any person who, in his official capacity, is authorized by law to make arrests and who is a member of one of the following law-enforcement agencies: | 105 106 107 |
| (1) The Maryland State Police; or | 109 |
| (2) The Baltimore City police department; or | 111 |
| (3) The police department, bureau or force of any county; or | 113 |
| (4) The police department, bureau or force of any incorporated city or town; or | 115 116 |
| (5) The office of the sheriff of any county; or | 118 |
| (6) The police department, bureau or force of any bicounty agency or the University of Maryland[.] ; OR | 120 121 |
| (7) THE STATE AVIATION ADMINISTRATION POLICE FORCE OF THE DEPARTMENT OF TRANSPORTATION AND THE TOLL FACILITIES POLICE FORCE OF THE MARYLAND TRANSPORTATION AUTHORITY; OR | 123 124 125 |
| (8) THE POLICE OFFICERS OF THE DEPARTMENT OF NATURAL RESOURCES. | 127 |

By: Delegate Wagner (by Request)
 Introduced and read first time: March 3, 1975
 Assigned to: Judiciary

Committee Report: Favorable with amendments
 House Action: Adopted
 Read second time: March 28, 1975

CHAPTER _____

AN ACT concerning

Law-enforcement Officers - Bill of Rights

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| FOR the purpose of providing that the provisions of this subtitle apply to the police forces of the State Aviation Administration of the Department of Transportation, the Toll Facilities of the Maryland Transportation Authority and the Department of Natural Resources but do not apply to law-enforcement officers in a probationary status, except when allegations of brutality are involved, or persons serving at the pleasure of the head of the agency; changing the name of "Investigating Committee" to "Hearing Board" and providing for the selection of the Hearing Board; clarifying language under the definition of "Hearing" to specify that testimony is taken under oath at a hearing; defining "Summary Punishment" and "Chief" as used in this subtitle; providing that certain punitive action may be taken without an investigation or formal hearing; providing that the Chief shall have [[power to subpoena witnesses, administer oaths and compel production of evidence, and providing penalties and generally relating thereto]] <u>certain powers in regard to investigations under this subtitle</u> ; and providing for summary punishment and emergency suspension by higher ranking law-enforcement officers; and clarifying language. | 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 |
| BY repealing and re-enacting, with amendments, | 64 |
| Article 27 - Crimes and Punishments | 67 |
| Section 727 and 730 | 69 |

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
 [Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to the bill.
 [[Double brackets]] enclose matter stricken out of bill.
 Numerals at right identify computer lines of text.

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|---|-----|
| Annotated Code of Maryland | 71 |
| (1971 Replacement Volume and 1974 Supplement) | 72 |
| BY adding to | 75 |
| Article 27 - Crimes and Punishments | 78 |
| Section 735 | 80 |
| Annotated Code of Maryland | 82 |
| (1971 Replacement Volume and 1974 Supplement) | 83 |
| SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF | 87 |
| MARYLAND, That Sections 727 and 730 of Article 27 - | 90 |
| Crimes and Punishments, of the Annotated Code of Maryland | 91 |
| (1971 Replacement Volume and 1974 Supplement) be and they | 93 |
| are hereby repealed and re-enacted, with amendments, to | |
| read as follows: | |
| Article 27 - Crimes and Punishments | 96 |
| 727. | 99 |
| (a) As used in the subtitle, the following words | 102 |
| have the meanings indicated. | 103 |
| (b) "Law-enforcement officer" means any person who, | 105 |
| in his official capacity, is authorized by law to make | 106 |
| arrests and who is a member of one of the following | 107 |
| law-enforcement agencies: | |
| (1) The Maryland State Police; or | 109 |
| (2) The Baltimore City police department; or | 111 |
| (3) The police department, bureau or force of any | 113 |
| county; or | |
| (4) The police department, bureau or force of any | 115 |
| incorporated city or town; or | 116 |
| (5) The office of the sheriff of any county; or | 118 |
| (6) The police department, bureau or force of any | 120 |
| bicounty agency or the University of Maryland[.]; OR | 121 |
| (7) THE STATE AVIATION ADMINISTRATION POLICE FORCE | 123 |
| OF THE DEPARTMENT OF TRANSPORTATION AND THE TOLL | 124 |
| FACILITIES POLICE FORCE OF THE MARYLAND TRANSPORTATION | |
| AUTHORITY; OR | 125 |
| (8) THE POLICE OFFICERS OF THE DEPARTMENT OF | 127 |
| NATURAL RESOURCES. | |

"LAW-ENFORCEMENT OFFICER" DOES NOT INCLUDE AN OFFICER SERVING IN A PROBATIONARY STATUS EXCEPT WHEN ALLEGATIONS OF BRUTALITY IN THE EXECUTION OF HIS DUTIES ARE MADE INVOLVING AN OFFICER WHO IS IN A PROBATIONARY STATUS. THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO PERSONS SERVING AT THE PLEASURE OF THE POLICE COMMISSIONER OF BALTIMORE CITY.

(c) "[Investigating committee] HEARING BOARD" means a [committee from within a law-enforcement agency] BOARD which is authorized BY THE CHIEF to hold a hearing on a complaint against a law-enforcement officer and which consists of not less than three members, ALL TO BE APPOINTED BY THE CHIEF AND [[SELECTED]] SELECTED FROM LAW-ENFORCEMENT OFFICERS WITHIN THAT AGENCY, OR LAW-ENFORCEMENT OFFICERS OF ANOTHER AGENCY WITH THE APPROVAL OF THE CHIEF OF THE OTHER AGENCY, AND who have had no part in the investigation or interrogation of the law-enforcement officer. AT LEAST ONE MEMBER OF THE HEARING BOARD SHALL BE OF THE SAME RANK AS THE LAW-ENFORCEMENT OFFICER AGAINST WHOM THE COMPLAINT HAS BEEN FILED.

(d) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation[,] at which no testimony is taken under oath, conducted by [an investigating committee] A HEARING BOARD for the purpose of taking or adducing testimony or receiving other evidence.

(e) "SUMMARY PUNISHMENT" IS PUNISHMENT IMPOSED BY THE HIGHEST RANKING OFFICER OF A UNIT OR MEMBER ACTING IN THAT CAPACITY, WHICH MAY BE IMPOSED WHEN THE FACTS CONSTITUTING THE OFFENSE ARE NOT IN DISPUTE. SUMMARY PUNISHMENT MAY NOT EXCEED THREE DAYS SUSPENSION WITHOUT PAY OF A FINE OF \$150.

(f) "CHIEF" MEANS THE SUPERINTENDENT, COMMISSIONER, CHIEF OF POLICE, OR SHERIFF OF A LAW-ENFORCEMENT AGENCY, OR THE OFFICER DESIGNATED BY THE OFFICIAL.

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(a) If the investigation or interrogation of a law-enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, EXCEPT IN THE CASE OF SUMMARY PUNISHMENT OR EMERGENCY SUSPENSION AS ALLOWED BY SECTION 735 OF THIS SUBTITLE AND before taking such action, the law-enforcement agency shall give notice to the law-enforcement officer that he is entitled to a hearing on the issues by [an investigating committee] A HEARING BOARD. The notice shall state the time and place

of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing. 174
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(b) The hearing shall be conducted by the [investigating committee] HEARING BOARD of the law-enforcement agency by which the law-enforcement officer is employed. Both the law-enforcement agency and the law-enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel. 177
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(c) Evidence which possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs shall be admissible and shall be given probative effect. The [investigating committee] HEARING BOARD conducting the hearing shall give effect to the rules of privilege recognized by law, and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All records and documents which any party desires to use shall 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. 184
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(d) Every party has the right of cross-examination of the witnesses who testify, and may submit rebuttal evidence. 195
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(e) The [investigating committee] HEARING BOARD conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified beforehand of the material so noticed. 198
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(F) WITH RESPECT TO THE SUBJECT OF ANY INVESTIGATION OR HEARING CONDUCTED PURSUANT TO THIS SUBTITLE, THE CHIEF MAY [[SUBPOENA WITNESSES AND]] ADMINISTER OATHS OR AFFIRMATIONS AND EXAMINE ANY INDIVIDUAL UNDER OATH[, AND MAY REQUIRE AND COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, CONTRACTS AND OTHER DOCUMENTS]]. 204
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(G) WITNESS FEES AND MILEAGE, IF CLAIMED, SHALL BE ALLOWED THE SAME AS FOR TESTIMONY IN A CIRCUIT COURT. WITNESS FEES, MILEAGE, AND THE ACTUAL EXPENSES NECESSARILY INCURRED IN SECURING ATTENDANCE OF WITNESSES AND THEIR TESTIMONY SHALL BE ITEMIZED, AND SHALL BE PAID BY THE LAW-ENFORCEMENT AGENCY. 210
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[[H) SUBPOENAS OF WITNESSES SHALL BE SERVED BY THE LAW-ENFORCEMENT AGENCY OR THE SHERIFF IN THE SAME MANNER AS IF ISSUED FROM A CIRCUIT COURT. IF ANY INDIVIDUAL FAILS TO OBEY A SUBPOENA LAWFULLY SERVED, THE 215
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CHIEF SHALL REPORT IMMEDIATELY THE DISOBEDIENCE, TOGETHER WITH A COPY OF THE SUBPOENA AND PROOF OF SERVICE, TO THE BALTIMORE CITY COURT OR THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE INDIVIDUAL WAS REQUIRED TO APPEAR, AND THE COURT SHALL FORTHWITH CAUSE SUCH INDIVIDUAL TO BE PRODUCED AND SHALL IMPOSE PENALTIES AS THOUGH HE HAD DISOBEYED A SUBPOENA ISSUED OUT OF COURT.

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(I) ANY PERSON WILFULLY TESTIFYING FALSELY UNDER OATH AS TO ANY MATTER MATERIAL TO ANY INVESTIGATION OR HEARING SHALL UPON CONVICTION BE GUILTY OF PERJURY AND BE PUNISHED ACCORDINGLY.

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(J) ANY PERSON WILFULLY FAILING TO ATTEND, ANSWER, OR PRODUCE RECORDS, DOCUMENTS OR OTHER EVIDENCE REQUESTED BY THE CHIEF OR WHO WILFULLY FAILS TO GIVE THE CHIEF FULL AND TRUTHFUL INFORMATION AND ANSWER IN WRITING TO ANY MATERIAL WRITTEN INQUIRY OF THE CHIEF, RELATIVE TO THE SUBJECT OF ANY INVESTIGATION OR HEARING, OR WILFULLY FAILS TO APPEAR AND TESTIFY UNDER OATH BEFORE THE CHIEF, SHALL UPON CONVICTION, IN ADDITION TO OR IN LIEU OF ANY OTHER PENALTY OR PENALTIES APPLICABLE, BE CONSIDERED GUILTY OF A MISDEMEANOR, AND UPON CONVICTION BE PUNISHED BY A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BOTH.]]

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SECTION 2. AND BE IT FURTHER ENACTED, That new Section 735 be and it is hereby added to Article 27 - Crimes and Punishments, of the Annotated Code of Maryland (1971 Replacement Volume and 1974 Supplement) to read as follows:

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Article 27 - Crimes and Punishments 248

735. 251

(A) THE PROVISIONS OF THIS SUBTITLE ARE NOT INTENDED TO PROHIBIT SUMMARY PUNISHMENT OR EMERGENCY SUSPENSION BY HIGHER RANKING LAW-ENFORCEMENT OFFICERS AS MAY BE DESIGNATED BY THE HEAD OF A LAW-ENFORCEMENT AGENCY.

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(1) SUMMARY PUNISHMENT MAY BE IMPOSED FOR MINOR VIOLATIONS OF DEPARTMENTAL RULES AND REGULATIONS WHEN: (I) THE FACTS WHICH CONSTITUTE THE MINOR VIOLATION ARE NOT IN DISPUTE; (II) THE OFFICER WAIVES THE HEARING PROVIDED BY THIS SUBTITLE; AND (III) THE OFFICER ACCEPTS THE PUNISHMENT IMPOSED BY THE HIGHEST RANKING OFFICER OF THE UNIT TO WHICH THE OFFICER IS ATTACHED.

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(2) EMERGENCY SUSPENSION MAY BE IMPOSED BY THE CHIEF WHEN IT APPEARS THAT THE ACTION IS IN THE BEST INTEREST OF THE PUBLIC AND THE LAW-ENFORCEMENT AGENCY. ANY PERSON SO SUSPENDED SHALL BE ENTITLED TO A PROMPT HEARING.

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SECTION 3. AND IF IT FURTHER ENACTED, That this Act shall take effect July 1, 1975.

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Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.

BILL OF RIGHTS - F.O.P. 89

728.

(B) Whenever a law enforcement officer is under investigation or subjected to interrogation by a law enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

1. The interrogation shall be conducted at a reasonable hour, preferably at a time when the law enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

2. The interrogation shall take place either 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, unless otherwise waived by the law enforcement officer.

3. The law enforcement officer under investigation shall be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator.

4. No complaint against a law enforcement officer, alleging brutality in the execution of his duties, shall be investigated unless the complaint be duly sworn to before an official authorized to administer oaths.

5. The law enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation, and of the names of all witnesses.

6. Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

7. The law enforcement officer under interrogation shall not be threatened with transfer, dismissal, or disciplinary action.

8. A complete record, either written, taped or transcribed, shall be kept of the complete interrogation of a law enforcement officer, including all recess periods. A copy of the record shall be available to the officer or his counsel upon request.

9. If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

10. At the request of any law enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present at all times during the interrogation, unless waived by the law enforcement officer. The interrogation shall be suspended for a reasonable time unless representation can be obtained.

11. No statute shall abridge nor shall any law enforcement agency adopt any regulation which prohibits the right of a law enforcement officer to bring suit arising out of his duties as a law enforcement officer.

12. No law enforcement agency shall insert any adverse material into any 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 upon the adverse material, unless the officer waives these rights.

March '75

(2) The Division of Parole and Probation shall file an annual report to the Administrative Office of the Courts.

(i) *Responsibility of public or private agency; unsuitable worker; authority of court to order restitution not limited.* — (1) Any public or private agency that requests the assignment of a community service worker is responsible for supervising the worker.

(2) Any public or private agency must accept the assignment of a community service worker on the terms and conditions imposed by the court.

(3) Any public or private agency may report the unsuitability of a community service worker to the court. If a worker is reported to be unsuitable, the court shall remove the worker from a project and, after considering all the facts and circumstances, may reassign the worker or take other action allowed by law.

(4) Nothing in this section shall be construed as a limitation on the authority of the court to direct any juvenile who has been adjudged delinquent or any defendant in a criminal case to make restitution to the victim of a particular crime or to perform certain services for the victim as an alternative means of restitution, either as a condition of probation, condition of suspended sentence or in lieu of payment of any fines or court costs imposed, under the supervision of the Division of Parole and Probation or any other agency or individual as directed by the court. (1979, ch. 385.)

LAW-ENFORCEMENT OFFICERS' BILL OF RIGHTS

§ 727. Definitions.

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

(b) "*Law-enforcement officer*" means any person who, in his official capacity, is authorized by law to make arrests and who is a member of one of the following law-enforcement agencies:

- (1) The Maryland State Police;
- (2) The Baltimore City Police Department;
- (3) The police department, bureau, or force of any county;
- (4) The police department, bureau, or force of any incorporated city or town;
- (5) The office of the sheriff of any county;
- (6) The police department, bureau, or force of any bicounty agency or the University of Maryland;

(7) The State Aviation Administration police force of the Department of Transportation, the Mass Transit Administration police force of the Department of Transportation, the Maryland toll facilities police force of the Maryland Transportation Authority, and the Maryland Port Administration police force of the Department of Transportation;

(8) The police officers of the Department of Natural Resources; or

(9) The Maryland Alcohol and Tobacco Tax Enforcement Unit.

(c) "*Law-enforcement officer*" does not include an officer serving in a probationary status except when allegations of brutality in the execution of his or her duties are made involving an officer who is in a probationary status. The

provisions of this subtitle do not apply to persons serving at the pleasure of the Police Commissioner of Baltimore City or the appointing authority of a charter county. The term "probationary status" includes only an officer who is in that status upon initial entry into the Department.

(d) "*Hearing boards*" mean

(1) A board which is authorized by the chief to hold a hearing on a complaint against a law-enforcement officer and which consists of not less than three members, except as provided in paragraph (2) of this subsection, all to be appointed by the chief and selected from law-enforcement officers within that agency, or law-enforcement officers of another agency with the approval of the chief of the other agency, and who have had no part in the investigation or interrogation of the law-enforcement officer. At least one member of the hearing board shall be of the same rank as the law-enforcement officer against whom the complaint has been filed.

(2) If a law-enforcement officer is offered summary punishment imposed pursuant to § 734A and refuses, the chief may convene a one-member or more hearing board and the hearing board shall have only the authority to recommend the sanctions as provided in this subtitle for summary punishment. If a single member hearing board is convened, that member need not be of the same rank. However, all other provisions of this subtitle shall apply.

(e) "*Hearing*" means any meeting in the course of an investigatory proceeding, other than an interrogation, at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or adducing testimony or receiving other evidence.

(f) "*Summary punishment*" is punishment imposed by the highest ranking officer of a unit or member acting in that capacity, which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three days suspension without pay or a fine of \$150.

(g) "*Chief*" means the superintendent, commissioner, chief of police, or sheriff of a law-enforcement agency, or the officer designated by the official. (1974, ch. 722; 1975, ch. 809, § 1; 1977, ch. 366; 1981, ch. 328.)

Effect of amendment. — The 1981 amendment, effective July 1, 1981, deleted "or" at the end of each subdivision in subsection (b), with the exception of subdivision (8), redesignated former subsection (b-1) to be present subsection (c), added "or her" in the first sentence in that subsection, added "or the appointing authority of a charter county" at the end of the second sentence therein and redesignated former subsections (c) to (f) to be present subsections (d) to (g).

Police chiefs entitled to benefits under this subtitle. — The Law Enforcement Officers' Bill of Rights expressly contemplates that chiefs or other heads of police departments are entitled to its benefits. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Law Enforcement Officers' Bill of Rights is not limited to tenured law enforcement officers. *DiGrazia v. County Executive*, 288

Md. 437, 418 A.2d 1191 (1980).

Whatever hearing rights employees of State Aviation Administration and Maryland toll facilities police forces have are found under this subtitle. 62 Op. Att'y Gen. 686 (1977).

Subsection (b) (5) excludes Sheriff of Baltimore City. — To read subsection (b) (5) of this section to include the Sheriff of Baltimore City would be unreasonable under article 1, § 14. *Sheriff of Baltimore City v. Abshire*, 44 Md. App. 256, 408 A.2d 398 (1979).

Determination of "initial entry". — The plaintiff's "initial entry" within the meaning of subsection (c) of this section was when he was hired for the second time in 1976. To view the subsection otherwise would mean that a probationary police officer could, with the cooperation of his employer, obtain permanent status by the simple expedient process of

leaving his employment and then being rehired. *Moore v. Town of Fairmount Heights*, 285 Md. 578, 403 A.2d 1252 (1979).
Quoted in *Police Comm'r v. Dowling*, 281

Md. 412, 379 A.2d 1007 (1977).
Cited in *Allgood v. Somerville*, 43 Md. App. 187, 403 A.2d 837 (1979).

§ 728. Right to engage in political activity; investigation or interrogation of officer; officer's right to sue; adverse material in officer's file.

(a) *Right to engage in political activity.* — A law-enforcement officer has the same rights to engage in political activity as are afforded to any State employee. This right to engage in political activity shall not apply to any law-enforcement officer when he is on duty or when he is acting in his official capacity.

(b) *Procedure to be followed at interrogation or investigation; record; representation by counsel; statute or regulation abridging right to sue; insertion of adverse material into officer's file; chief under investigation; polygraph examination.* — Whenever a law-enforcement officer is under investigation or subjected to interrogation by a law-enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the law-enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

(2) The interrogation shall take place either 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, unless otherwise waived by the law-enforcement officer, or at any other reasonable and appropriate place.

(3) The law-enforcement officer under investigation shall be informed of the name, rank, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator during any one interrogating session consistent with the provisions of subsection (b) (6) of this section.

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

(5) The law-enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation. Upon completion of the investigation, the law-enforcement officer shall be notified of the name of any witness not less than ten days prior to any hearing.

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(6) Interrogating sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

(7) (i) The law-enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

(ii) This subtitle does not prevent any law-enforcement agency from requiring a law-enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations which specifically relate to the subject matter of the investigation. This subtitle does not prevent a law-enforcement agency from commencing any action which may lead to a punitive measure as a result of a law-enforcement officer's refusal to submit to a blood alcohol test, blood, breath, or urine tests for controlled dangerous substances, polygraph examination, or interrogation, after having been ordered to do so by the law-enforcement agency. The results of any blood alcohol test, blood, breath, or urine test for controlled dangerous substances, polygraph examination, or interrogation, as may be required by the law-enforcement agency under this subparagraph are not admissible or discoverable in any criminal proceedings against the law-enforcement officer when the law-enforcement officer has been ordered to submit thereto. The results of a polygraph examination may not be used as evidence in any administrative hearing when the law-enforcement officer has been ordered to submit to a polygraph examination by the law-enforcement agency unless the agency and the law-enforcement officer agree to the admission of the results at the administrative hearing.

(8) A complete record, either written, taped, or transcribed, shall be kept of the complete interrogation of a law-enforcement officer, including all recess periods. Upon completion of the investigation, and upon request of the law-enforcement officer under investigation or his counsel, a copy of the record of his interrogation shall be made available not less than ten days prior to any hearing.

(9) If the law-enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

(10) At the request of any law-enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present at all times during the interrogation, unless waived by the law-enforcement officer. The interrogation shall be suspended for a period of time not to exceed ten days until representation is obtained. However, the chief may, for good cause shown, within that ten day period, extend that period of time.

(11) A statute may not abridge and a law-enforcement agency may not adopt any regulation which prohibits the right of a law-enforcement officer to bring suit arising out of his duties as a law-enforcement officer.

(12) (i) A law-enforcement agency may not insert any adverse material into any file of the officer, except the file of the internal investigation or the intelli-

gence division, unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing upon the adverse material, unless the officer waives these rights.

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

1. The law enforcement agency investigating the complaint has exonerated the officer of all charges in the complaint, or determined that the charges were unsustainable or unfounded; and

2. Three years have passed since the findings by the law enforcement agency.

(13) (i) If the chief is the law-enforcement officer under investigation, the chief of another law-enforcement agency in this State shall function as the law-enforcement officer of the same rank on the hearing board.

(ii) If the chief of a State law-enforcement agency is under investigation, the Governor shall appoint the chief of another law-enforcement agency as the law-enforcement officer of the same rank on the hearing board.

(iii) If the chief of a county or municipal law-enforcement agency is under investigation, the official who may appoint the chief's successor shall appoint the chief of another law-enforcement agency as the officer of the same rank on the hearing board.

(iv) If the chief of a State law-enforcement agency or the chief of a county or municipal law-enforcement agency is under investigation, the official who may appoint the chief's successor, or that official's designee, shall function as chief for the purposes of this subtitle.

(14) The law-enforcement officer's representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner, if the questions to be asked are reviewed with the law-enforcement officer or his representative prior to the administration of the examination, the representative is allowed to observe the administration of the polygraph examination, and if a copy of the final report of the examination by the certified polygraph operator is made available to the law-enforcement officer or his representative within a reasonable time, not to exceed ten days, after the completion of the examination.

(c) *Effect of subtitle on chief's authority.* — This subtitle does not limit the authority of the chief to regulate the competent and efficient operation and management of a law-enforcement agency by any reasonable means including but not limited to, transfer and reassignment where that action is not punitive in nature and where the chief determines that action to be in the best interests of the internal management of the law-enforcement agency. (1974, ch. 722; 1977, ch. 366; 1981, chs. 392, 456.)

Effect of amendments. — Chapter 392, Acts 1981, effective July 1, 1981, designated the former provisions of paragraph (12) in subsection (b) as subparagraph (i) and added subparagraph (ii).

Chapter 456, Acts 1981, effective July 1, 1981, added "or discoverable" in the third sentence in subparagraph (ii) of paragraph (7) in subsection (b).

Purpose of subtitle. — This subtitle was enacted primarily to assure that certain procedural guarantees would be offered to police officers during any investigation and subsequent hearing which could lead to disciplinary action, demotion, or dismissal. *DiGrazia v. County Executive*, 43 Md. App. 580, 406 A.2d 660 (1979), rev'd on other grounds, 288 Md. 437, 418 A.2d 1191 (1980).

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This subtitle should not be construed as a tenure provision. *Allgood v. Somerville*, 43 Md. App. 187, 403 A.2d 837 (1979).

Police chiefs entitled to benefits under this subtitle. — The Law Enforcement Officers' Bill of Rights expressly contemplates that chiefs or other heads of police departments are entitled to its benefits. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Law Enforcement Officers' Bill of Rights is not limited to tenured law enforcement officers. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

This subtitle provides protection during inquiry. — Any law-enforcement officer covered by the Law Enforcement Officers' Bill of Rights is entitled to its protections during any inquiry into his conduct which could lead to the imposition of a disciplinary sanction. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Rights under § 733 separate from requirements of section. — The right under § 733 of this article not to be discharged "by reason of the lawful exercise of (the officer's) constitutional rights" is separate and independent of any requirement that an investigation be conducted under this section, and does not depend upon whether such an investigation was conducted. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Subsection (b) (3) means that in a particular interrogation session only one person may conduct the interrogation. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Successive interrogations not proscribed. — Nothing in subsection (b) (3) of this section proscribes successive interrogations, so long as there is compliance with subsection (b) (6) of this section. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Miranda warnings not required. —

Where, when interviewed, officer was not a suspect, nor was there any reason to believe he was involved in the misdeeds and unlawful acts of some of the police officers which were the subject of the police department investigation, Miranda warnings were no more required to be read, at that point, to the officer than they would be to any witness not a suspect before a statement is made. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Polygraph examination not necessary. — Where officer was thought to be merely a witness who might possibly aid the county police department's investigation, there was no necessity to conduct a polygraph examination of the officer in accordance with this section. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Meaning of subsection (b) (8). — Subsection (b) (8) of this section, wherein it states that the record of the interrogation shall be "either written, taped or transcribed," means that the record may be wholly written, or wholly taped, or wholly transcribed, or a combination of any two or more of the three methods, so long as there is a complete and preserved record for the review by counsel and by a court, if there be an appeal. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Subsection (b) (11) may not be lifted out of subsection (b) and considered apart from balance of statute as a separate statutory provision, so as to elevate it to a status never intended and confer upon it a meaning wholly distinct from that given it by the legislature. *Brady v. Mayor of Laurel*, 40 Md. App. 373, 392 A.2d 89 (1978).

Stated in Police Comm'r v. Dowling, 281 Md. 412, 379 A.2d 1007 (1977).

Cited in Abbott v. Administrative Hearing Bd., 33 Md. App. 681, 366 A.2d 756 (1976); *State of Md. Comm'n on Human Relations v. Prince George's County*, 285 Md. 205, 401 A.2d 661 (1979).

§ 729. Disclosure by officer of property, income, etc.

A law-enforcement officer may not be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures (including those of any member of his family or household) unless that information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, or unless such disclosure is required by State or federal law. (1974, ch. 722; 1977, ch. 366.)

Deputy sheriffs of Baltimore City omitted. — The General Assembly, having placed the deputy sheriffs of Baltimore City within the State Merit Law, purposely omitted

that office from the protection afforded by this subtitle. *Sheriff of Baltimore City v. Abshire*, 44 Md. App. 256, 408 A.2d 398 (1979).

§ 730. Hearing before demotion, dismissal, transfer, etc.

(a) *Notice; record.* — If the investigation or interrogation of a law-enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, except in the case of summary punishment or emergency suspension as allowed by § 734A of this subtitle and before taking that action, the law-enforcement agency shall give notice to the law-enforcement officer that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing.

(b) *Conduct of hearing.* — The hearing shall be conducted by a hearing board. Both the law-enforcement agency and the law-enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. Both may be represented by counsel.

(c) *Evidence.* — Evidence which possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs shall be admissible and shall be given probative effect. The hearing board conducting the hearing shall give effect to the rules of privilege recognized by law, and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. All records and documents which any party desires to use shall 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.

(d) *Cross-examination and rebuttal of witnesses.* — Every party has the right of cross-examination of the witnesses who testify, and may submit rebuttal evidence.

(e) *Judicial notice.* — The hearing board conducting the hearing may take notice of judicially cognizable facts and, in addition, may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity and reasonable time to contest the facts so noticed. A hearing board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

(f) *Oaths or affirmations.* — With respect to the subject of any hearing conducted pursuant to this subtitle, the chief or the officer designated by the chief shall administer oaths or affirmations and examine any individual under oath.

(g) *Witness fees and expenses.* — Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the law-enforcement agency.

(h) *Summonses.* — (1) The chief, or hearing board, as the case may be, shall in connection with any disciplinary hearing, have the power to administer oaths and to issue summonses to compel the attendance and testimony of witnesses, and the production of books, papers, records, and documents as may

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be relevant or necessary. These summonses may be served in accordance with the Maryland Rules of Procedure pertaining to service of process issued by a court, without cost. Any party may request the chief or hearing board to issue a summons or order under the provisions of this subtitle.

(2) In case of disobedience or refusal to obey any of these summonses, the chief, or hearing board, may apply to the Baltimore City Court or the circuit court of any county, as the case may be, where the summonsed party resides or conducts business, for an order requiring the attendance and testimony of the witness and the production of books, papers, records, and documents, without cost. Upon a finding that the attendance and testimony of the witness, or the production of the books, papers, records, and documents sought is relevant or necessary, the court may issue an order requiring the attendance, testimony, or production of books, papers, records and documents without cost, and any failure to obey an order of the court may be punished by the court as a contempt thereof. (1974, ch. 722; 1975, ch. 809, § 1; 1977, ch. 366.)

This subtitle provides protection during inquiry. — Any law-enforcement officer covered by the Law Enforcement Officers' Bill of Rights is entitled to its protections during any inquiry into his conduct which could lead to the imposition of a disciplinary sanction. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Procedural safeguards applicable to police officers. — The purpose of the Law-Enforcement Officers' Bill of Rights was to guarantee that certain procedural safeguards be offered to police officers during any investigation and subsequent hearing which could lead to disciplinary action, demotion or dismissal. *Abbott v. Administrative Hearing Bd.*, 33 Md. App. 681, 366 A.2d 756 (1976); *DiGrazia v. County Executive*, 43 Md. App. 580, 406 A.2d 660 (1979), rev'd on other grounds, 288 Md. 437, 418 A.2d 1191 (1980).

From the inception of a departmental, disciplinary proceeding to its final conclusion, a police officer is entitled to the safeguards provided for in §§ 727-734 of this article, Law-Enforcement Officers' Bill of Rights, and article 41, §§ 244-256A, the Administrative Procedure Act. *Commissioner, Baltimore City Police Dep't v. Cason*, 34 Md. App. 487, 368 A.2d 1067 (1977).

Establishment of different procedures regarding police officers justified. — The nature of the duties of police officers is sufficiently different from those of other public employees to justify the establishment of different procedures to be employed in disciplinary actions involving police officers from those involving other county employees. *Abbott v. Administrative Hearing Bd.*, 33 Md. App. 681, 366 A.2d 756 (1976).

Local grant of authority to the Baltimore City Police Commissioner to regulate disci-

pline and the like of police officers must be considered in conjunction with this section. *Hoyt v. Police Comm'r*, 279 Md. 74, 367 A.2d 924 (1977).

No equivalency to criminal proceeding. — Nothing in this section requires, or suggests, that it is the equivalent of a criminal proceeding. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Nonpermanent officer not entitled to hearing. — Since the plaintiff was not a permanent police officer because of his failure to successfully complete a training course at the Police Academy, he was not entitled to a hearing under this subtitle. *Moore v. Town of Fairmount Heights*, 285 Md. 578, 403 A.2d 1252 (1979).

Person may not be compelled to testify against himself. — Although subsection (c) of this section does provide "the hearing board conducting the hearing shall give effect to the rules of privilege recognized by law," that wording means that a person may not be compelled to testify against himself. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Mandate of section was satisfied where the police department notified the officer of the charges and the hearing; kept a record of the hearing; afforded the officer ample opportunity to present both evidence and argument with respect to the issues involved; admitted probative evidence; allowed officer's counsel wide latitude in cross-examination of departmental witnesses; and made extensive findings of fact in its report and recommendations to the police chief. *Widomski v. Chief of Police*, 41 Md. App. 361, 397 A.2d 222 (1979).

Cited in Police Comm'r v. Dowling, 281 Md. 412, 379 A.2d 1007 (1977); *Allgood v. Somerville*, 43 Md. App. 187, 403 A.2d 837 (1979).

§ 731. Decision or order; findings of fact; recommendations for action; procedure following finding of guilt; punishment; final order or decision.

(a) Any decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A finding of not guilty terminates the action. If a finding of guilt is made, the hearing board shall reconvene the hearing, receive evidence, and consider the law-enforcement officer's past job performance and other relevant information as factors before making its recommendations to the chief. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law-enforcement officer or to his attorney or representative of record and to the chief. The person who may take any disciplinary action following any hearing in which there is a finding of guilt shall consider the law-enforcement officer's past job performance as a factor before he imposes any penalty.

(b) After the disciplinary hearing and a finding of guilt, the hearing board may recommend punishment as it deems appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment, or other similar action which would be considered a punitive measure.

(c) The written recommendations as to punishment are not binding upon the chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall review the findings, conclusions, and recommendations of the hearing board and then he shall issue his final order. The chief's final order and decision is binding and may be appealed in accordance with this subtitle. Before the chief may increase the recommended penalty of the hearing board, he personally shall review the entire record of the hearing board proceedings, shall permit the law-enforcement officer to be heard and shall state the reason for increasing the recommended penalty.

(d) Notwithstanding any other provisions of this subtitle, if a chief is an eyewitness to the incident under investigation, the decision of the hearing board, both as to findings of fact and punishment, if any, is final. The decision then may be appealed in accordance with § 732 of this subtitle. (1974, ch. 722; 1977, ch. 366.)

Purpose of subtitle. — This subtitle was enacted primarily to assure that certain procedural guarantees would be offered to police officers during any investigation and subsequent hearing which could lead to disciplinary action, demotion, or dismissal. *DiGrazia v. County Executive*, 43 Md. App. 580, 406 A.2d 660 (1979), rev'd on other grounds, 288 Md. 437, 418 A.2d 1191 (1980).

Construction with local law. — The Law-Enforcement Officers' Bill of Rights and the Code of Public Local Laws of Baltimore City relative to the Police Department of Baltimore

City are enactments of the General Assembly and may be construed and harmonized together. *Police Comm'r v. Dowling*, 281 Md. 412, 379 A.2d 1007 (1977).

Reason for delivery of copy of board's findings and recommendations to the officer in question, his attorney or other representative is in order that they might take due notice thereof and govern themselves accordingly relative to any further presentation to the Police Commissioner of Baltimore City. *Police Comm'r v. Dowling*, 281 Md. 412, 379 A.2d 1007 (1977).

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Dismissal proper notwithstanding recommendation for lesser punishment. — The Law-Enforcement Officers' Bill of Rights does not prevent the Police Commissioner of Baltimore City from dismissing an officer notwithstanding a recommendation for a lesser punishment by a hearing board. *Police Comm'r v. Dowling*, 281 Md. 412, 379 A.2d 1007 (1977).

Time for appeal would be computed from time of decision of the Police Commissioner of

Baltimore City. Police Comm'r v. Dowling, 281 Md. 412, 379 A.2d 1007 (1977).

Quoted in *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Cited in *Abbott v. Administrative Hearing Bd.*, 33 Md. App. 681, 366 A.2d 756 (1976); *Moore v. Town of Fairmount Heights*, 285 Md. 578, 403 A.2d 1252 (1979); *Allgood v. Somerville*, 43 Md. App. 187, 403 A.2d 837 (1979).

§ 732. Appeals.

Appeal from decisions rendered in accordance with § 731 shall be taken to the circuit court of the counties or the Baltimore City Court pursuant to Maryland Rule B2. Any party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals. (1974, ch. 722; 1977, ch. 366.)

Appeal procedures established by Bill of Rights control in conflict with local law. — Where the appeal procedures established by a local law of a county were in conflict with the Law-Enforcement Officers' Bill of Rights, the latter, as a public general law enacted by the General Assembly, was controlling. *Abbott v. Administrative Hearing Bd.*, 33 Md. App. 681, 366 A.2d 756 (1976).

Section not inconsistent with local law. — The fact that this section provides for appeals from decisions rendered in accordance with § 731 of this article does not compel a finding of inconsistency with the conduct of hearings as provided in the Code of Public Local Laws of Baltimore City. *Police Comm'r v. Dowling*, 281 Md. 412, 379 A.2d 1007 (1977).

Equal protection not denied. — Applica-

tion of the appeal procedures of the Law-Enforcement Officers' Bill of Rights does not deprive a county police officer of the equal protection of the law. *Abbott v. Administrative Hearing Bd.*, 33 Md. App. 681, 366 A.2d 756 (1976).

Time for appeal would be computed from time of decision of the Police Commissioner of Baltimore City. Police Comm'r v. Dowling, 281 Md. 412, 379 A.2d 1007 (1977).

Scope of review. — See *Commissioner, Baltimore City Police Dep't v. Cason*, 34 Md. App. 487, 368 A.2d 1067 (1977).

Stated in *Moore v. Town of Fairmount Heights*, 285 Md. 578, 403 A.2d 1252 (1979); *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

§ 733. Retaliation for exercising rights.

A law-enforcement officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to his employment or be threatened with any such treatment, by reason of his exercise of or demand for the rights granted in this subtitle, or by reason of the lawful exercise of his constitutional rights. (1974, ch. 722; 1977, ch. 366.)

Rights under section separate from requirements of § 728. — The right under this section not to be discharged "by reason of the lawful exercise of (the officer's) constitutional rights" is separate and independent of any requirement that an investigation be conducted under § 728 of this article, and does not depend upon whether such an investigation was conducted. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Determination of whether an employee's speech was constitutionally protected depends, as the United States Supreme Court said in *Pickering v. Board of Educ.*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968), on both the nature of the speech and the nature of the employment relationship. In considering the former, such factors as whether the speech related to a matter of public concern, and whether it was accurate or false and defam-

atory. In considering the latter element, an appraisal is necessary with respect to the impact of the speech on the employment relationship and on the efficiency of the public service. The relevant factors to examine include whether the speech was directed at someone with whom the speaker had a close working relationship for which it could persuasively be claimed that personal loyalty and confidence are necessary to its proper functioning, and whether the speech might disrupt discipline or harmony among coworkers. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Differentiation between policymaking and nonpolicymaking employees. — The United States Supreme Court in *Pickering v. Board of Educ.*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968), differentiated between confidential, policymaking employees and nonpolicymaking employees, indicating that the former had less stringent First Amendment protections than the latter. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

The test for balancing the right of an employee to First Amendment free speech protection, as set forth in *Pickering v. Board of Educ.*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968), permits consideration of whether the employee is a policymaking, as opposed to a nonpolicymaking official. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Employee's burden to show that questioned conduct motivated his removal. — Under the test formulated by the United States Supreme Court in *Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977), an employee has the burden to show that the questioned conduct was a substantial or motivating factor in

his removal. If this burden is discharged, then the burden shifts to the employer to prove by a preponderance of the evidence that he would not have continued the employment even absent the protected activity. The issue is to be resolved in favor of the employee only if the court finds that he would have been reemployed but for the protected conduct. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Determining violation of section a mixed question of law and fact. — Whether a director of police was removed from his position as a punitive measure for exercising his right of free speech — a right expressly protected by this section — was a mixed question of law and fact, not appropriate for resolution on summary judgment. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Director's removal resulting from exercise of his constitutional rights unlawful. — Although it is clearly within a county executive's power to remove the current director of police and replace him with another appointee, his decision to terminate the present director's employment would not be lawful if it was made because of the current director's exercise of constitutionally protected First Amendment rights. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Bald conclusionary statement in petition held demurrable. — Where a plaintiff files a petition under § 734 of this article which contains a bald conclusionary statement as to a violation of rights granted by this section, such statement is obviously demurrable, absent some factual recitation to support the cause of action thereunder. *Allgood v. Somerville*, 43 Md. App. 187, 403 A.2d 837 (1979).

§ 734. Application to court for show cause order.

Any law-enforcement officer who is denied any right afforded by this subtitle may apply at any time prior to the commencement of the hearing before the hearing board, either individually or through his certified or recognized employee organization, to the circuit court of the circuit or the Baltimore City Court where he is regularly employed for any order directing the law-enforcement agency to show cause why the right should not be afforded. (1974, ch. 722; 1977, ch. 366.)

Bald conclusionary statement in petition held demurrable. — Where a plaintiff files a petition under this section which contains a bald conclusionary statement as to a violation of rights granted by § 733 of this article, such statement is obviously demurrable, absent some factual recitation to support the cause of action thereunder. *Allgood v. Somerville*, 43 Md. App. 187, 403 A.2d 837 (1979).

Quoted in *Moore v. Town of Fairmount Heights*, 285 Md. 578, 403 A.2d 1252 (1979); *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

Cited in *DiGrazia v. County Executive*, 43 Md. App. 580, 440 A.2d 660 (1979), rev'd on other grounds, 288 Md. 437, 418 A.2d 1191 (1980).

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§ 734A. Summary punishment or emergency suspension.

The provisions of this subtitle are not intended to prohibit summary punishment or emergency suspension by higher ranking law-enforcement officers as may be designated by the head of a law-enforcement agency.

(1) Summary punishment may be imposed for minor violations of departmental rules and regulations when: (i) The facts which constitute the minor violation are not in dispute; (ii) the officer waives the hearing provided by this subtitle; and (iii) the officer accepts the punishment imposed by the highest ranking officer of the unit to which the officer is attached.

(2) Emergency suspension may be imposed by the chief when it appears that the action is in the best interest of the public and the law-enforcement agency. Any person so suspended shall be entitled to a prompt hearing. (1975, ch. 809, § 2.)

§ 734B. Conflicting law, ordinance or regulation; preemption of local legislation.

Except for the administrative hearing process provided for in Article 41, § 70A concerning the certification enforcement power of the police training commission, the provisions of this subtitle shall supercede any State, county or municipal law, ordinance, or regulation that conflicts with the provisions of this subtitle, and any local legislation shall be preempted by the subject and material of this subtitle. (1977, ch. 366; 1981, ch. 679.)

Effect of amendment. — The 1981 amendment, effective Jan. 1, 1982, added the exception at the beginning of the section.

Right to discharge police official restricted. — The Law Enforcement Officers' Bill of Rights does not unlawfully impair the authority of the county executive to remove or

replace a nontenured police department official, it simply restricts the right of the appointing authority to discharge such an official for a reason that runs afoul of its protective provisions. *DiGrazia v. County Executive*, 288 Md. 437, 418 A.2d 1191 (1980).

§ 734C. False statement, report or complaint.

Any person who knowingly makes a false statement, report, or complaint in the course of an investigation or any proceeding conducted under the provisions of this subtitle is subject to the same penalties as provided in Article 27, § 150. (1977, ch. 366.)

§ 734D. Waiver of rights.

Any officer may waive in writing any or all rights provided in this subtitle. (1977, ch. 366.)

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