



**Testimony for the House Judiciary Committee  
March 12, 2015**

**HB 968 – Law Enforcement Officers’ Bill of Rights – Alterations  
SUPPORT**

The ACLU of Maryland supports HB 968, which makes changes to the Law Enforcement Officers’ Bill of Rights to enable greater accountability and transparency.

Enacted in 1974, the Maryland Law Enforcement Officer Bill of Rights (LEOBR) is widely recognized as out of step with the rest of the nation. In brief, the LEOBR covers two components of the disciplinary process: the conduct of internal investigations that may lead to a recommendation of disciplinary action against a police officer; and procedures that must be followed once an investigation results in a recommendation of discipline. While the ACLU of Maryland is a firm believer in due process, the LEOBR goes too far in giving police special rights and is widely considered a barrier to police accountability.

Criminal justice expert Professor Samuel Walker compared the Law Enforcement Officers’ Bill of Rights across the country. His conclusion:

The Maryland Law Enforcement Officers’ Bill of Rights (LEOBR) contains several provisions that impede the effective investigation of alleged officer misconduct, and in that respect is a barrier to police accountability.

Among the twelve state statutory bills of rights for police officers across the country, the Maryland law stands out as one of the two worst, with respect to accountability. Only the Rhode Island statute has similar provisions. The other ten state laws do not have provisions that pose such serious obstacles to accountability.<sup>1</sup>

The proposed reforms of the LEOBR in HB 968 seek to address barriers to timely review and discipline; remove arbitrary hurdles to citizens’ ability to complain about police behavior; ensure a fair process; and allow for the possibility of meaningful civilian review of police behavior. These changes bring an extreme statute in line with the rules governing police in other states and, more generally, with the rules that govern other public employees in Maryland. Furthermore, and equally importantly, making these changes will be a step towards real accountability, transparency, and restoring public trust in police.

**Timely Review**

The LEOBR states that officers may not be formally questioned by their superiors for 10 days following an incident. While officers are entitled to an attorney, union attorneys are generally available immediately for officers, and there is no need for an additional waiting period. 10 days simply impedes investigation and significantly delays the ability of police departments to communicate effectively with the public about what happened.

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<sup>1</sup> See Samuel Walker, School of Criminology and Criminal Justice, University of Nebraska at Omaha, *The Maryland Law Enforcement Officers’ Bill of Rights: A Barrier to Police Accountability* (2015)(attached). See also Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights*, Public Interest Law Journal, Vol. 14, at <http://samuelwalker.net/wp-content/uploads/2010/06/POBillsOfRights.pdf>.

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### **Arbitrary Barriers to Civilian Complaints**

Currently, excessive force complaints must be brought within 90 days and must be notarized. That means anyone in the hospital, in jail, unaware of his or her rights, or unable to obtain a notarized document is effectively prevented from filing an excessive force complaint. No other complaint has these restrictions; as a result, arguably the most serious complaint that can be filed is the hardest to file. The U.S. Department of Justice, in its “Principles for Promoting Police Integrity,” recommends that:

Civilians should be provided a full and fair opportunity to file complaints alleging officer misconduct. Civilians should be allowed to file complaints in-person, by mail, by telephone, by facsimile transmission, or, where possible, by-email.

...

Complaints should be accepted from all individuals, including those who request anonymity. Complaints should be accepted from third parties to ensure that witnesses of abuse or misconduct can file complaints as well as victims of such misconduct.<sup>2</sup>

Maryland’s LEOBR should be amended to delete the barriers to filing police brutality complaints.

Finally, under the current law all disciplinary actions must be brought within one year of act in question coming to the attention of agency officials. However, information establishing official misconduct is often uncovered through civil litigation after the year time limit has passed, so the agency is barred from disciplining the offending officer. The bill allows departments to act on such information.

### **Fair Process**

Under the current LEOBR, a chief has limited authority to discipline an officer. While there are instances where officers accept discipline proposed by their superiors, the LEOBR provides that a hearing board, including a member of equal rank of the officer being investigated, adjudicates allegations of misconduct. After the hearing board offers its recommendation, the recommendation goes to the chief. This process puts the appeal before the decision, and takes the decision out of the hands of the Chief of the department, where it belongs. And in some jurisdictions, the hearing boards decisions regarding what discipline to impose are binding on the chief. Moreover, no other public employee in Maryland enjoys these protections. HB 968 would fix this problem and bring the process in line with the norm for other government employees.

### **Protecting the possibility of Civilian Review**

Self-review is rarely the best form of ensuring a thorough, transparent and effective evaluation. The U.S. Department of Justice recommends “meaningful civilian input.”<sup>3</sup> Yet, as currently enacted, the LEOBR precludes meaningful civilian review by mandating that only police can investigate or discipline other police. HB 968 preserves the ability of individual jurisdictions to construct meaningful civilian review, should they wish to do so.

For the foregoing reasons, the ACLU of Maryland supports HB 968.

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<sup>2</sup> <https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>, at 7.

<sup>3</sup> *Id* at 13.