

SENATE BILL 887

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By: **Senators Munson, Astle, Edwards, Exum, Kelley, Klausmeier, and Robey**

Introduced and read first time: February 15, 2010

Assigned to: Rules

Re-referred to: Judicial Proceedings, February 19, 2010

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 4, 2010

CHAPTER _____

1 AN ACT concerning

2 **Correctional Services – State Correctional Officers’ Bill of Rights**

3 FOR the purpose of providing for certain rights of a State correctional officer relating
4 to employment, investigation, and discipline under certain circumstances;
5 providing for the procedures for the investigation and interrogation of a State
6 correctional officer; establishing procedures for an application for a show cause
7 order under certain circumstances; establishing a certain limitation on
8 administrative charges against a State correctional officer; providing for
9 procedures for a hearing board conducting an investigation against a State
10 correctional officer; providing for expungement of a record of a formal complaint
11 against a State correctional officer under certain circumstances; providing for
12 certain disciplinary actions against a State correctional officer under certain
13 circumstances; providing that a State correctional officer who receives a certain
14 recommendation with respect to disciplinary or punitive action has certain
15 appeals rights; requiring a State correctional officer to be granted release time
16 for certain purposes; requiring the Department of Public Safety and
17 Correctional Services to bear the cost of certain expenses; providing that this
18 Act supersedes inconsistent provisions of any other State or local law that
19 conflict with this Act to the extent of the conflict; providing for the effect of this
20 Act in relation to the duties of an appointing authority; prohibiting certain false
21 statements; ~~establishing a criminal penalty for providing a false statement to~~
22 ~~certain persons;~~ defining certain terms; and generally relating to rights of a
23 State correctional officer.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
 2 Article – Correctional Services
 3 Section 10–901 through ~~10–914~~ 10–913 to be under the new subtitle “Subtitle 9.
 4 State Correctional Officers’ Bill of Rights”
 5 Annotated Code of Maryland
 6 (2008 Replacement Volume and 2009 Supplement)

7 BY repealing and reenacting, without amendments,
 8 Article – State Personnel and Pensions
 9 Section 1–101(b) and 11–105
 10 Annotated Code of Maryland
 11 (2009 Replacement Volume and 2009 Supplement)

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

14 **Article – Correctional Services**

15 **SUBTITLE 9. STATE CORRECTIONAL OFFICERS’ BILL OF RIGHTS.**

16 **10–901.**

17 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 18 INDICATED.

19 (B) “APPOINTING AUTHORITY” HAS THE MEANING STATED IN § 1–101
 20 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

21 (C) “CORRECTIONAL OFFICER” MEANS AN EMPLOYEE OF THE
 22 DEPARTMENT WORKING IN A STATE CORRECTIONAL FACILITY ~~WHOSE DUTIES~~
 23 ~~RELATE TO THE INVESTIGATION, CARE, CUSTODY, CONTROL, OR SUPERVISION~~
 24 ~~OF INMATES WHO SERVES IN THE CLASSIFICATION OF CORRECTIONAL OFFICER~~
 25 I, II, SERGEANT, LIEUTENANT, CAPTAIN, OR MAJOR, AND INCLUDES:

26 (1) A CORRECTIONAL DIETARY OFFICER;

27 (2) A CORRECTIONAL MAINTENANCE OFFICER;

28 (3) A CORRECTIONAL LAUNDRY OFFICER;

29 (4) A CORRECTIONAL RECREATION OFFICER; AND

30 (5) A CORRECTIONAL SUPPLY OFFICER.

31 (D) (1) “HEARING” MEANS A PROCEEDING DURING AN
 32 INVESTIGATION CONDUCTED BY A HEARING BOARD TO TAKE TESTIMONY OR

1 RECEIVE OTHER EVIDENCE, OR A CONTESTED CASE PROCEEDING BEFORE THE
2 OFFICE OF ADMINISTRATIVE HEARINGS, ELECTED BY THE CORRECTIONAL
3 OFFICER.

4 (2) "HEARING" DOES NOT INCLUDE AN INTERROGATION AT
5 WHICH NO TESTIMONY IS TAKEN UNDER OATH.

6 (E) "HEARING BOARD" MEANS A HEARING BOARD THAT IS AUTHORIZED
7 UNDER § 10-908 OF THIS SUBTITLE TO HOLD A HEARING ON A COMPLAINT
8 AGAINST A CORRECTIONAL OFFICER.

9 (F) "INTERNAL INVESTIGATIVE UNIT" MEANS THE INTERNAL
10 INVESTIGATIVE UNIT ESTABLISHED UNDER § 10-701 OF THIS ~~ARTICLE~~ TITLE.

11 (G) "MISCONDUCT" MEANS:

12 (1) ENGAGING IN INTENTIONAL BEHAVIOR, WITHOUT
13 JUSTIFICATION, THAT INJURES ANOTHER PERSON, CAUSES DAMAGE TO
14 PROPERTY, OR THREATENS THE SAFETY OF THE WORKPLACE;

15 (2) ENGAGING IN UNJUSTIFIABLY OFFENSIVE CONDUCT TOWARD
16 FELLOW EMPLOYEES, INMATES, OR THE PUBLIC;

17 (3) USING EXCESSIVE FORCE IN THE TREATMENT OR CARE OF AN
18 INMATE;

19 (4) POSSESSING OR TRAFFICKING IN CONTRABAND AT A
20 DEPARTMENT FACILITY;

21 (5) BEING ON DUTY WHILE UNDER THE INFLUENCE OF ALCOHOL
22 OR A CONTROLLED DANGEROUS SUBSTANCE, OR WHILE ENGAGED IN THE
23 ILLEGAL USE OF A PRESCRIPTION DRUG;

24 (6) ENGAGING IN A SOCIAL, PERSONAL, INTIMATE, OR SEXUAL
25 RELATIONSHIP WITH AN INMATE;

26 (7) STEALING STATE PROPERTY WITH A VALUE OF \$300 OR LESS;

27 (8) ENGAGING IN CONDUCT INVOLVING DISHONESTY, FRAUD,
28 DECEIT, MISREPRESENTATION, OR ILLEGALITY;

29 (9) WILLFULLY MAKING A FALSE OFFICIAL STATEMENT OR
30 REPORT;

1 (10) VIOLATING A LAWFUL ORDER OR FAILING TO OBEY A LAWFUL
2 ORDER GIVEN BY A SUPERIOR;

3 (11) ENGAGING IN ANY OF THE ACTIONS THAT ARE CAUSE FOR
4 AUTOMATIC TERMINATION OF EMPLOYMENT UNDER § 11-105 OF THE STATE
5 PERSONNEL AND PENSIONS ARTICLE; OR

6 (12) COMMITTING ANY VIOLATION OF THE DEPARTMENT'S
7 STANDARDS OF CONDUCT.

8 10-902.

9 (A) THE PURPOSE OF THIS SUBTITLE IS TO ESTABLISH EXCLUSIVE
10 PROCEDURES FOR THE INVESTIGATION AND DISCIPLINE OF A CORRECTIONAL
11 OFFICER BY THE INTERNAL INVESTIGATIVE UNIT OF THE DEPARTMENT FOR
12 ALLEGED MISCONDUCT THAT MISCONDUCT. MAY LEAD TO DISCIPLINARY
13 ACTION, DEMOTION, OR DISMISSAL.

14 (B) THE DISCIPLINARY ACTIONS AUTHORIZED UNDER THIS SUBTITLE
15 ARE THOSE AUTHORIZED UNDER §§ 11-104 AND 11-105 OF THE STATE
16 PERSONNEL AND PENSIONS ARTICLE.

17 10-903.

18 (A) EXCEPT AS OTHERWISE PROVIDED, THE PROVISIONS OF THIS
19 SUBTITLE SUPERSEDE ANY INCONSISTENT PROVISIONS OF ANY OTHER STATE
20 LAW, INCLUDING § 11-106 OF THE STATE PERSONNEL AND PENSIONS ARTICLE,
21 THAT CONFLICT WITH THIS SUBTITLE TO THE EXTENT OF THE CONFLICT.

22 (B) THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF THE
23 APPOINTING AUTHORITY TO REGULATE THE COMPETENT AND EFFECTIVE
24 OPERATION AND MANAGEMENT OF A STATE CORRECTIONAL FACILITY BY
25 REASONABLE MEANS INCLUDING THE TRANSFER AND REASSIGNMENT OF
26 EMPLOYEES IF:

27 (1) THAT ACTION IS NOT PUNITIVE IN NATURE; AND

28 (2) THE APPOINTING AUTHORITY DETERMINES THAT ACTION TO
29 BE IN THE BEST INTERESTS OF THE INTERNAL MANAGEMENT OF THE
30 CORRECTIONAL FACILITY.

31 10-904.

32 (A) ~~AN APPOINTING AUTHORITY MAY NOT PROHIBIT OR REGULATE~~
33 ~~SECONDARY EMPLOYMENT BY A CORRECTIONAL OFFICER.~~

1 ~~(B)~~ (A) A CORRECTIONAL OFFICER MAY NOT BE REQUIRED OR
2 REQUESTED TO DISCLOSE AN ITEM OF THE CORRECTIONAL OFFICER'S
3 PROPERTY, INCOME, ASSETS, SOURCE OF INCOME, DEBTS, OR PERSONAL OR
4 DOMESTIC EXPENDITURES, INCLUDING THOSE OF A MEMBER OF THE
5 CORRECTIONAL OFFICER'S FAMILY OR HOUSEHOLD, UNLESS THE DISCLOSURE
6 IS REQUIRED BY FEDERAL OR STATE LAW OR THE INFORMATION IS NECESSARY
7 TO INVESTIGATE A POSSIBLE CONFLICT OF INTEREST WITH RESPECT TO THE
8 PERFORMANCE OF THE CORRECTIONAL OFFICER'S DUTIES.

9 ~~(C)~~ (B) A CORRECTIONAL OFFICER MAY NOT BE DISCHARGED,
10 DISCIPLINED, OR DEMOTED, DENIED PROMOTION, TRANSFER, OR
11 REASSIGNMENT, OR OTHERWISE DISCRIMINATED AGAINST IN REGARD TO THE
12 CORRECTIONAL OFFICER'S EMPLOYMENT OR BE THREATENED WITH THAT
13 TREATMENT BECAUSE THE CORRECTIONAL OFFICER:

14 (1) HAS EXERCISED OR DEMANDED THE RIGHTS GRANTED BY
15 THIS SUBTITLE; OR

16 (2) HAS LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

17 ~~(D)~~ (C) THE RIGHT OF A CORRECTIONAL OFFICER TO BRING SUIT
18 ARISING OUT OF THE CORRECTIONAL OFFICER'S DUTIES AS A CORRECTIONAL
19 OFFICER MAY NOT BE ABRIDGED BY RULE, REGULATION, OR POLICY.

20 ~~(E) THE FACT THAT A CORRECTIONAL OFFICER IS UNDER~~
21 ~~INVESTIGATION MAY NOT IMPACT NEGATIVELY A PROMOTIONAL PROCESS IN~~
22 ~~WHICH THE CORRECTIONAL OFFICER IS INVOLVED.~~

23 (D) A CORRECTIONAL OFFICER MAY WAIVE ANY OR ALL OF THE RIGHTS
24 UNDER THIS SUBTITLE IF:

25 (1) THE WAIVER IS SIGNED AND ACKNOWLEDGED BY THE
26 CORRECTIONAL OFFICER; AND

27 (2) THE WAIVER IS GIVEN AFTER THE CORRECTIONAL OFFICER IS
28 GIVEN AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL SELECTED BY THE
29 CORRECTIONAL OFFICER OR A REPRESENTATIVE FROM THE CORRECTIONAL
30 OFFICER'S EMPLOYEE ORGANIZATION.

31 10-905.

32 (A) THE INVESTIGATION OR INTERROGATION BY THE APPOINTING
33 AUTHORITY OR BY THE INTERNAL INVESTIGATIVE UNIT OF A CORRECTIONAL

1 OFFICER FOR A REASON THAT MAY LEAD TO DISCIPLINARY ACTION, DEMOTION,
2 OR DISMISSAL SHALL BE CONDUCTED IN ACCORDANCE WITH THIS SECTION.

3 (B) THE INVESTIGATING OFFICER OR INTERROGATING OFFICER SHALL
4 BE A MEMBER OF THE INTERNAL INVESTIGATIVE UNIT OR A DESIGNEE OF THE
5 APPOINTING AUTHORITY.

6 ~~(C) A COMPLAINT AGAINST A CORRECTIONAL OFFICER THAT ALLEGES~~
7 ~~BRUTALITY IN THE EXECUTION OF THE CORRECTIONAL OFFICER'S DUTIES MAY~~
8 ~~NOT BE INVESTIGATED UNLESS THE COMPLAINT:~~

9 ~~(1) IS FILED WITHIN 15 DAYS AFTER THE ALLEGED BRUTALITY;~~
10 ~~AND~~

11 ~~(2) IS SWORN ON PERSONAL KNOWLEDGE, BEFORE AN OFFICIAL~~
12 ~~AUTHORIZED TO ADMINISTER OATHS, BY:~~

13 ~~(I) THE INDIVIDUAL FILING THE COMPLAINT; OR~~

14 ~~(II) AN INDIVIDUAL WITH FIRSTHAND KNOWLEDGE~~
15 ~~OBTAINED BECAUSE THE INDIVIDUAL WAS PRESENT AT AND OBSERVED THE~~
16 ~~ALLEGED INCIDENT.~~

17 ~~(D)~~ (C) (1) ~~BEFORE~~ AT LEAST 24 HOURS BEFORE AN
18 INTERROGATION, THE CORRECTIONAL OFFICER UNDER INVESTIGATION SHALL
19 BE INFORMED OF THE NAME, RANK, AND COMMAND OF:

20 (I) ~~THE INTERNAL INVESTIGATIVE UNIT MEMBER~~ PERSON
21 IN CHARGE OF THE INVESTIGATION;

22 (II) THE INTERROGATING OFFICER; AND

23 (III) EACH INDIVIDUAL WHO WILL BE PRESENT DURING THE
24 INTERROGATION.

25 (2) AT LEAST 24 HOURS BEFORE AN INTERROGATION, THE
26 CORRECTIONAL OFFICER UNDER INVESTIGATION SHALL BE INFORMED IN
27 WRITING BY THE APPOINTING AUTHORITY OF:

28 (I) THE NATURE OF THE INVESTIGATION; AND

29 ~~(II) THE NAME OF THE COMPLAINANT; AND~~

30 ~~(III)~~ (II) THE CORRECTIONAL OFFICER'S RIGHTS UNDER
31 THIS SUBTITLE.

1 ~~(E)~~ (D) IF THE CORRECTIONAL OFFICER UNDER INTERROGATION IS
2 UNDER ARREST, OR IS LIKELY TO BE PLACED UNDER ARREST AS A RESULT OF
3 THE INTERROGATION, THE CORRECTIONAL OFFICER SHALL BE INFORMED
4 COMPLETELY OF THE CORRECTIONAL OFFICER'S CONSTITUTIONAL RIGHTS
5 BEFORE THE INTERROGATION BEGINS.

6 ~~(F)~~ (E) UNLESS THE SERIOUSNESS OF THE INVESTIGATION IS OF A
7 DEGREE THAT AN IMMEDIATE INTERROGATION IS REQUIRED, THE
8 INTERROGATION SHALL BE CONDUCTED AT A REASONABLE HOUR, PREFERABLY
9 WHEN THE CORRECTIONAL OFFICER IS ON DUTY.

10 ~~(G)~~ (F) THE INTERROGATION SHALL TAKE PLACE AT:

11 (1) THE APPOINTING AUTHORITY'S OFFICE;

12 (2) THE APPOINTING AUTHORITY'S CONFERENCE ROOM; OR

13 ~~(3) THE ROLL CALL ROOM;~~

14 ~~(4) THE CORRECTIONAL FACILITY OFFICE OF THE~~
15 ~~CORRECTIONAL OFFICERS' EXCLUSIVE BARGAINING REPRESENTATIVE; OR~~

16 ~~(5)~~ (3) ANOTHER REASONABLE AND APPROPRIATE PLACE.

17 ~~(H)~~ (G) (1) ALL QUESTIONS DIRECTED TO THE CORRECTIONAL
18 OFFICER UNDER INTERROGATION SHALL BE ASKED BY ONE ~~INTERROGATING~~
19 ~~OFFICER~~ PERSON DURING ANY ONE SESSION OF INTERROGATION.

20 (2) EACH SESSION OF INTERROGATION SHALL:

21 ~~(i) PROVIDE A BREAK OF AT LEAST 15 MINUTES FOR EACH~~
22 ~~60 MINUTES OF INTERROGATION; AND~~

23 ~~(ii) ALLOW FOR PERSONAL NECESSITIES AND REST~~
24 ~~PERIODS AS REASONABLY NECESSARY.~~

25 ~~(I)~~ (H) THE CORRECTIONAL OFFICER UNDER INTERROGATION MAY
26 NOT BE THREATENED WITH CRIMINAL PROSECUTION, TRANSFER, DISMISSAL,
27 OR DISCIPLINARY ACTION.

28 ~~(J)~~ (I) ~~THE INTERROGATING OFFICER MAY NOT INTENTIONALLY~~
29 ~~MAKE A FALSE STATEMENT DURING THE COURSE OF AN INTERROGATION.~~

1 ~~(2) IF AN INTERROGATING OFFICER INTENTIONALLY MAKES A~~
2 ~~FALSE STATEMENT DURING AN INTERROGATION, THE INTERROGATING OFFICER~~
3 ~~SHALL BE SUBJECT TO DISCIPLINE FROM THE INTERNAL INVESTIGATION UNIT,~~
4 ~~INCLUDING TERMINATION.~~

5 ~~(K) (1) (i) ON REQUEST, THE CORRECTIONAL OFFICER UNDER~~
6 ~~INTERROGATION SHALL BE REPRESENTED BY COUNSEL OR ANOTHER~~
7 ~~REPRESENTATIVE PROVIDED BY THE CORRECTIONAL OFFICERS' EXCLUSIVE~~
8 ~~BARGAINING REPRESENTATIVE.~~

9 (I) (1) IF REQUESTED BY OR ON BEHALF OF THE CORRECTIONAL
10 OFFICER UNDER INVESTIGATION, THE CORRECTIONAL OFFICER MAY NOT BE
11 QUESTIONED OR INTERROGATED, AND ANY CURRENT QUESTIONING OR
12 INTERROGATION MUST CEASE, UNLESS:

13 (i) 1. THE CORRECTIONAL OFFICER IS REPRESENTED
14 BY LEGAL COUNSEL SELECTED BY THE CORRECTIONAL OFFICER;

15 2. THE CORRECTIONAL OFFICER IS REPRESENTED
16 BY AN AGENT OF THE EXCLUSIVE REPRESENTATIVE OF THE CORRECTIONAL
17 OFFICER DESIGNATED UNDER § 3-406 OF THE STATE PERSONNEL AND
18 PENSIONS ARTICLE; OR

19 3. THE CORRECTIONAL OFFICER CHOOSES AN
20 AGENT OF THE EMPLOYEE ORGANIZATION SELECTED BY THE CORRECTIONAL
21 OFFICER FOR AN INVESTIGATION UNDER THIS SUBTITLE IF THE CORRECTIONAL
22 OFFICER IS NOT WITHIN THE BARGAINING UNIT FOR WHICH AN EXCLUSIVE
23 REPRESENTATIVE IS DESIGNATED; AND

24 (ii) THE LEGAL COUNSEL OR THE AGENT SELECTED BY THE
25 CORRECTIONAL OFFICER IS PRESENT AND AVAILABLE FOR CONSULTATION AT
26 ALL TIMES DURING THE INTERROGATION.

27 ~~(ii) THE EXCLUSIVE BARGAINING REPRESENTATIVE SHALL~~
28 ~~BE PRESENT AND AVAILABLE FOR CONSULTATION AT ALL TIMES DURING THE~~
29 ~~INTERROGATION.~~

30 (2) (i) SUBJECT TO SUBPARAGRAPH (ii) OF THIS PARAGRAPH,
31 IF REPRESENTATION IS NOT AVAILABLE, THE INTERROGATION SHALL BE
32 SUSPENDED UNTIL REPRESENTATION IS OBTAINED.

33 (ii) A SUSPENSION OF INTERROGATION UNDER
34 SUBPARAGRAPH (i) OF THIS PARAGRAPH MAY NOT EXCEED 10 DAYS UNLESS

1 THE APPOINTING AUTHORITY, FOR GOOD CAUSE SHOWN, EXTENDS THE PERIOD
2 FOR OBTAINING REPRESENTATION.

3 (3) DURING THE INTERROGATION, THE CORRECTIONAL
4 OFFICER'S COUNSEL OR REPRESENTATIVE MAY:

5 (I) REQUEST A RECESS AT ANY TIME TO CONSULT WITH THE
6 CORRECTIONAL OFFICER;

7 (II) OBJECT TO ANY QUESTION POSED; AND

8 (III) STATE ON THE RECORD OUTSIDE THE PRESENCE OF
9 THE CORRECTIONAL OFFICER THE REASON FOR THE OBJECTION.

10 ~~(H)~~ (J) (1) A COMPLETE RECORD SHALL BE KEPT OF THE ENTIRE
11 INTERROGATION, INCLUDING ALL RECESS PERIODS.

12 (2) THE RECORD SHALL BE MADE BY ELECTRONIC EQUIPMENT
13 OR BY A STENOGRAPHER.

14 (3) ON COMPLETION OF THE INVESTIGATION, AND ON REQUEST
15 OF THE CORRECTIONAL OFFICER OR THE CORRECTIONAL OFFICER'S COUNSEL
16 OR REPRESENTATIVE, A COPY OF THE RECORD OF THE INTERROGATION SHALL
17 BE PROVIDED WITHIN 5 DAYS OF THE REQUEST.

18 (K) (1) THE PERSON ASSIGNED TO CONDUCT THE INVESTIGATION
19 MAY ORDER THE CORRECTIONAL OFFICER UNDER INVESTIGATION TO SUBMIT
20 TO BLOOD ALCOHOL TESTS, BLOOD, BREATH, OR URINE TESTS FOR
21 CONTROLLED DANGEROUS SUBSTANCES, POLYGRAPH EXAMINATIONS, OR
22 INTERROGATIONS THAT SPECIFICALLY RELATE TO THE SUBJECT MATTER OF
23 THE INVESTIGATION.

24 (2) IF THE CORRECTIONAL OFFICER IS ORDERED TO SUBMIT TO A
25 TEST, EXAMINATION, OR INTERROGATION DESCRIBED IN PARAGRAPH (1) OF
26 THIS SUBSECTION AND THE CORRECTIONAL OFFICER REFUSES TO DO SO, THE
27 APPOINTING AUTHORITY MAY COMMENCE AN ACTION THAT MAY LEAD TO
28 DISCIPLINE AS A RESULT OF THE REFUSAL.

29 (3) IF A CORRECTIONAL OFFICER IS ORDERED TO SUBMIT TO A
30 TEST, EXAMINATION, OR INTERROGATION DESCRIBED IN PARAGRAPH (1) OF
31 THIS SUBSECTION, THE RESULTS OF THE TEST, EXAMINATION, OR
32 INTERROGATION ARE NOT ADMISSIBLE OR DISCOVERABLE IN A CRIMINAL
33 PROCEEDING AGAINST THE CORRECTIONAL OFFICER.

1 **(L) (1) IF THE CORRECTIONAL OFFICER IS ORDERED TO SUBMIT TO A**
2 **POLYGRAPH EXAMINATION, THE RESULTS OF THE POLYGRAPH EXAMINATION**
3 **MAY NOT BE USED AS EVIDENCE IN A HEARING BOARD OR AN ADMINISTRATIVE**
4 **HEARING UNLESS THE APPOINTING AUTHORITY AND THE CORRECTIONAL**
5 **OFFICER AGREE TO THE ADMISSION OF THE RESULTS.**

6 **(2) THE CORRECTIONAL OFFICER'S COUNSEL OR**
7 **REPRESENTATIVE NEED NOT BE PRESENT DURING THE ACTUAL**
8 **ADMINISTRATION OF A POLYGRAPH EXAMINATION BY A CERTIFIED**
9 **POLYGRAPHER IF:**

10 **(I) THE QUESTIONS TO BE ASKED ARE REVIEWED WITH THE**
11 **CORRECTIONAL OFFICER OR THE COUNSEL OR REPRESENTATIVE BEFORE THE**
12 **ADMINISTRATION OF THE EXAMINATION;**

13 **(II) THE COUNSEL OR REPRESENTATIVE IS ALLOWED TO**
14 **OBSERVE THE ADMINISTRATION OF THE EXAMINATION; AND**

15 **(III) A COPY OF THE FINAL REPORT OF THE EXAMINATION BY**
16 **THE CERTIFIED POLYGRAPHER IS MADE AVAILABLE TO THE CORRECTIONAL**
17 **OFFICER OR THE COUNSEL OR REPRESENTATIVE WITHIN A REASONABLE TIME,**
18 **NOT EXCEEDING 10 DAYS, AFTER COMPLETION OF THE EXAMINATION.**

19 **(M) ON COMPLETION OF AN INVESTIGATION AND AT LEAST 20 DAYS**
20 **BEFORE A HEARING, THE CORRECTIONAL OFFICER UNDER INVESTIGATION**
21 **SHALL BE:**

22 **(1) NOTIFIED OF THE NAME OF EACH WITNESS AND OF EACH**
23 **CHARGE AND SPECIFICATION AGAINST THE CORRECTIONAL OFFICER; AND**

24 **(2) PROVIDED WITH A COPY OF THE INVESTIGATORY FILE AND**
25 **ANY EXCULPATORY INFORMATION, IF THE CORRECTIONAL OFFICER AND THE**
26 **CORRECTIONAL OFFICER'S COUNSEL OR REPRESENTATIVE AGREE TO EXECUTE**
27 **A CONFIDENTIALITY AGREEMENT WITH THE APPOINTING AUTHORITY OR THE**
28 **INTERNAL INVESTIGATIVE UNIT NOT TO DISCLOSE ANY MATERIAL CONTAINED**
29 **IN THE INVESTIGATORY FILE OR EXCULPATORY INFORMATION FOR ANY**
30 **PURPOSE OTHER THAN TO DEFEND THE CORRECTIONAL OFFICER.**

31 **(N) A PERSON MAY NOT INSERT ADVERSE MATERIAL INTO A FILE OF**
32 **THE CORRECTIONAL OFFICER, EXCEPT THE FILE OF THE INTERNAL**
33 **INVESTIGATIVE UNIT, UNLESS THE CORRECTIONAL OFFICER HAS AN**
34 **OPPORTUNITY TO REVIEW, SIGN, RECEIVE A COPY OF, AND COMMENT IN**
35 **WRITING ON THE ADVERSE MATERIAL.**

1 **10-906.**

2 (A) A CORRECTIONAL OFFICER WHO IS DENIED A RIGHT GRANTED BY
3 THIS SUBTITLE MAY APPLY TO THE CIRCUIT COURT OF THE COUNTY WHERE THE
4 CORRECTIONAL OFFICER IS REGULARLY EMPLOYED FOR AN ORDER TO SHOW
5 CAUSE WHY THE RIGHT SHOULD NOT BE GRANTED.

6 (B) THE CORRECTIONAL OFFICER MAY APPLY FOR THE SHOW CAUSE
7 ORDER:

8 (1) EITHER INDIVIDUALLY OR THROUGH THE CORRECTIONAL
9 OFFICERS' EXCLUSIVE BARGAINING REPRESENTATIVE WHO SHALL HAVE
10 STANDING FOR THAT PURPOSE; AND

11 (2) AT ANY TIME BEFORE THE BEGINNING OF A HEARING BY THE
12 HEARING BOARD.

13 ~~(C) FAILURE TO OBEY THE COURT ORDER MAY BE PUNISHED BY THE~~
14 ~~COURT AS CONTEMPT.~~

15 **10-907.**

16 (A) THE APPOINTING AUTHORITY MAY NOT ~~IMPOSE ANY DISCIPLINARY~~
17 ~~ACTION 30 DAYS OR MORE~~ BRING CHARGES RECOMMENDING THE IMPOSITION
18 OF DISCIPLINE MORE THAN 90 DAYS AFTER THE INTERNAL INVESTIGATIVE
19 UNIT OR THE APPOINTING AUTHORITY ACQUIRES KNOWLEDGE OF THE ACTION
20 THAT GIVES RISE TO THE DISCIPLINE.

21 (B) AN APPOINTING AUTHORITY MAY NOT RECOMMEND DISCIPLINARY
22 ACTION AGAINST A CORRECTIONAL OFFICER FOR EXCESSIVE USE OF FORCE
23 AGAINST AN INMATE BASED SOLELY ON THE UNCORROBORATED STATEMENT OF
24 THE INMATE UNLESS THE APPOINTING AUTHORITY DETERMINES THAT THERE
25 EXISTS ANY INDICIA OF RELIABILITY TO SUPPORT THE INMATE'S ALLEGATION.

26 (C) THIS SECTION DOES NOT LIMIT THE RIGHT OF THE DEPARTMENT
27 TO INVESTIGATE CLAIMS OF EXCESSIVE FORCE AGAINST INMATES TO ENSURE
28 THE SAFETY AND SECURITY OF ITS CORRECTIONAL FACILITIES, OR FOR ANY
29 OTHER LEGITIMATE PURPOSE.

30 **10-908.**

31 (A) IF THE APPOINTING AUTHORITY BRINGS CHARGES RECOMMENDING
32 DISCIPLINE AGAINST A CORRECTIONAL OFFICER, THE CHARGES SHALL
33 CONTAIN:

1 **(1) A STATEMENT OF FACTS AND OFFENSES ALLEGED; AND**

2 **(2) NOTICE OF THE CORRECTIONAL OFFICER'S APPEAL RIGHTS.**

3 **(B) THE APPOINTING AUTHORITY SHALL PROVIDE THE CHARGES AND**
 4 **NOTICE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION TO THE**
 5 **CORRECTIONAL OFFICER AND TO THE CORRECTIONAL OFFICER'S LEGAL**
 6 **COUNSEL OR THE AGENT OF THE EMPLOYEE ORGANIZATION SELECTED BY THE**
 7 **CORRECTIONAL OFFICER UNDER § 10-907 OF THIS SUBTITLE.**

8 **(C) ON RECEIVING CHARGES WHICH RECOMMEND TERMINATION,**
 9 **DEMOTION, OR SUSPENSION WITHOUT PAY OF 10 DAYS OR GREATER, A**
 10 **CORRECTIONAL OFFICER MAY:**

11 **(1) FILE AN APPEAL UNDER § 11-109 OF THE STATE PERSONNEL**
 12 **AND PENSIONS ARTICLE; OR**

13 **(2) WITHIN 15 DAYS AFTER RECEIVING THE CHARGES, FILE A**
 14 **REQUEST FOR A HEARING BY A HEARING BOARD.**

15 **(D) IF A CORRECTIONAL OFFICER RECEIVES CHARGES WHICH**
 16 **RECOMMEND DISCIPLINE OTHER THAN TERMINATION, DEMOTION, OR**
 17 **SUSPENSION WITHOUT PAY OF 10 DAYS OR GREATER, BEFORE THE APPOINTING**
 18 **AUTHORITY TAKES ACTION ON THE DISCIPLINE, THE CORRECTIONAL OFFICER**
 19 **MAY APPEAL ONLY UNDER § 11-109 OF THE STATE PERSONNEL AND PENSIONS**
 20 **ARTICLE.**

21 **(E) AN EMERGENCY SUSPENSION IS NOT SUBJECT TO APPEAL.**

22 **(F) AN ACTION WHICH DOES NOT CONSTITUTE DISCIPLINE UNDER §**
 23 **11-107 OF THE STATE PERSONNEL AND PENSIONS ARTICLE IS NOT SUBJECT**
 24 **TO APPEAL.**

25 **10-909.**

26 ~~**(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**~~
 27 ~~**SUBSECTION, IF THE INVESTIGATION OR INTERROGATION OF A CORRECTIONAL**~~
 28 ~~**OFFICER RESULTS IN A RECOMMENDATION OF TERMINATION, DEMOTION, OR**~~
 29 ~~**SUSPENSION WITHOUT PAY OF GREATER THAN 10 DAYS, THE CORRECTIONAL**~~
 30 ~~**OFFICER IS ENTITLED TO A HEARING ON THE ISSUES BY THE HEARING BOARD**~~
 31 ~~**BEFORE THE APPOINTING AUTHORITY TAKES ACTION ON THE**~~
 32 ~~**RECOMMENDATION.**~~

33 **(2) (A) A CORRECTIONAL OFFICER WHO HAS BEEN CHARGED**
 34 **WITH A FELONY MAY REQUEST A STAY OF ALL CHARGES AND PROCEEDINGS**

1 UNDER THIS SECTION UNTIL AFTER A VERDICT HAS BEEN REACHED IN THE
2 FELONY CASE.

3 ~~(3) (B)~~ A CORRECTIONAL OFFICER WHO HAS BEEN CONVICTED
4 OF A FELONY IS NOT ENTITLED TO A HEARING UNDER THIS SECTION.

5 ~~(B) (1) THE INTERNAL INVESTIGATIVE UNIT SHALL GIVE WRITTEN~~
6 ~~NOTICE TO THE CORRECTIONAL OFFICER OF THE RIGHT TO A HEARING BY THE~~
7 ~~HEARING BOARD UNDER THIS SECTION.~~

8 ~~(2) THE NOTICE REQUIRED UNDER THIS SUBSECTION SHALL~~
9 ~~STATE THE TIME AND PLACE OF THE HEARING AND THE ISSUES INVOLVED.~~

10 (C) (1) (I) THE HEARING BOARD AUTHORIZED UNDER THIS
11 SECTION SHALL CONSIST OF AT LEAST THREE MEMBERS, INCLUDING:

12 ~~1. ONE MEMBER SELECTED BY THE APPOINTING~~
13 ~~AUTHORITY OF THE CORRECTIONAL FACILITY WHERE THE CORRECTIONAL~~
14 ~~OFFICER IS REGULARLY EMPLOYED, CHOSEN FROM A LIST OF THREE~~
15 ~~CORRECTIONAL OFFICERS EMPLOYED AT THE CORRECTIONAL FACILITY~~
16 ~~SELECTED BY THE EXCLUSIVE BARGAINING REPRESENTATIVE;~~

17 ~~2. ONE MEMBER SELECTED BY THE EXCLUSIVE~~
18 ~~BARGAINING REPRESENTATIVE FROM A LIST COMPILED BY THE APPOINTING~~
19 ~~AUTHORITY OF THREE CORRECTIONAL OFFICERS FROM ANOTHER~~
20 ~~CORRECTIONAL FACILITY THAT ARE AT THE SAME RANK AS THE CORRECTIONAL~~
21 ~~OFFICER AGAINST WHOM THE COMPLAINT IS FILED; AND~~

22 ~~3. ONE MEMBER, WHO SHALL SERVE AS THE CHAIR~~
23 ~~OF THE HEARING BOARD, SELECTED FROM A LIST OF ARBITRATORS WHO ARE~~
24 ~~MEMBERS OF THE NATIONAL ACADEMY OF ARBITRATORS MAINTAINED~~
25 ~~JOINTLY BY THE EXCLUSIVE BARGAINING REPRESENTATIVE AND THE~~
26 ~~DEPARTMENT. MEMBERS.~~

27 1. FOR CORRECTIONAL OFFICERS HOLDING THE
28 RANK OF SERGEANT OR BELOW, THE HEARING BOARD SHALL BE COMPOSED OF
29 TWO CORRECTIONAL OFFICERS WHO ARE MEMBERS OF THE BARGAINING UNIT,
30 ONE OF WHOM IS THE SAME RANK AS THE CORRECTIONAL OFFICER FACING
31 CHARGES, AND ONE CORRECTIONAL OFFICER RANKED LIEUTENANT OR HIGHER.

32 2. FOR CORRECTIONAL OFFICERS HOLDING THE
33 RANK OF LIEUTENANT AND ABOVE, THE HEARING BOARD SHALL BE COMPOSED
34 OF ONE CORRECTIONAL OFFICER OF EQUAL RANK, ONE CORRECTIONAL

1 OFFICER OF EQUAL OR LOWER RANK, AND ONE CORRECTIONAL OFFICER OF
2 EQUAL OR HIGHER RANK.

3 (II) CORRECTIONAL OFFICERS ASSIGNED TO SERVE ON A
4 HEARING BOARD SHALL BE RANDOMLY SELECTED FROM A ROTATING LIST OF
5 CORRECTIONAL OFFICERS ELIGIBLE TO SERVE ON DISCIPLINARY HEARING
6 BOARDS MAINTAINED BY THE DEPARTMENT.

7 (III) THE DEPARTMENT, AFTER CONSULTATION WITH THE
8 EXCLUSIVE REPRESENTATIVE FOR THE CORRECTIONAL OFFICERS WHO ARE
9 COVERED BY THIS SUBTITLE, SHALL DETERMINE:

10 1. THE MANNER OF SELECTION OF CORRECTIONAL
11 OFFICERS WHO ARE ELIGIBLE TO SERVE ON A ROTATING LIST; AND

12 2. THE MANNER OF THE SELECTION OF
13 CORRECTIONAL OFFICERS FOR A HEARING BOARD.

14 (IV) CORRECTIONAL OFFICERS ASSIGNED TO SERVE ON A
15 HEARING BOARD SHALL BE FROM A FACILITY OTHER THAN THE FACILITY TO
16 WHICH THE CORRECTIONAL OFFICER FACING CHARGES IS REGULARLY
17 ASSIGNED, AND MAY NOT HAVE HAD A ROLE IN THE INVESTIGATION OR THE
18 INTERROGATION OF THE CORRECTIONAL OFFICER AGAINST WHOM THE
19 CHARGES ARE FILED, OR BE INVOLVED IN ANY WAY WITH THE INCIDENTS THAT
20 ARE THE SUBJECT OF THE COMPLAINT.

21 (V) 1. THE HIGHEST RANKING MEMBER OF THE
22 HEARING BOARD SHALL SERVE AS THE HEARING BOARD CHAIR.

23 2. THE CHAIR OF THE HEARING BOARD:

24 A. SHALL PARTICIPATE IN ANY DELIBERATIONS; BUT

25 B. MAY ONLY VOTE ON THE DECISION IN THE EVENT
26 OF A TIE; AND

27 C. MAY FILE A STATEMENT OF POSITION FOR THE
28 RECORD.

29 3. THE CHAIR OF THE HEARING BOARD SHALL BE
30 FROM A DIFFERENT FACILITY THAN THE OTHER BOARD MEMBERS.

31 ~~(H)~~ (VI) THE APPOINTING AUTHORITY AND THE
32 EXCLUSIVE BARGAINING REPRESENTATIVE MAY NEGOTIATE AN ALTERNATIVE

1 METHOD OF FORMING THE HEARING BOARD FOR MEMBERS OF THE COLLECTIVE
2 BARGAINING UNIT.

3 ~~(2) TO SERVE ON THE HEARING BOARD, A CORRECTIONAL~~
4 ~~OFFICER MAY NOT HAVE HAD ANY PART IN THE INVESTIGATION OR THE~~
5 ~~INTERROGATION OF THE CORRECTIONAL OFFICER AGAINST WHOM THE~~
6 ~~COMPLAINT IS FILED OR BE INVOLVED IN ANY WAY WITH THE INCIDENTS THAT~~
7 ~~ARE THE SUBJECT OF THE COMPLAINT.~~

8 ~~(3) IF NO ONE IS WILLING TO SERVE AS A MEMBER OF THE~~
9 ~~HEARING BOARD UNDER PARAGRAPH (1)(I)2 OF THIS SUBSECTION, THE~~
10 ~~APPOINTING AUTHORITY MAY APPOINT A MEMBER FROM A LIST AGREED ON BY~~
11 ~~THE EXCLUSIVE BARGAINING REPRESENTATIVE.~~

12 ~~(4) (2) (I) DECISIONS OF THE HEARING BOARD SHALL BE BY~~
13 ~~MAJORITY VOTE OF ALL MEMBERS OF THE BOARD.~~

14 (II) THE VOTES OF THE HEARING BOARD ARE
15 CONFIDENTIAL, AND DECISIONS SHALL BE REPORTED BY THE CHAIR.

16 (D) (1) IN CONNECTION WITH A DISCIPLINARY HEARING, THE
17 HEARING BOARD MAY ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE AND
18 TESTIMONY OF WITNESSES AND THE PRODUCTION OF DOCUMENTS AS
19 RELEVANT OR NECESSARY.

20 (2) THE SUBPOENAS MAY BE SERVED WITHOUT COST IN
21 ACCORDANCE WITH THE MARYLAND RULES THAT RELATE TO SERVICE OF
22 PROCESS ISSUED BY A COURT.

23 (3) EACH PARTY MAY REQUEST THE HEARING BOARD TO ISSUE A
24 SUBPOENA OR ORDER UNDER THIS SUBTITLE.

25 (4) IN CASE OF REFUSAL TO OBEY A SUBPOENA SERVED UNDER
26 THIS SUBSECTION, THE PARTIES TO THE PROCEEDING MAY APPLY WITHOUT
27 COST TO THE CIRCUIT COURT OF A COUNTY WHERE THE SUBPOENAED PARTY
28 RESIDES OR CONDUCTS BUSINESS, FOR AN ORDER TO COMPEL THE
29 ATTENDANCE AND TESTIMONY OF THE WITNESS OR THE PRODUCTION OF THE
30 DOCUMENTS SOUGHT.

31 (5) ON A FINDING THAT THE ATTENDANCE AND TESTIMONY OF
32 THE WITNESS OR THE PRODUCTION OF THE DOCUMENTS SOUGHT IS RELEVANT
33 OR NECESSARY, THE COURT MAY:

1 (I) ISSUE WITHOUT COST AN ORDER THAT REQUIRES THE
2 ATTENDANCE AND TESTIMONY OF WITNESSES OR THE PRODUCTION OF
3 DOCUMENTS; AND

4 (II) IMPOSE PUNISHMENT FOR FAILURE TO OBEY THE
5 ORDER.

6 (E) (1) THE HEARING SHALL BE CONDUCTED BY THE HEARING
7 BOARD.

8 (2) THE HEARING BOARD SHALL GIVE THE ~~INTERNAL~~
9 ~~INVESTIGATIVE UNIT~~ DEPARTMENT AND CORRECTIONAL OFFICER AMPLE
10 OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ABOUT THE ISSUES
11 INVOLVED.

12 (3) (I) THE CORRECTIONAL FACILITY AND CORRECTIONAL
13 OFFICER MAY BE REPRESENTED BY LEGAL COUNSEL THEY EACH MAY SELECT.

14 (II) IN THE ALTERNATIVE, A CORRECTIONAL OFFICER MAY
15 BE REPRESENTED:

16 1. BY AN AGENT OF THE EXCLUSIVE
17 REPRESENTATIVE OF THE CORRECTIONAL OFFICER DESIGNATED UNDER §
18 3-406 OF THE STATE PERSONNEL AND PENSIONS ARTICLE; OR

19 2. IF THE CORRECTIONAL OFFICER IS NOT WITHIN
20 THE BARGAINING UNIT FOR WHICH AN EXCLUSIVE REPRESENTATIVE IS
21 DESIGNATED UNDER § 3-406 OF THE STATE PERSONNEL AND PENSIONS
22 ARTICLE, BY ANY PERSON CHOSEN BY THE CORRECTIONAL OFFICER.

23 (4) EACH PARTY HAS THE RIGHT TO CROSS-EXAMINE WITNESSES
24 WHO TESTIFY, AND EACH PARTY MAY SUBMIT REBUTTAL EVIDENCE.

25 (F) (1) EVIDENCE WITH PROBATIVE VALUE THAT IS COMMONLY
26 ACCEPTED BY REASONABLE AND PRUDENT INDIVIDUALS IN THE CONDUCT OF
27 THEIR AFFAIRS IS ADMISSIBLE AND SHALL BE GIVEN PROBATIVE EFFECT.

28 (2) THE HEARING BOARD SHALL GIVE EFFECT TO THE RULES OF
29 PRIVILEGE RECOGNIZED BY LAW AND MAY EXCLUDE INCOMPETENT,
30 IRRELEVANT, IMMATERIAL, AND UNDULY REPETITIOUS EVIDENCE.

31 (3) EACH RECORD OR DOCUMENT THAT A PARTY DESIRES TO USE
32 SHALL BE OFFERED AND MADE A PART OF THE RECORD.

1 (4) DOCUMENTARY EVIDENCE MAY BE RECEIVED IN THE FORM
2 OF COPIES OR EXCERPTS OR BY INCORPORATION BY REFERENCE.

3 (G) (1) THE HEARING BOARD MAY TAKE NOTICE OF:

4 (I) JUDICIALLY AND ADMINISTRATIVELY COGNIZABLE
5 FACTS; AND

6 (II) GENERAL, TECHNICAL, OR SCIENTIFIC FACTS WITHIN
7 ITS SPECIALIZED KNOWLEDGE.

8 (2) THE HEARING BOARD SHALL:

9 (I) NOTIFY EACH PARTY OF THE FACTS SO NOTICED EITHER
10 BEFORE OR DURING THE HEARING OR BY REFERENCE IN PRELIMINARY
11 REPORTS OR OTHERWISE; AND

12 (II) GIVE EACH PARTY AN OPPORTUNITY AND REASONABLE
13 TIME TO CONTEST THE FACTS SO NOTICED.

14 (3) THE HEARING BOARD MAY USE ITS EXPERIENCE, TECHNICAL
15 COMPETENCE, AND SPECIALIZED KNOWLEDGE IN THE EVALUATION OF THE
16 EVIDENCE PRESENTED.

17 (H) THE OFFICIATING MEMBER OF A HEARING BOARD SHALL
18 ADMINISTER OATHS OR AFFIRMATIONS AND EXAMINE INDIVIDUALS UNDER
19 OATH.

20 ~~(I) (1) WITNESS FEES AND MILEAGE, IF CLAIMED, SHALL BE~~
21 ~~ALLOWED TO THE SAME EXTENT AS FOR TESTIMONY IN A CIRCUIT COURT.~~

22 ~~(2) WITNESS FEES, MILEAGE, AND THE ACTUAL EXPENSES~~
23 ~~NECESSARILY INCURRED IN SECURING THE ATTENDANCE OF WITNESSES AND~~
24 ~~THEIR TESTIMONY SHALL BE ITEMIZED AND PAID BY THE CORRECTIONAL~~
25 ~~FACILITY.~~

26 (I) (1) A CORRECTIONAL OFFICER SHALL BE GRANTED RELEASE
27 TIME FROM THE CORRECTIONAL OFFICER'S NORMAL WORK SCHEDULE TO
28 ATTEND A CONFERENCE OR HEARING AS A WITNESS.

29 (2) EXPENSES INCURRED IN CONNECTION WITH ATTENDANCE BY
30 A CORRECTIONAL OFFICER AT CONFERENCES OR HEARINGS, WHETHER AS A
31 GRIEVANT, AS A GRIEVANT'S REPRESENTATIVE, OR AS A WITNESS, SHALL BE
32 BORNE BY THE DEPARTMENT.

1 (J) AN OFFICIAL RECORD, INCLUDING TESTIMONY AND EXHIBITS,
2 SHALL BE KEPT OF THE HEARING.

3 (K) TO THE EXTENT THAT ANY PROVISION OF THIS SECTION IS
4 INCONSISTENT WITH THE ADMINISTRATIVE PROCEDURE ACT, THE
5 ADMINISTRATIVE PROCEDURE ACT SHALL GOVERN.

6 ~~10-909~~ 10-910.

7 (A) (1) A DECISION, ORDER, OR ACTION TAKEN AS A RESULT OF A
8 HEARING UNDER § ~~10-908~~ 10-909 OF THIS SUBTITLE SHALL BE IN WRITING AND
9 ACCOMPANIED BY FINDINGS OF FACT.

10 (2) THE FINDINGS OF FACT SHALL CONSIST OF A CONCISE
11 STATEMENT ON EACH ISSUE IN THE CASE.

12 (3) A FINDING OF NOT GUILTY BY THE HEARING BOARD
13 TERMINATES THE ACTION.

14 (4) THE HEARING BOARD MAY MAKE A FINDING OF GUILTY ON
15 ~~CLEAR AND CONVINCING~~ A PREPONDERANCE OF THE EVIDENCE THAT
16 ESTABLISHES FAULT WITH THE CORRECTIONAL OFFICER'S ACTIONS THAT THE
17 CORRECTIONAL OFFICER ENGAGED IN MISCONDUCT ON ANY OF THE CHARGES.

18 (5) THE HEARING BOARD SHALL MAKE A SEPARATE FINDING OF
19 GUILTY OR NOT GUILTY AS TO EACH OFFENSE ALLEGED.

20 ~~(5)~~ (6) IF THE HEARING BOARD MAKES A FINDING OF GUILT,
21 THE HEARING BOARD SHALL:

22 (I) RECONVENE THE HEARING;

23 (II) RECEIVE EVIDENCE; AND

24 (III) CONSIDER THE CORRECTIONAL OFFICER'S PAST JOB
25 PERFORMANCE, THE RELATION OF THE CONTEMPLATED DISCIPLINARY ACTION
26 TO ANY PRIOR DISCIPLINARY ACTION, AND OTHER RELEVANT MITIGATING
27 INFORMATION AS FACTORS BEFORE DECIDING A PENALTY.

28 ~~(6)~~ (7) THE HEARING BOARD SHALL ~~DECIDE~~ RECOMMEND THE
29 PENALTY IT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES,
30 INCLUDING DISCIPLINARY SUSPENSION WITHOUT PAY, DEMOTION, DISMISSAL,
31 TRANSFER, LOSS OF PAY, REASSIGNMENT, OR OTHER SIMILAR ACTION THAT IS
32 CONSIDERED PUNITIVE.

1 **(8) FOR THE PURPOSES OF THIS SUBSECTION,**
 2 **PERFORMANCE-BASED OFFENSES SHALL BE CONSIDERED ONE TYPE OF**
 3 **OFFENSE AND ATTENDANCE-BASED OFFENSES SHALL BE CONSIDERED**
 4 **ANOTHER TYPE OF OFFENSE.**

5 ~~(7)~~ **(9) A COPY OF THE DECISION OR ORDER, FINDINGS OF**
 6 **FACT, CONCLUSIONS, AND A WRITTEN DETERMINATION OF PENALTY SHALL BE**
 7 **DELIVERED OR MAILED PROMPTLY TO:**

8 **(I) THE CORRECTIONAL OFFICER ~~OR~~ AND THE**
 9 **CORRECTIONAL OFFICER'S COUNSEL OR REPRESENTATIVE OF RECORD;**

10 **(II) THE APPOINTING AUTHORITY OF THE CORRECTIONAL**
 11 **FACILITY; AND**

12 **(III) THE SECRETARY.**

13 ~~**(B) THE DECISION OF THE HEARING BOARD AS TO FINDINGS OF FACT**~~
 14 ~~**AND PENALTY IS FINAL.**~~

15 ~~**(C) WITHIN 5 DAYS AFTER RECEIPT OF THE DECISION OF THE HEARING**~~
 16 ~~**BOARD, THE SECRETARY SHALL ISSUE A FINAL ORDER IMPLEMENTING THE**~~
 17 ~~**DECISION OF THE HEARING BOARD.**~~

18 ~~**(D) THE FINAL ORDER AND DECISION OF THE HEARING BOARD THEN**~~
 19 ~~**MAY BE APPEALED IN ACCORDANCE WITH § 10-910 OF THIS SUBTITLE.**~~

20 **(B) (1) WITHIN 30 DAYS AFTER RECEIPT OF THE RECOMMENDATIONS**
 21 **OF THE HEARING BOARD, THE APPOINTING AUTHORITY SHALL:**

22 **(I) REVIEW THE FINDINGS, CONCLUSIONS, AND**
 23 **RECOMMENDATIONS OF THE HEARING BOARD; AND**

24 **(II) ISSUE A FINAL ORDER.**

25 **(2) THE FINAL ORDER AND DECISION OF THE APPOINTING**
 26 **AUTHORITY IS BINDING, BUT MAY BE APPEALED IN ACCORDANCE WITH § 10-911**
 27 **OF THIS SUBTITLE.**

28 **(3) THE RECOMMENDATION OF A PENALTY BY THE HEARING**
 29 **BOARD IS NOT BINDING ON THE APPOINTING AUTHORITY.**

30 **(4) THE APPOINTING AUTHORITY SHALL CONSIDER THE**
 31 **CORRECTIONAL OFFICER'S PAST JOB PERFORMANCE AND THE RELATION OF**

1 THE CONTEMPLATED DISCIPLINARY ACTION TO ANY PRIOR DISCIPLINARY
2 ACTION BEFORE IMPOSING A PENALTY.

3 (5) BEFORE TERMINATING A CORRECTIONAL OFFICER UNDER
4 THIS SUBSECTION, THE APPOINTING AUTHORITY SHALL OBTAIN APPROVAL
5 FROM THE SECRETARY.

6 (6) WITH THE APPROVAL OF THE SECRETARY, THE APPOINTING
7 AUTHORITY MAY INCREASE THE RECOMMENDED PENALTY OF THE HEARING
8 BOARD IF THE APPOINTING AUTHORITY:

9 (I) REVIEWS THE ENTIRE RECORD OF THE PROCEEDINGS
10 OF THE HEARING BOARD;

11 (II) MEETS WITH THE CORRECTIONAL OFFICER AND
12 ALLOWS THE CORRECTIONAL OFFICER TO BE HEARD ON THE RECORD;

13 (III) AT LEAST 10 DAYS BEFORE THE MEETING, DISCLOSES
14 AND PROVIDES IN WRITING TO THE CORRECTIONAL OFFICER ANY ORAL OR
15 WRITTEN COMMUNICATION NOT INCLUDED IN THE RECORD OF THE HEARING
16 BOARD ON WHICH THE DECISION TO CONSIDER INCREASING THE PENALTY IS
17 WHOLLY OR PARTLY BASED; AND

18 (IV) STATES ON THE RECORD THE SUBSTANTIAL EVIDENCE
19 ON WHICH THE APPOINTING AUTHORITY RELIED TO SUPPORT THE INCREASE OF
20 THE RECOMMENDED PENALTY.

21 ~~(E)~~ (C) (1) THE CORRECTIONAL TRAINING COMMISSION MAY
22 REVOKE THE CERTIFICATION OF A CORRECTIONAL OFFICER IN CONJUNCTION
23 WITH DISCIPLINARY ACTION TAKEN UNDER THIS SUBTITLE.

24 (2) IF A HEARING BOARD RESCINDS OR MODIFIES A
25 DISCIPLINARY ACTION AGAINST A CORRECTIONAL OFFICER, THE HEARING
26 BOARD MAY REINSTATE THE CORRECTIONAL OFFICER'S CERTIFICATION WITH
27 NO FURTHER EXAMINATION OR CONDITION.

28 ~~10-910~~ 10-911.

29 (A) AN APPEAL FROM A DECISION MADE UNDER § ~~10-909~~ 10-910 OF
30 THIS SUBTITLE SHALL BE TAKEN TO THE CIRCUIT COURT FOR THE COUNTY IN
31 ACCORDANCE WITH MARYLAND RULE 7-202.

32 (B) A PARTY AGGRIEVED BY A DECISION OF A COURT UNDER THIS
33 SUBTITLE MAY APPEAL TO THE COURT OF SPECIAL APPEALS.

1 ~~10-911~~ 10-912.

2 (A) ~~(1)~~ ON WRITTEN REQUEST, A CORRECTIONAL OFFICER MAY HAVE
3 EXPUNGED FROM ANY FILE THE RECORD OF A FORMAL COMPLAINT MADE
4 AGAINST THE CORRECTIONAL OFFICER IF:

5 ~~(1)~~ (1) THE INTERNAL INVESTIGATIVE UNIT THAT
6 INVESTIGATED THE COMPLAINT:

7 ~~1.~~ (I) EXONERATED THE CORRECTIONAL OFFICER OF
8 ALL CHARGES IN THE COMPLAINT; OR

9 ~~2.~~ (II) DETERMINED THAT THE CHARGES WERE
10 UNSUSTAINED OR UNFOUNDED; OR

11 ~~(1)~~ (2) A HEARING BOARD ACQUITTED THE
12 CORRECTIONAL OFFICER, DISMISSED THE ACTION, OR MADE A FINDING OF NOT
13 GUILTY.

14 ~~(2)~~ (B) THERE IS NO TIME REQUIREMENT FOR EXPUNGEMENT
15 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

16 ~~(B) (1) ON WRITTEN REQUEST, A CORRECTIONAL OFFICER WHO WAS
17 FOUND TO HAVE COMMITTED WRONGDOING MAY HAVE EXPUNGED FROM THE
18 CORRECTIONAL OFFICER'S PERSONAL FILE THE RECORD OF THAT
19 WRONGDOING IF:~~

20 ~~(I) 12 MONTHS HAVE PASSED SINCE THE FINDING OF
21 WRONGDOING; AND~~

22 ~~(II) THE CORRECTIONAL OFFICER HAS NOT BEEN FOUND TO
23 HAVE COMMITTED ANY WRONGDOING OF THE SAME TYPE.~~

24 ~~(2) FOR THE PURPOSES OF THIS SUBSECTION,
25 PERFORMANCE-BASED OFFENSES SHALL BE CONSIDERED ONE TYPE OF
26 OFFENSE AND ATTENDANCE-BASED OFFENSES SHALL BE CONSIDERED
27 ANOTHER TYPE OF OFFENSE.~~

28 ~~10-912~~ 10-913.

29 (A) THIS SUBTITLE DOES NOT PROHIBIT EMERGENCY SUSPENSION
30 WITH PAY BY A CORRECTIONAL OFFICER OF HIGHER RANK AS DESIGNATED BY
31 THE APPOINTING AUTHORITY.

1 (B) (1) THE APPOINTING AUTHORITY MAY IMPOSE EMERGENCY
2 SUSPENSION WITH PAY IF IT APPEARS THAT THE ACTION IS IN THE BEST
3 INTEREST OF THE INMATES, THE PUBLIC, AND THE CORRECTIONAL FACILITY.

4 (2) IF THE CORRECTIONAL OFFICER IS SUSPENDED WITH PAY,
5 THE APPOINTING AUTHORITY MAY SUSPEND THE CORRECTIONAL POWERS OF
6 THE CORRECTIONAL OFFICER AND REASSIGN THE CORRECTIONAL OFFICER TO
7 RESTRICTED DUTIES PENDING:

8 (I) A DETERMINATION BY A COURT WITH RESPECT TO A
9 CRIMINAL VIOLATION; OR

10 (II) A FINAL DETERMINATION BY THE HEARING BOARD OR
11 THE OFFICE OF ADMINISTRATIVE HEARINGS WITH RESPECT TO A
12 CORRECTIONAL FACILITY VIOLATION.

13 (3) A CORRECTIONAL OFFICER WHO IS SUSPENDED UNDER THIS
14 SUBSECTION IS ENTITLED TO A PROMPT HEARING.

15 (C) (1) IF A CORRECTIONAL OFFICER IS CHARGED WITH A FELONY,
16 THE APPOINTING AUTHORITY MAY IMPOSE AN EMERGENCY SUSPENSION OF
17 CORRECTIONAL POWERS WITHOUT PAY.

18 (2) A CORRECTIONAL OFFICER WHO IS SUSPENDED UNDER
19 PARAGRAPH (1) OF THIS SUBSECTION IS ENTITLED TO A PROMPT HEARING,
20 HELD NO MORE THAN 90 DAYS AFTER THE SUSPENSION.

21 ~~10-913.~~

22 ~~(A) ON RECEIVING A TERMINATION, DEMOTION, OR SUSPENSION~~
23 ~~WITHOUT PAY OF GREATER THAN 10 DAYS, A CORRECTIONAL OFFICER MAY:~~

24 ~~(1) FILE AN APPEAL UNDER § 11-109 OF THE STATE PERSONNEL~~
25 ~~AND PENSIONS ARTICLE; OR~~

26 ~~(2) REQUEST A HEARING BY THE HEARING BOARD.~~

27 ~~(B) IF A CORRECTIONAL OFFICER RECEIVES PUNITIVE ACTION OTHER~~
28 ~~THAN TERMINATION, DEMOTION, OR SUSPENSION WITHOUT PAY OF GREATER~~
29 ~~THAN 10 DAYS, THE CORRECTIONAL OFFICER MAY APPEAL ONLY UNDER §~~
30 ~~11-109 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.~~

31 ~~(C) AN EMERGENCY SUSPENSION IS NOT SUBJECT TO APPEAL.~~

32 ~~10-914.~~

1 ~~(A) A PERSON MAY NOT KNOWINGLY MAKE A FALSE STATEMENT,~~
2 ~~REPORT, OR COMPLAINT DURING AN INVESTIGATION OR PROCEEDING~~
3 ~~CONDUCTED UNDER THIS SUBTITLE.~~

4 ~~(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A~~
5 ~~MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT~~
6 ~~EXCEEDING 6 MONTHS OR A FINE NOT EXCEEDING \$5,000 OR BOTH.~~

7 Article – State Personnel and Pensions

8 1–101.

9 (b) “Appointing authority” means an individual or a unit of government that
10 has the power to make appointments and terminate employment.

11 11–105.

12 The following actions are causes for automatic termination of employment:

13 (1) intentional conduct, without justification, that:

14 (i) seriously injures another person;

15 (ii) causes substantial damage to property; or

16 (iii) seriously threatens the safety of the workplace;

17 (2) theft of State property of a value greater than \$300;

18 (3) illegal sale, use, or possession of drugs on the job;

19 (4) conviction of a controlled dangerous substance offense by an
20 employee in a designated sensitive classification;

21 (5) conviction of a felony;

22 (6) accepting for personal use any fee, gift, or other valuable thing in
23 connection with or during the course of State employment if given to the employee by
24 any person with the hope or expectation of receiving a favor or better treatment than
25 that accorded to other persons;

26 (7) (i) violation of the Fair Election Practices Act; or

27 (ii) using, threatening, or attempting to use political influence
28 or the influence of any State employee or officer in securing promotion, transfer, leave
29 of absence, or increased pay;

1 (8) wantonly careless conduct or unwarrantable excessive force in the
2 treatment or care of an individual who is a client, patient, prisoner, or any other
3 individual who is in the care or custody of this State; and

4 (9) violation of § 3–314 of the Criminal Law Article.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.