

Chapter 194

(Senate Bill 887)

AN ACT concerning

Correctional Services – State Correctional Officers’ Bill of Rights

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

BY adding to

Article – Correctional Services

Section 10–901 through ~~10–914~~ 10–913 to be under the new subtitle “Subtitle 9.
State Correctional Officers’ Bill of Rights”

Annotated Code of Maryland

(2008 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, without amendments,

Article – State Personnel and Pensions

Section 1–101(b) and 11–105

Annotated Code of Maryland

(2009 Replacement Volume and 2009 Supplement)

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

Article – Correctional Services

SUBTITLE 9. STATE CORRECTIONAL OFFICERS' BILL OF RIGHTS.

10-901.

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

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

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

- (1) A CORRECTIONAL DIETARY OFFICER;
- (2) A CORRECTIONAL MAINTENANCE OFFICER;
- (3) A CORRECTIONAL LAUNDRY OFFICER;
- (4) A CORRECTIONAL RECREATION OFFICER; AND
- (5) A CORRECTIONAL SUPPLY OFFICER.

(D) (1) “HEARING” MEANS A PROCEEDING DURING AN INVESTIGATION CONDUCTED BY A HEARING BOARD TO TAKE TESTIMONY OR RECEIVE OTHER EVIDENCE, OR A CONTESTED CASE PROCEEDING BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS, ELECTED BY THE CORRECTIONAL OFFICER.

(2) “HEARING” DOES NOT INCLUDE AN INTERROGATION AT WHICH NO TESTIMONY IS TAKEN UNDER OATH.

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

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

(G) "MISCONDUCT" MEANS:

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

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

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

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

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

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

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

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

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

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

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

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

10-902.

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

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

10-903.

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

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

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

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

10-904.

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

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

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

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

(2) HAS LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

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

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

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

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

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

10-905.

(A) THE INVESTIGATION OR INTERROGATION BY THE APPOINTING AUTHORITY OR BY THE INTERNAL INVESTIGATIVE UNIT OF A CORRECTIONAL OFFICER FOR A REASON THAT MAY LEAD TO DISCIPLINARY ACTION, DEMOTION, OR DISMISSAL SHALL BE CONDUCTED IN ACCORDANCE WITH THIS SECTION.

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

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

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

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

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

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

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

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

(II) THE INTERROGATING OFFICER; AND

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

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

(I) THE NATURE OF THE INVESTIGATION; AND

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

~~(H)~~ (II) THE CORRECTIONAL OFFICER'S RIGHTS UNDER THIS SUBTITLE.

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

~~(F)~~ (E) UNLESS THE SERIOUSNESS OF THE INVESTIGATION IS OF A DEGREE THAT AN IMMEDIATE INTERROGATION IS REQUIRED, THE

INTERROGATION SHALL BE CONDUCTED AT A REASONABLE HOUR, PREFERABLY WHEN THE CORRECTIONAL OFFICER IS ON DUTY.

~~(C)~~ (F) THE INTERROGATION SHALL TAKE PLACE AT:

(1) THE APPOINTING AUTHORITY'S OFFICE;

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

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

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

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

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

(2) EACH SESSION OF INTERROGATION SHALL:

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

~~(H)~~ ALLOW FOR PERSONAL NECESSITIES AND REST PERIODS AS REASONABLY NECESSARY.

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

~~(J) (1) THE INTERROGATING OFFICER MAY NOT INTENTIONALLY MAKE A FALSE STATEMENT DURING THE COURSE OF AN INTERROGATION.~~

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

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

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

(I) 1. THE CORRECTIONAL OFFICER IS REPRESENTED BY LEGAL COUNSEL SELECTED BY THE CORRECTIONAL OFFICER;

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

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

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

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

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF REPRESENTATION IS NOT AVAILABLE, THE INTERROGATION SHALL BE SUSPENDED UNTIL REPRESENTATION IS OBTAINED.

(II) A SUSPENSION OF INTERROGATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY NOT EXCEED 10 DAYS UNLESS THE APPOINTING AUTHORITY, FOR GOOD CAUSE SHOWN, EXTENDS THE PERIOD FOR OBTAINING REPRESENTATION.

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

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

(II) OBJECT TO ANY QUESTION POSED; AND

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

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

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

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

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

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

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

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

(2) THE CORRECTIONAL OFFICER'S COUNSEL OR REPRESENTATIVE NEED NOT BE PRESENT DURING THE ACTUAL

ADMINISTRATION OF A POLYGRAPH EXAMINATION BY A CERTIFIED POLYGRAPHER IF:

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

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

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

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

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

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

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

10-906.

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

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

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

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

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

10-907.

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

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

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

10-908.

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

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

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

(B) THE APPOINTING AUTHORITY SHALL PROVIDE THE CHARGES AND NOTICE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION TO THE

CORRECTIONAL OFFICER AND TO THE CORRECTIONAL OFFICER'S LEGAL COUNSEL OR THE AGENT OF THE EMPLOYEE ORGANIZATION SELECTED BY THE CORRECTIONAL OFFICER UNDER § 10-907 OF THIS SUBTITLE.

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

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

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

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

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

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

10-909.

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

~~(2)~~ (A) A CORRECTIONAL OFFICER WHO HAS BEEN CHARGED WITH A FELONY MAY REQUEST A STAY OF ALL CHARGES AND PROCEEDINGS UNDER THIS SECTION UNTIL AFTER A VERDICT HAS BEEN REACHED IN THE FELONY CASE.

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

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

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

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

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

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

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

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

2. FOR CORRECTIONAL OFFICERS HOLDING THE RANK OF LIEUTENANT AND ABOVE, THE HEARING BOARD SHALL BE COMPOSED OF ONE CORRECTIONAL OFFICER OF EQUAL RANK, ONE CORRECTIONAL OFFICER OF EQUAL OR LOWER RANK, AND ONE CORRECTIONAL OFFICER OF EQUAL OR HIGHER RANK.

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

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

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

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

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

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

2. THE CHAIR OF THE HEARING BOARD:

A. SHALL PARTICIPATE IN ANY DELIBERATIONS; BUT

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

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

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

~~(H)~~ (VI) THE APPOINTING AUTHORITY AND THE EXCLUSIVE BARGAINING REPRESENTATIVE MAY NEGOTIATE AN ALTERNATIVE METHOD OF FORMING THE HEARING BOARD FOR MEMBERS OF THE COLLECTIVE BARGAINING UNIT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) JUDICIALLY AND ADMINISTRATIVELY COGNIZABLE FACTS; AND

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

(2) THE HEARING BOARD SHALL:

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

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

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

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

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

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

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

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

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

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

~~10-909~~ 10-910.

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

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

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

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

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

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

(I) RECONVENE THE HEARING;

(II) RECEIVE EVIDENCE; AND

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

~~(6)~~ (7) THE HEARING BOARD SHALL ~~DECIDE~~ RECOMMEND THE PENALTY IT CONSIDERS APPROPRIATE UNDER THE CIRCUMSTANCES, INCLUDING DISCIPLINARY SUSPENSION WITHOUT PAY, DEMOTION, DISMISSAL,

TRANSFER, LOSS OF PAY, REASSIGNMENT, OR OTHER SIMILAR ACTION THAT IS CONSIDERED PUNITIVE.

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

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

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

(II) THE APPOINTING AUTHORITY OF THE CORRECTIONAL FACILITY; AND

(III) THE SECRETARY.

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

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

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

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

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

(II) ISSUE A FINAL ORDER.

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

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

(4) THE APPOINTING AUTHORITY SHALL CONSIDER THE CORRECTIONAL OFFICER'S PAST JOB PERFORMANCE AND THE RELATION OF THE CONTEMPLATED DISCIPLINARY ACTION TO ANY PRIOR DISCIPLINARY ACTION BEFORE IMPOSING A PENALTY.

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

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

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

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

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

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

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

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

~~10-910~~ 10-911.

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

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

~~10-911~~ 10-912.

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

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

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

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

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

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

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

~~(i) 12 MONTHS HAVE PASSED SINCE THE FINDING OF WRONGDOING; AND~~

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

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

~~10-912 10-913.~~

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

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

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

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

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

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

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

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

~~10-913.~~

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

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

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

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

~~(C) AN EMERGENCY SUSPENSION IS NOT SUBJECT TO APPEAL.~~
~~10-914.~~

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

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

Article – State Personnel and Pensions

1-101.

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

11-105.

The following actions are causes for automatic termination of employment:

- (1) intentional conduct, without justification, that:
 - (i) seriously injures another person;
 - (ii) causes substantial damage to property; or
 - (iii) seriously threatens the safety of the workplace;
- (2) theft of State property of a value greater than \$300;
- (3) illegal sale, use, or possession of drugs on the job;
- (4) conviction of a controlled dangerous substance offense by an employee in a designated sensitive classification;
- (5) conviction of a felony;

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

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

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

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

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

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

Approved by the Governor, May 4, 2010.