



## Senate Bill 436

### *Law Enforcement Officer Bill of Rights - Hearing Board – Exclusion of Evidence*

MACo Position: **OPPOSE**

To: Judicial Proceedings Committee

Date: February 12, 2014

From: Natasha Mehu

The Maryland Association of Counties **OPPOSES** Senate Bill 436. This bill, with an overbroad reaction to a single case, further narrows the ability of Chiefs of Police and Sheriffs to effectively manage their employees who necessarily must earn and serve the public trust.

SB 436 would require a hearing board operating under the Law Enforcement Officer Bill of Rights (LEOBR) to exclude evidence obtained in violation of investigation and interrogation standards as outlined in §3-104 of the LEOBR subtitle. This would apply for hearings that follow an investigation or interrogation of a law enforcement officer resulting in a recommendation of punitive action such as demotion, dismissal, transfer, loss of pay, or reassignment.

MACo does not find this provision to be necessary because law enforcement officers already have extensive procedural rights under the LEOBR. Under the LEOBR, each party at a hearing may be represented by counsel and has the right to cross-examine witness and provide rebuttal evidence. The LEOBR also states that the hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

Furthermore, the provision is overly broad. Such broad application would create artificial loopholes which may be exploited by miscreant officers. For instance, the exclusion of evidence would apply for disputes over any aspect of the interrogation. This would include disputes descending into details as minor as whether enough rest periods were granted during an interrogation. Time and resources will be spent in pre-hearing litigation as to whether the evidence was obtained in violation of the investigation or interrogation, delaying the imposition of discipline.

Finally, remedies already exist to address issues of agency error. An officer may apply to the circuit court for a show-cause order that directs the law enforcement agency to show cause as to why a right under the subtitle may not be granted. Additionally, a law enforcement officer may appeal hearing decision to the Circuit Court or the Court of Special Appeals if aggrieved by a decision of court.

For these reasons, and in support of the law enforcement agencies, MACo urges an **UNFAVORABLE** report on SB 436.