

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 166

(Senator Sydnor, *et al.*)

Judicial Proceedings

**Criminal Procedure - Police Officers - Duty to Report Misconduct (Maryland
Police Accountability Act)**

This bill requires a police officer to report misconduct if the police officer has actual knowledge that another police officer has engaged in (1) specified misconduct in violation of the Criminal Law Article or (2) the use of “excessive force,” defined under the bill as force that, under the totality of the circumstances, is objectively unreasonable. The police officer must report the misconduct to the officer’s own supervisor or the chief of the law enforcement agency that employs the reporting police officer. A police officer who knowingly and willfully violates the duty to report misconduct is guilty of a misdemeanor and on conviction is subject to a maximum penalty of five years imprisonment and/or a \$10,000 fine.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provision.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill’s penalty provision.

Small Business Effect: None.

Analysis

Bill Summary: In addition to the use of excessive force, the following types of misconduct in violation of the Criminal Law Article must be reported:

- homicide;
- a sexual crime;
- theft or a related crime;
- perjury;
- fraud or a related crime;
- tampering with physical evidence; or
- fabricating physical evidence.

The terms “law enforcement agency” and “police officer” have the same meanings as stated in § 3-201 of the Public Safety Article.

Current Law:

Use of Force

Chapter 519 of 2016 requires each law enforcement agency to require a law enforcement officer who is involved in a use of force incident in the line of duty to file an incident report regarding the use of force by the end of the officer’s shift unless the officer is disabled.

Common law allowed police officers to use any force necessary to effectuate a felony arrest; however, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court held that, under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.” In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court expanded its definition to include the “objective reasonableness” standard. The court held that the Fourth Amendment “reasonableness” inquiry is “whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” In *Randall v. Peaco*, 175 Md. App. 320 (2007), the Maryland Court of Special Appeals applied principles of the *Graham* case and stated that the test for determining the objective reasonableness of an officer’s conduct for purposes of deciding a claim of excessive force brought under the State constitution is the test the Supreme Court announced in *Graham*.

Law Enforcement Officers' Bill of Rights

The Law Enforcement Officers' Bill of Rights (LEOBR) was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of specified State and local agencies. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. LEOBR requirements are much more restrictive and time consuming than general State personnel requirements under Title 11 of the State Personnel and Pensions Article.

Definitions Under § 3-201 of the Public Safety Article

“Law enforcement agency” means a governmental police force, sheriff’s office, or security force or law enforcement organization of the State, a county, or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State. “Law enforcement agency” does not include members of the Maryland National Guard who meet specified conditions.

“Police officer” means an individual who is authorized to enforce the general criminal laws of the State and is a member of one of several specified law enforcement agencies.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Wicomico counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Maryland State’s Attorneys’ Association; Morgan State University; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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