

Maryland General Assembly Public Safety and Policing Workgroup

AGENDA

Tuesday, September 22, 2015

1:00 p.m.

**Joint Hearing Room
Legislative Services Building
Annapolis, Maryland**

I. Call to Order

II. Presentations

- **Law Enforcement Data Presentation**
(Traffic Stops, SWAT, ECD, and Deaths involving a law enforcement officer)

Governor's Office of Crime Control and Prevention

Don Hogan, Director of Legislation

Greg Coster, MSAC Director

Jeffery Zuback, Research Chief

III. Discussion of Work Plans for Workgroup

IV. Adjournment

Public Safety & Policing Workgroup Presentation

An overview of Race Based Traffic Stop, SWAT
Deployment, ECD Discharge, and Deaths Involving a
Law Enforcement Officer data collection in
Maryland

Governor's Office of Crime Control & Prevention

September 22, 2015



Mandated Data Collection (Traffic Stop Data)

- ❖ In 2001, the Maryland General Assembly passed Chs. 342 and 343 which required data collection on every law eligible traffic stop in Maryland.
- ❖ In 2011, the Maryland General Assembly passed SB 14 which reinstated this data collection process.
- ❖ In August 2011, GOCCP provided funding to MSP to create a modification of the E-TIX (Electronic Traffic Information Exchange) interface, which includes a reporting entry database that allows for all law enforcement agencies to submit traffic stop records electronically through MSP, who submits all law enforcement data to MSAC by March 1st each year.
- ❖ Chapter 127 of 2015 reinstated this data collection process for an additional five years.
- ❖ Traffic stops excluded from data collection include traffic stops that result from checkpoints or roadblocks, stops of multiple vehicles after an accident or emergency, the use of radar, laser, vascar technology, and license plate readers.
- ❖ MSAC submits a report to the Governor, the General Assembly, and each law enforcement agency on the data findings by September 1st each year.

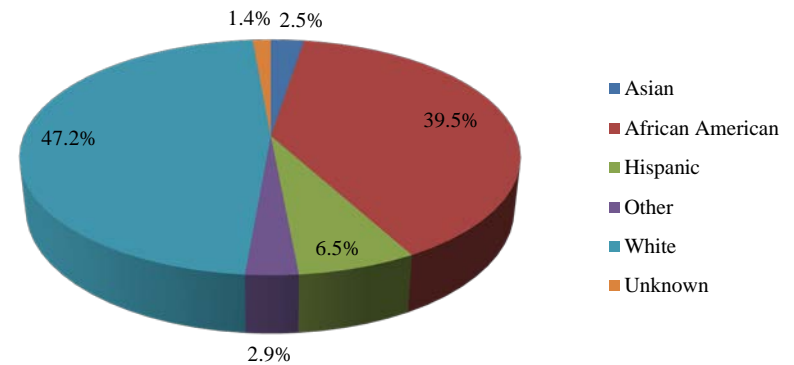
What Data is collected? (Traffic Stop Data)

- ❖ Demographic information on the driver;
- ❖ Agency that made the stop;
- ❖ Date (Month) of the stop;
- ❖ Time of day the stop occurred;
- ❖ Length of stop;
- ❖ Vehicle registration information;
- ❖ County of residence;
- ❖ Reason for the stop;
- ❖ Reason for the search, if one was conducted;
- ❖ Type of search;
- ❖ Outcome of the search;
- ❖ Overall outcome of the traffic stop.

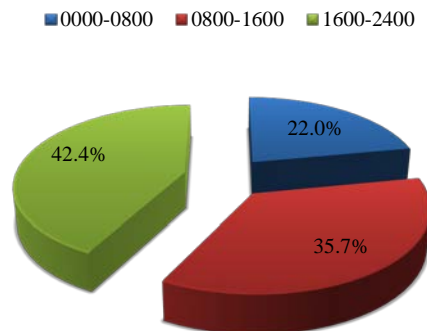
2013 Traffic Stop Data Findings

- ❖ 63% male
- ❖ Big 5 counties accounted for 2/3 of the traffic stops in the state
- ❖ Nearly 80% of the drivers were Maryland Residents
- ❖ Most common stop reasons:
 equipment violations
 registration
 traffic signs, signals, and markings
 speeding

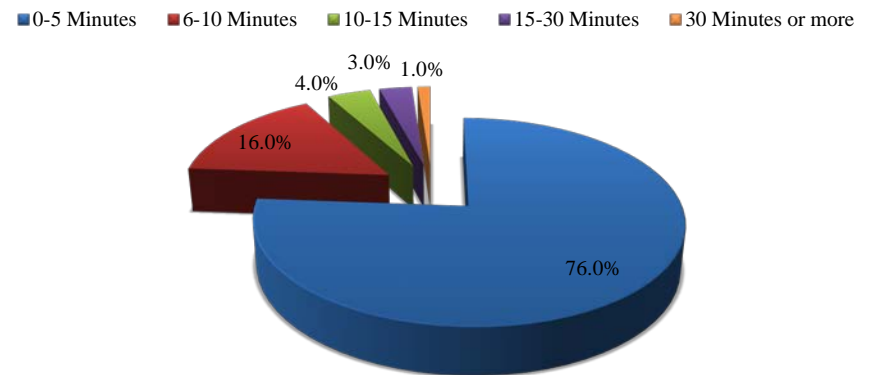
Race/Ethnicity of Driver in Traffic Stops



Time of Traffic Stop (24 hrs)



Length of Traffic Stop



2013 Traffic Stop Data Findings

- ❖ 3.9% of males and 1.8% of females were searched

Males		Females	
2.3%	Asian	0.9%	Asian
4.6%	African American	1.7%	African American
5.1%	Hispanic	1.6%	Hispanic
2.2%	Other	1.2%	Other
3.3%	Caucasian	1.9%	Caucasian

- ❖ Most common search reasons were incident to arrest, probable cause, and the driver giving consent

- ❖ When a search was conducted 4.1% of males and 4.2% of females had an item(s) confiscated by law enforcement (contraband, property, or both)

Males		Females	
2.8%	Asian	1.6%	Asian
4.5%	African American	3.5%	African American
1.8%	Hispanic	1.6%	Hispanic
2.3%	Other	5.5%	Other
5.6%	Caucasian	4.8%	Caucasian

- ❖ The traffic stop outcomes are shown below by race:

Warning		Citation		Repair Order		Arrest	
54.2%	Asian	33.3%	Asian	11.0%	Asian	1.4%	Asian
50.9%	African American	36.4%	African American	10.5%	African American	2.3%	African American
39.3%	Hispanic	45.8%	Hispanic	11.7%	Hispanic	3.3%	Hispanic
52.6%	Other	36.5%	Other	10.0%	Other	1.0%	Other
54.2%	Caucasian	33.7%	Caucasian	10.2%	Caucasian	1.9%	Caucasian

Report

2013 Race Based Traffic Stop Data Analysis

<http://goccp.maryland.gov/msac/documents/TSDReport2014.pdf>

Mandated Data Collection (SWAT)

- ❖ In 2009, the Maryland General Assembly passed Senate Bill 447/ House Bill 1267. This law requires law enforcement agencies that *maintained* a SWAT Team as a part of its regular deployment and operation, to report specific activation and deployment information to MSAC.
- ❖ A SWAT Team is defined as a special unit composed of two or more law enforcement officers within a law enforcement agency trained to deal with unusually dangerous or violent situations and having special equipment and weapons, such as rifles more powerful than those carried by regular police officers.
- ❖ MSAC and the Police and Correctional Training Commissions (PCTC) worked with law enforcement and legal representatives to develop a standardized, efficient, user-friendly format to record and report data required under this law.
- ❖ Law enforcement agencies submitted an excel spreadsheet to MSAC by January 15th and July 15th of each year.
- ❖ MSAC submitted a report on the findings to the Governor, the General Assembly, and each law enforcement agency September 1st each year.
- ❖ This law sunsetted on June 30, 2014.

What Data was collected? (SWAT)

- ❖ The number of times the SWAT Team was activated and deployed;
- ❖ The location where the SWAT Team was deployed (e.g., zip code);
- ❖ The legal authority for each activation and deployment (i.e., Arrest Warrant, Search Warrant, Barricade, Exigent Circumstances, or Other);
- ❖ The reason for each activation and deployment (i.e., Part I Crime, Part II Crime, Emergency Petition, Suicidal, or Other);
- ❖ Whether forcible entry was used;
- ❖ Whether property or contraband was seized;
- ❖ Whether a weapon was discharged by a SWAT Team member;
- ❖ The number of arrests made;
- ❖ Whether any person or domestic animal was injured or killed by a SWAT Team member;
- ❖ Whether there were any injuries of a SWAT Officer.

FY 2009 – 2014 SWAT Data

Findings

- ❖ Roughly 1,600 SWAT deployments occurred each year from 35-40 police agencies.
- ❖ SWAT deployments in Maryland were activated and initiated, almost exclusively (90-93%) in conjunction with the execution of a search warrant signed by a judge.
- ❖ These search warrants almost unanimously (95-98%) were initiated as a response to a Part I Felony Crime or a Part II Crime drug investigation.
- ❖ 2/3 of SWAT deployments involved forcible entry.
- ❖ 80-87% involved the seizure of illegal property or contraband.
- ❖ At least one arrest was made in 2/3 of all deployments.
- ❖ A discharged weapon or injury of a person by a SWAT team officer occurred in less than 2% of all deployments.
- ❖ An injury or death of a domestic animal and the death of a person by a SWAT Team member during a deployment also occurred in less than 2% of total deployments.

FY 2009 – 2014 SWAT Data Findings

SWAT Deployment Data	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Total SWAT Deployments	1,618	1,641	1,651	1,650	1,689
Agencies that Reported at least 1 Deployment	39	36	37	38	35
Legal Authority was a Search Warrant	91.8%	90.3%	89.5%	90.5%	93.1%
Reason for Deployment was a Part I or Part II Crime	95.1%	96.9%	96.0%	96.4%	98.2%
Forcible Entry was Used	69.1%	68.1%	65.8%	68.2%	70.6%
Property or Contraband was Seized	81.5%	83.3%	85.0%	84.9%	87.1%
At least 1 Arrest was Made	63.4%	62.8%	66.0%	65.2%	60.3%
A firearm was discharged	11	10	22	21	35
An Animal was Injured	3	2	1	2	2
An Animal was Killed	3	2	2	2	5
A person was Injured	16	13	20	23	23
A person was Killed	1	1	0	2	5
A SWAT Officer was Injured	Not Reported	Not Reported	10	9	11

Report

Fiscal Year 2014 SWAT Team Deployment Data Analysis

<http://goccp.maryland.gov/msac/documents/SWATReportFY2014.pdf>

Mandated Data Collection (ECD)

- ❖ In 2011, the Maryland General Assembly passed Senate Bill 652/House Bill 507. This law requires law enforcement agencies that issue Electronic Control Devices (ECDs), also known as tasers, to report certain information regarding the use of those devices to MSAC.
- ❖ An Electronic Control Device is defined as a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of an electrical current.
- ❖ MSAC and the Police and Correctional Training Commissions (PCTC) worked with law enforcement and legal representatives to develop a standardized, efficient, user-friendly format to record and report data required under this law.
- ❖ Law enforcement agencies submit an excel spreadsheet to MSAC by March 31st of each year.
- ❖ MSAC submits a report to the Governor, the General Assembly, and each law enforcement agency on the findings by September 1st each year.

What Data is collected? (ECD)

- ❖ The number of times an ECD was discharged by the agency in the past year;
- ❖ The time, date, and location (zip code) of the discharge;
- ❖ The type of incident (e.g. non-criminal, criminal, or traffic stop) in which the person against whom the ECD was discharged was involved prior to the discharge;
- ❖ The reason for each discharge (e.g. non-threatening non-compliance, threat of force, and use of force);
- ❖ The type of mode used (e.g. probe, drive stun, or both);
- ❖ The point of impact of each discharge (e.g., arm, back torso, buttocks, front torso, groin/hip, head, leg, neck, side, clothing, or miss);

What Data is collected? (ECD)

- ❖ The number of ECD cycles, the duration of each cycle, and the duration between cycles of the discharge;
- ❖ The race, gender, and age, of each person against whom the ECD was discharged;
- ❖ The type of weapon (e.g., firearm, edged, blunt force, or other), if any, possessed by the person against whom the ECD was discharged, and the threat of any weapon;
- ❖ Any injury or death resulting from the discharge other than punctures or lacerations caused by the ECD contact or the removal of ECD probes;
- ❖ The type of medical care, if any, provided to the person against whom the ECD was discharged, other than the treatment for punctures or lacerations caused by the ECD contact or the removal of ECD probes.

2012 – 2014 ECD Data Findings

- ❖ 92 law enforcement agencies in Maryland use Tasers.
- ❖ ECD discharges are most likely to occur in densely populated areas during the evening hours (4:00pm – 12:00 am shift).
- ❖ The majority of discharges occur during law enforcement's initial response to a criminal incident and when a person failed to comply with law enforcement officer orders.
- ❖ Probe mode was most commonly used during an ECD discharge in which a person's center mass (i.e., front and back torso) was the most frequent a point of impact. There were very few ECD discharges that made contact with more sensitive areas of the body (i.e., head, neck, and groin).
- ❖ On average, an ECD discharge incident only involved one five second cycle; however, if more than one cycle did occur, the person was given approximately 5-7 seconds (on average) to recover before another electrical current made contact.
- ❖ Persons who were tased possessed a weapon about 20% of the time and showed a threat of a weapon about 10% of the time.
- ❖ 2 deaths resulted from an ECD discharge since 2012.
- ❖ Injuries resulting from a taser discharge occurred in roughly 25% of the incidents.
- ❖ Approximately 60% of the individuals who were tased received additional medical care, mainly hospital care.

2012 – 2014 ECD Data Findings

ECD Discharge Data	2012	2013	2014
Total ECD Discharges	1,068	928	977
Agencies that Reported at least one ECD discharge	65	56	57
4:00 pm - 12:00 am shift	48.1%	44.4%	45.1%
ECD Discharges on African Americans	62.0%	60.8%	68.9%
ECD Discharges on Caucasians	33.3%	32.5%	26.0%
ECD Discharges on Males	93.5%	93.4%	93.1%
ECD Discharges on Persons ages 18-44	81.6%	80.5%	79.9%
Response to a Criminal Incident	71.6%	77.7%	78.8%
Subject was Nonthreatening and Noncompliant	56.7%	54.9%	64.7%
Subject used Force or Threatened to use Force	43.3%	45.1%	35.3%
Probe Mode	74.7%	73.5%	79.1%
Center Mass Point of Impact	71.9%	68.8%	66.4%
Median Number of cycles	1	1	1
Median Duration of Cycle	5 seconds	5 seconds	5 seconds
Median Duration between Multiple ECD cycles	7 seconds	6 seconds	4 seconds
Weapon Possessed by the Subject	21.7%	21.2%	16.1%
Threat of Weapon	5.7%	20.1%	9.4%
Injuries resulting from an ECD discharge	24.3%	19.8%	33.6%
Some type of medical care received	54.9%	57.7%	65.4%
Deaths resulting from an ECD Discharge	0	1	1

Report

2014 Electronic Control Device (ECD) Discharges Analysis

http://www.goccp.maryland.gov/msac/documents/ECD_Data_Report_2015.pdf

Deaths Involving a Law Enforcement Officer

May 12, 2015

Governor Hogan signed House Bill 954, “Deaths Involving a Law Enforcement Officer.”

For the first time in Maryland, a legal mechanism is now in place for capturing and reporting to the public each time a citizen dies during a police encounter, or a law enforcement officer dies in the line of duty.

Deaths Involving a Law Enforcement Officer

2010 – 2013

The Maryland Statistical Analysis Center (MSAC) at GOCCP was the State Reporting Coordinator and data repository for the federal Arrest Related Deaths (ARD) program.

2014

The program ended (although MSAC continued to collect the data) due to legislative sunset, but recently passed federal legislation under the Deaths in Custody Reporting Act will have GOCCP assuming the State Reporting Coordinator role once again for the federal program.

What is an “Officer-involved death?”

Defined by HB 954

The death of an individual resulting directly from an act or omission of a law enforcement officer, while the officer is on duty or while the officer is off duty, but performing activities that are within the scope of the officer’s official duties.

What is an “Officer-involved death?”

Includes individuals who die as the result of:

- Homicide (by L.E.)
- Accidental injury resulting in death
- Natural causes
- Suicide
- Medical Condition / illness
- Overdose / Intoxication

The Office of the Chief Medical Examiner (OCME) determines the cause of death.

What Data is collected? (Deaths Involving a Law Enforcement Officer)

- ❖ Age, gender, ethnicity, and race of the deceased;
- ❖ Age, gender, ethnicity, and race of the officer involved;
- ❖ A brief description on the circumstances surrounding the death;
- ❖ Date, time, and location of the death;
- ❖ The law enforcement agency of the officer who:
 1. Died; OR
 2. Detained, arrested, or was in the process of arresting the deceased.

Data from 2010 - 2014

Cause of Death ->	Homicide by Law Enforcement*	Accidental Injury to Self	Suicide	Medical Condition or Illness	Overdose or Intoxication	Natural Causes	Pending	Unknown or Undetermined	Total
2010	8	1	7	3	2				21
2011	18	4	8		2				32
2012	26	5	7		3				41
2013	19	6	2	1		1	2		31
2014	17	3	2				3	2	27
Total	88	19	26	4	7	1	5	2	152

* OCME does not make a determination on justification

Legislative Reporting

3 year history Legislative Report

Data period covered: January 1, 2012 – June 30, 2015
Data submission due to MSAC: Law Enforcement submission required by 8/15/16
Legislative Report Due: October 15, 2016
Data Source: Reported by law enforcement to MSAC
Sunset: N/A
Notes: This is a 1 time report due 10/15/16

Annual Legislative Reports

Data period covered: January 1 – December 31 (first report covers July 1 – December 31, 2015)
Data submission due to MSAC: Law Enforcement submission required by March 1
Legislative Report Due: June 30
Data Source: Reported by law enforcement to MSAC
Sunset: None
Notes: First report due 6/30/16. Law Enforcement started collecting data on 7/1/15.

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Questions?

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July 15, 2015

Hon. Catherine Pugh, Senate Chair
Hon. Curtis S. Anderson, House Chair
Public Safety & Policing Working Group
c/o Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

SENT BY EMAIL ATTACHMENT

Dear Senator Pugh and Delegate Anderson:

I respectfully submit this letter to the Public Safety & Policing Working Group for its consideration. I retired as Anne Arundel County Attorney in 2014, and my recommendations are based on 31 years of experience in the Anne Arundel County Office of Law and five years of experience prior to that as an Assistant State's Attorney for Anne Arundel County. I worked with police officers as a prosecutor, and while in the Anne Arundel County Office of Law I both defended police officers in civil litigation and advised police chiefs and internal affairs investigators in the course of investigations and disciplinary proceedings governed by the Law Enforcement Officers' Bill of Rights (LEOBR).

I believe that significant changes to the LEOBR and the Maryland Public Information Act are needed for the sake of accountability and transparency in the operation of law enforcement agencies. It will be the citizens of the City of Baltimore, the jurisdiction that places the most demands on its police department, who will continue to suffer the most without improvements in accountability and transparency.

I have some specific recommendations, and I also would like to take some of your time to expand on what I believe needs to be a paradigm shift in the way that we view police discipline and job performance. In the 36 years that I have followed the issue I have watched the authority of police chiefs to maintain the discipline and effectiveness of their departments gradually eroded to the point where I believe that the General Assembly needs to reset the balance between the rights of police officers to retain their employment and the powers of management to control their conduct.

ourselves of the notion that policing is the same in Baltimore City as it is in some small municipality in Western Maryland or on the Eastern Shore. Officers in Baltimore face on a daily basis issues that officers in some departments that are subject to the LEOBR may never face at all.

Second, let's not count on police chiefs being too willing to offend their local FOPs. I came to know many police chiefs during the course of my career, and most walked a fine line between trying to retain control of discipline within their departments and trying to avoid alienating the FOP, particularly to the point of triggering the dreaded "no confidence" vote. The political power of police unions and their ability to intimidate police chiefs in Maryland is an issue that I will expand upon later.

In my opinion changes to the LEOBR *are* needed on a statewide basis. On the other hand, the LEOBR is such a polarizing political issue that I do not believe that statewide change is likely. It isn't worth the fight to try to extend the changes beyond the City of Baltimore. Make the changes where they are needed most, and where a crisis exists. Ignore the camel's-nose-under-the-tent argument that you will hear from the FOP.

2. Put the authority for making initial decisions whether and what type of disciplinary action should be imposed back where it belongs.

The role of the LEOBR "hearing board" in Maryland is absolutely unique, and a testament to the political power in Maryland of public safety unions to gradually undermine the professional management of police departments. The members of the hearing board, and not the chief of police, currently have the primary responsibility under current law for determining if a policy, procedure, or law has been violated and, if so, what the penalty for the violation shall be. That needs to be changed, and the responsibility returned to the chief of police. The police chief should be given the power to decide if a violation has occurred and, if so, what the appropriate sanction will be.

How can it be that police departments are the only entities for which it is a "good" idea to strip management of the right to regulate the conduct of employees? *How can the Police Commissioner be held accountable for the discipline of his or her department if he or she cannot be trusted with the power to decide whether an officer should be disciplined?*

It is not uncommon for personnel decisions by governmental managers to be subject to *subsequent* administrative and judicial review to make sure that their decisions are not arbitrary or capricious. Requiring action by a "neutral" and non-accountable hearing board *before* a supervisor can discipline a subordinate, however, is a protection afforded only to police officers. This is a rabbit hole that the General Assembly never should have gone down.

3. Eliminate the 10 day "suspension" of interrogation that prohibits an officer from being questioned about an incident for 10 days following the incident.

1. Retaining employment as a police officer has become an entitlement, and the increased emphasis placed on protecting the tenure of officers since the enactment of the LEOBR in 1974 has come at the expense of what should be a higher priority, which is ensuring that chiefs of police are given the tools and then held accountable for maintaining the discipline, integrity, and effectiveness of their departments. The principle that a police chief must be able to act decisively and with reasonable speed to get rid of a bad cop has been lost.

I am not arguing against reasonable safeguards against improvident discipline. But I believe that the balance has swung way too far in one direction, toward protecting police officers and away from protecting the public. It is my opinion that Maryland's version of the LEOBR is not about *fairness* to officers; it is about throwing as many obstacles as possible in the way of effective disciplinary action by police chiefs.

I do not know that we *ever* have had a crisis in this State consisting of police officers being inappropriately disciplined. On the other hand, more than one jurisdiction in this State has had a problem with out-of-control police officers.

The overwhelming majority of police officers take seriously the duty to protect and serve and do it well. A significant number, however, do not, and the challenge is to get rid of them before their numbers grow and they destroy the culture of a department. It takes only a handful of bad cops to spoil the barrel and to spoil it quickly. It is a case of misplaced priorities: Yes, it is important that the employment rights of police officers be protected, but it is not heresy to believe that it is more important that the job of a police chief to maintain the discipline, integrity, and effectiveness of his or her officers not be made as hard as possible.

2. There is a clear if unintended message delivered by the LEOBR: The General Assembly trusts rank-and-file police officers but not police chiefs. Why else would the power of a police chief to discipline his or her officers be so severely limited? Over the years the General Assembly has radically shifted the balance of power over discipline from police chiefs to police unions; in other words, from management to labor. A rhetorical question illustrates the point: Would any private sector manager or military commander design a system of discipline in which the manager or commander did not retain the primary authority to decide whether an employee (or soldier, sailor, or airman) was fit to be retained?

As pointed out above, the consequence of this imbalance is that police chiefs lack adequate authority over the conduct of their officers. Without that authority police chiefs cannot reasonably be held accountable for their conduct of their officers.

Another important principle has been lost as the LEOBR has evolved: The principle that you give the head of an agency the tools to do the job and then hold him or her responsible for the results. If hearing boards are too hesitant in finding officers guilty of misconduct or too lenient in the discipline imposed, what do you do? Fire the officers on the hearing boards? The current disciplinary system defies accepted principles of management, removing the authority to discipline from the managers responsible for maintaining discipline.

Conclusion

Above all other principles I believe that it is vital that police chiefs be held accountable for their success in maintaining the discipline and effectiveness of their departments. That can only be done if police chiefs are given the necessary authority. The LEOBR as currently written is simply too aggressive in restraining the authority of police chiefs to investigate misconduct and impose the discipline that they believe necessary. Citizens are absolutely entitled to the information necessary to judge for themselves how well a police chief has done in controlling the excessive use of force and other abuses of police authority.

The Baltimore City Police Department is facing a crisis and the Police Commissioner needs to be given the tools to run his or her department properly. The imperative is not only to reduce the incidence of the use of excessive force but also to better enable the department to control an epidemic of violent crime. It now appears beyond dispute that the fractured relationship between the department and the community caused by hostile and even violent officers has interfered with the basic mission of the department, which is to fight crime.

My final concluding remark is to suggest that the Working Group may wish to expand its inquiry to include police "performance criteria" other than disciplinary violations such as the use of excessive force. For example, how effective is the Baltimore City Police Department in getting rid of underperforming officers who do *not* commit individual bad acts for which discipline is meted out? Qualitative personnel management is a struggle for most State and local agencies, and for what agency in the State is it more important at the present time to have the best quality people on the job? The same "us versus them" mentality and strong trade union orientation that interferes with discipline can also interfere with accurate performance appraisal and qualitative personnel management, and I believe it is worth a look to see how the Baltimore City Police Department is doing in that regard.

Thank you for considering my letter, and good luck with your important task.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Plymyer". The signature is fluid and cursive, with the first name "David" being particularly prominent and stylized.

David A. Plymyer