



BALTIMORE COUNTY LODGE NO. 4
FRATERNAL ORDER OF POLICE

INCORPORATED

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DAVID M. ROSE
LODGE PRESIDENT

DONNA M. PATTERSON
LODGE SECRETARY

The Honorable Luke Clippinger, Chairman
House Judiciary Committee
Room 101
House Office Building
Annapolis, MD 21401

Re: House Bill 1090 - Law Enforcement – Complaints and Investigations – Use of Force - Oppose

Chairman Clippinger,

Police officers, in fulfilling their oath to the public, are often called upon to put themselves in harm's way. However, in doing so, they are not expected to graciously accept the probability of injury.

The test of whether a police officer used excessive force during an arrest or a seizure is analyzed under the 4th amendment's objective reasonableness standard.

The Supreme Court explained the test of reasonableness under the 4th amendment is not capable of precise definition or mechanical application. The reasonableness test requires close attention to the facts in *Connor v. Graham* 490 U.S. 386 (1989) citing *Tennessee v. Garner* 1985.

In evaluating excessive force claims, the facts must be examined from the perspective of the officer. (Graham) For the purposes of the 4th Amendment's objective reasonableness standard, the court should not define clearly established law at too high a level.

Officers cannot be expected to engage in a protracted analysis of all the information known in a rapidly changing circumstance, putting the officer in a position to make an immediate choice. The critical reality is officers often do not even have a moment to ponder many conflicting factors. The reasonableness of the officer's actions must be based on the information possessed by the officer at the time the force is employed. *Richardson v McGriff* 361 MD 347 (2000)

The Court's focus should be on the circumstances at the moment the force was used and the facts that officers on the beat are not often afforded the luxury of armchair reflection.

The reasonableness of an officer's particular use of force used must be judged from the perspective of a *reasonable officer "on the scene"* rather than with the vision of 20/20 hindsight. Most significantly, the court further reiterated that "reasonableness" meant the standard of reasonableness "at the moment" and the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments, in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation. (*Greenridge v Ruffin* 927 F2d at 792 (4th Circuit 1991) citing *Graham v Connor* 1989

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The Courts use of the phrases "at the moment" and "split second judgment" are strong indicia that the reasonableness inquiry extends only to those factors known to the officer at the precise moment the officers effectuate the seizure.

"The 4th amendment does not require omniscience. Officer's need not be absolutely sure of the nature of the threat or the suspects intent to cause them harm. The constitution does not require that certitude proceed the act of self-protection. *Anderson v Russel 247 F.3d at 132*

Additionally, this bill touches on two other matters of concern. In Section 4-311 of the Public Safety Article it exempts "a record related to a formal complaint of job-related misconduct against a law enforcement officer, including an investigation record, a hearing record, or a disciplinary decision, is not a personnel record for the purposes of this subtitle".

This is very troubling because it does not differentiate between an officer's record of conduct being a mere allegation or an allegation that was completely investigated. It also does not reference whether the officer was sustained of the allegation and after all administrative avenues have been exhausted was the disciplinary action accepted or implemented. There is much discussion to be had by all parties involved before the General Assembly should even attempt this endeavor.

This bill, as written would be unprecedented as it would make law enforcement disciplinary records, the only public employee records open to public review.

The second point of concern is the changes to Section 3-104 of the Public Safety Article. The language removes the requirement that the investigator be a sworn officer and changes it to "any person who will interrogate the officer". This is a very dangerous revision. Officers assigned to investigate misconduct are hand picked by the Chief of Police. They are trained in the art of interrogation and the investigation of officers. These officers exercise their duties with due care and pride. To give these investigations to "any person" would be totally ineffective.

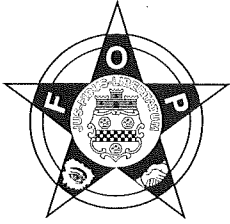
It is the position of the Fraternal Order of Police that HB 1090 should be given an unfavorable recommendation based on established case law cited above.

David Rose
President
Baltimore County Fraternal Order of Police
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Law enforcement officers across the country have faced intense public scrutiny about officer conduct and the use of force on the citizens they serve. Recent events both nationally and local have gained widespread attention on both traditional and social media. This has created a flawed perception that police officers across America and in Maryland, serve the community, with no regard for citizen rights, the use of force is commonplace and there is no mechanism to discipline officers for misconduct. As you can see from the last decade of statistics below, misconduct and the use of force by officers, whether physical or with a firearm is quite rare.

Year	County Population	Calls for Service	Assaults on Officers	Arrests	Uses of Force	Citizen Complaints
2010	801,700	604,706	957	33,898	329	128
2011	805,029	576,017	955	29,959	354	109
2012	817,455	585,112	798	29,439	377	126
2013	817,455	580,416	692	27,982	318	124
2014	824,000	572,289	659	26,989	305	89
2015	824,000	582,894	660	25,651	300	85
2016	826,000	606,851	609	24,534	252	71
2017	831,000	709,627	581	23,584	208	52
2018	831,000	668,820	627	21,564	242	43
2019	835,000	<u>749,403</u>	<u>602</u>	<u>21,689</u>	<u>249</u>	<u>50</u>
		6,236,135	7,140	265,289	2,934	877

County Population

The county population has steadily grown since 2010 with an increase of approximately 33,300 (4%) over the ten (10) year period. Demographics available on the county website showed that in 2010 the population was 64% white, 26% African American, 4% Hispanic, 6% other.



Calls for Service

The number of calls for service shown includes all calls to 911, non emergency calls and traffic stops. This does not take into account the numerous undocumented interactions with citizens that officers have every day.

Calls for service for the time period shown have shown an increase of 24%. The average number of calls for service was 623,614. The last three years have been above the average.

Arrests

In the decade 2010 thru 2019 in Baltimore County, there were a total of 265,289 arrests. That equates to an average of 26,529 arrests per year in a county where the population has grown 4% to 835,000. Every year since 2015 has been under the average.

The number of arrests has trended downward 36% since 2010. Baltimore County officers made 1,017 less arrests per month or 33 less per day, in 2019 than in 2010 while the population has grown 4% and calls for service have increased 24%.

Uses of Force by Officers

In the Baltimore County Police Department a “use of force” report must be completed when an officer uses force involving any execution of a physical act to control a person, overcome resistance, and/or defend oneself or another. The force may entail the use of body parts, issued departmental equipment, or an instrument of necessity.

In the ten (10) years indicated above Baltimore County officers used force a total of 2,934 times. That equates to an average of 293 uses of force per year. That is less than 1 use of force by an officer per day on average. Additionally, the statistics show that force was only used in 00.0470% of all calls for service and 01.105% of all arrests.

Internal Affairs stats show that officers were involved in combat shootings 60 times during the ten (10) year time period averaging six (6) per year. This equates to the use of a firearm in 00.00096% of all calls for service and in 00.0226% of all arrests.

Assaults on Officers

During the ten (10) year time period officers reported being assaulted 7,140 times averaging 714 assaults per year. (There has been 2 line of duty deaths) While assaults on officers have been trending downward, the numbers show that officers in Baltimore County are 2.4 times more likely to be assaulted by a citizen than use force against a citizen.

Citizen Complaints

According to the Internal Affairs Section in the Baltimore County Police Department there were 877 complaints from citizens about officer misconduct, including uses of force. That equates to an average of 87 per year and has also been steadily trending downward (39%). Over the entire time period there was an average of 1 citizen complaint for every 7,110 calls for service. In the years 2018 and 2019 there was 1 citizen complaint for every 15,249 calls for service.



Closing

As you can see from the last decade of agency statistics, the constant false narrative against law enforcement is simply not true. The use of force is very rare in both calls for service and in arrest situations. The use of a firearm is even more rare, NINETY-SIX, TEN THOUSANDS OF 1% on all calls for service and TWENTY- TWO ONE HUNDRETHS OF 1% of all arrests!

When you think about it, the odds of a person getting struck by lightning in their lifetime is greater, .0333%, than getting shot by an officer.

The United States Supreme Court in Connor v Graham 1989, carefully laid out the standard for the use of force. The statistics above show that it works and there is no need for it to be changed.

The Baltimore Metropolitan area has a serious crime problem. In 2019 there were almost 350 murders in Baltimore City and Baltimore County set an all time high with 50 murders. There are currently 27 Mayoral candidates and a City Police Commissioner, each with a crime plan. Our County Executive recently released one in Baltimore County. However, no crime plan can be effective without the men and women who put on the uniform to do the job each and every day. However, the vitriol towards the law enforcement profession has gotten to the point where recruiting is an arduous task. We have members in Baltimore County leaving the profession at a pace never before seen. This has to stop now.

This General Assembly has done its job. In 2016 there was “police reform” with HB1016 and changes were made to the LEOBR, as well as additional mandates for training in the Maryland Police Training and Standards Commission. Today, law enforcement, as a profession, has never been so transparent. There are cell phone cameras, body cameras and dash cameras so citizens can see law enforcement from a point of view like never before. We also have open hearing boards so the public can view the disciplinary process as it unfolds. The Baltimore City Police Department is currently under a Consent Decree and drastic changes are being made as to how that agency will operate in the future. It is now time to step back and let these changes take effect.

Maryland Law Enforcement and the Fraternal Order of Police have worked together with The General Assembly to make these changes. We now ask that you end the crusade against our members and start to work with us to resolve the one problem we must face together, which is making our communities safe again for the citizens we serve.

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