



## **HB 1221 Public Information Act - Personnel and Investigatory Records - Complaints Against Law Enforcement Officers**

### **Oppose Unless Amended**

Under current law, if you file a complaint of police misconduct, you cannot find out how the department investigates your complaint. All you can find out is the outcome and the discipline. You cannot find out whether the department conducted a thorough or lackluster investigation of your complaint. This is because Maryland's Public Information Act (PIA) prohibits disclosure of disciplinary files.

HB 1221 allows disclosure over only the following disciplinary files:

1. All allegations, regardless of the outcome for:
  - a. Discharge of a firearm at a person by an officer; and
  - b. Use of force resulting in death or serious bodily injury;
2. Only sustained allegations of:
  - a. Sexual assault against a member of the public;
  - b. Dishonesty, perjury, false statements, false reports, destroyed, falsified or concealed evidence directly related to the reporting, investigation, or prosecution of a crime; and
  - c. Prohibited discrimination directly related to the reporting, investigation, or prosecution of a crime.

We urge the committee to expand the range of misconduct that our communities have transparency over. Most importantly, our communities deserve transparency regardless of the outcome and especially when complaints are unsustainable because police departments often conduct slow, weak, or biased investigations (or no investigation at all!) and thereby find abusive officers innocent of wrongdoing. Specifically, we propose that HB 1221 be amended to allow disclosure of:

1. All use of force investigations, regardless of whether it causes death or serious bodily injury;
2. All discrimination or bias misconduct, not only “prohibited discrimination” as the bill currently states;
3. Misconduct committed during criminal investigations, like those documented in the Baltimore City Gun Trace Task Force;
4. Criminal activity by officers; and
5. Investigations into misconduct regardless of the outcome

We also propose a requirement that police departments report annually regarding the number of complaints received and how they are resolved.

Unless the bill is expanded, its passage will create the illusion of transparency without worthwhile reform. We therefore respectfully oppose HB 1221 unless it is amended to allow more meaningful transparency over police misconduct.

Respectfully,

1199 SEIU  
ACLU of Maryland  
Common Cause Maryland  
FreeState Justice  
League of Women Voters  
Maryland Delaware District of Columbia Press Association  
Public Justice Center  
SURJ Montgomery County  
Takoma Park Mobilization

## We need transparency over allegations of ALL misconduct, not only allegations Police Departments “sustain”

HB 1221 only allows disclosure of “sustained” allegations of sexual assault, dishonesty, and discrimination. For these allegations, we need transparency regardless of whether the department sustained the allegation.

### 1. The Baltimore City Police Department fails to sustain complaints consistently.

BPD, and likely other departments, fail to sustain complaints of misconduct consistently. The following is an excerpt from the DOJ investigation report!:

WHERE EVIDENCE OF MISCONDUCT EXISTS.

#### d. BPD Fails to Sustain Complaints and Apply Discipline Consistently

Deficiencies in BPD’s complaint intake and investigation contribute to BPD’s extremely low rate of sustaining allegations of officer misconduct, which in turn leads to a lack of discipline and accountability in the Department. Discipline for allegations of serious misconduct is rare. Of the 1,382 allegations of excessive force that BPD tracked from 2010 through 2015, only 31 allegations, or 2.2 percent were sustained. These allegations arose out of fourteen separate incidents. In light of the significant evidence of excessive force we found in our investigation, the low rate of sustaining excessive force complaints is troubling. Similarly, BPD completed investigations into 1,359 allegations of discourtesy from 2010 through 2015, and sustained just 2.6 percent of those allegations, arising out of just fifteen incidents. This low number of sustained outcomes is also concerning, considering the number of community members we spoke to who described BPD officers behaving in a rude or abusive manner during encounters with community members.

### 2. Very few allegations of misconduct are sustained.

According to the DOJ investigation, the Baltimore City Police Department sustains very few allegations of misconduct. We don’t know whether this is also a problem for other departments. So, getting only sustained complaints (as proposed in HB 1221) would not tell us anything about the majority of misconduct, which departments allow to fly under the radar.

In 2019, the Montgomery County police department received and sustained the following:

- 58 allegations of use of force. Sustained zero.
- 23 allegations of discrimination/ harassment. Sustained zero.
- 12 allegations of dishonesty. Sustained zero.

“Of the 1,382 allegations of excessive force that BPD tracked from 2010 through 2015, only 31 allegations, or 2.2 percent were sustained. These allegations arose out of fourteen separate incidents.”<sup>ii</sup>

“BPD completed investigations into 1,359 allegations of discourtesy from 2010 through 2015, and sustained just 2.6 percent of those allegations, arising out of just fifteen incidents.”<sup>iii</sup>

**3. Police Departments treat misconduct differently.** Police departments do not categorize misconduct uniformly. As a result, “sustain” could mean one thing in Baltimore City and another in Montgomery County.

The [Montgomery County Police Department website](#) says they have 5 possible dispositions:

1. Insufficient evidence: There was not enough evidence to prove or disprove the allegation.
2. Sustained: Sufficient evidence to prove the allegations of misconduct.
3. Policy Failure: Omissions or insufficient/ineffective policy to address the allegation (s). If this is the finding, recommendations will be made to create and/or adjust policy.
4. Unfounded: Based on the facts of the investigation, the act (s) did not occur.
5. Exonerated: Actions of the involved officer(s) were justified, lawful and proper.

The [Prince George’s County Police Department website](#) recognizes 4 outcomes:

1. Non-sustained: The investigation did not discover sufficient evidence to prove or disprove the allegations.
2. Sustained: The investigation found sufficient evidence to prove the allegations.
3. Unfounded: The investigation found the alleged acts did not occur or did not involve Departmental employees.
4. Exonerated: The investigation found the alleged acts did occur, but they were justified, lawful, and proper.

**4. HB 1221 could discourage departments from sustaining complaints.** If only sustained complaints are transparent, police departments may be incentivized to avoid transparency by not sustaining complaints.

**5. Transparency of unsustained complaints would not expose old complaints.** Under LEOBR (Pub. Safety §3-110(a)), unsustained allegations can be expunged after 3 years, and would therefore not be disclosed.

**6. Unsustained complaints are what communities most want to see.** Communities especially want to know about complaints that are unsustained, when police departments conduct slow, weak, or biased investigations (or no investigation at all!) and thereby find abusive officers innocent of wrongdoing.

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<sup>i</sup> U.S. DOJ Investigation of the Baltimore Police Department (2016), p. 146.

<sup>ii</sup> *Id.*

<sup>iii</sup> *Id.*