ROBERT G. CASSILLY
Legislative District 34
Harford County

Judicial Proceedings Committee

Joint Committee on Administrative, Executive, and Legislative Review

Joint Committee on Federal Relations

THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 401
Annapolis, Maryland 21401
410-841-3158 · 301-858-3158
800-492-7122 *Ext.* 3158
Bob.Cassilly@senate.state.md.us

District Office
1015 South Main Street
Bel Air, Maryland 21014
443-502-0583

January 26, 2021

RE: **Senate Bill 381 – Law Enforcement Officers' Bill of Rights – Uniform Disciplinary Procedures**

Dear Committee Members:

This bill is in response to demands for greater public accountability regarding alleged police misconduct. On this topic, the General Assembly has seen proposals to repeal the Law Enforcement Officers Bill of Rights (LEOBR), calls to remove the confidentiality protections afforded police personnel records, calls to establish new citizen boards to remove police officers, and more.

Modern police agencies are powerful, paramilitary organizations that operate 24/7/365 throughout every corner of this state. Officers in the field are generally alone and necessarily operate with great deal of personal discretion as they encounter infinite possibilities of personal and public danger and, at times, overwhelming public demand. Mistakes by law enforcement can be costly in terms of life, health, public safety, and public morale. A good officer is a life saver who builds better lives and better communities. A bad officer is a potential menace to the community.

Given the autonomy and immense power possessed by each individual officer, it is vital that all police agencies in this state operate under a process that provides for effective and timely police discipline in order to identify and quickly remove or discipline offending officers. We have heard a lot of complaints over the past six years that the current processes are not working as well as they should in every jurisdiction and citizens are demanding action. It would appear from the criminal convictions of certain officers that some of those complaints are well founded and that it is time for this body to take action.

As we move forward in this endeavor, it is important that we act with careful deliberation. We have witnessed in our own State the immense damage done to public safety when elected leaders act rashly, imprudently, and even foolishly to attack those sworn to protect and serve. We need the police. We especially need very good police who are smart, dedicated, and honest. We cannot attract police recruits and retain officers with the desired qualifications by belittling and disrespecting them through unfair systems or demeaning processes.

In 1974 this body created the LEOBR "to secure for law enforcement officers minimum guarantees of procedural and substantive due process." (Governor William Donald Schaefer's letter May 27, 1988, supporting his veto of SB 227.) Toward this purpose, LEOBR established a

uniform, statewide process for police disciplinary matters. It established a process that was fair to the officers but also instilled public confidence. Police officers were provided with due process protections and the public had confidence that the final decision in police misconduct matters lay with elected officials who were subject to public removal should they fail to achieve an appropriate balance between public interest and the interests of the police officers.

In Governor Schaefer's evaluation of LEOBR in 1988, 13 years after enactment of LEOBR, he stated: "Most observers agree that LEOBR has served its purpose well. The rights of law enforcement officers are clearly defined and are uniform throughout Maryland. The uniformity of the system enhances its effectiveness and the public's confidence in law enforcement." (Copy of Governor Schafer's letter attached as Exhibit B)

Unfortunately, that balance between the public interest and police rights has eroded over time. Please consider the following brief history of LEOBR which I find revealing and instructive.

In 1987 and 1988, SB860 and SB 227 / HB 1209 would have authorized law enforcement officers to waive any or all of the LEOBR hearing procedures and elect, in the alternative, to proceed under a process established by a locally negotiated collective bargaining agreement (CBA). This bill passed the General Assembly twice and was vetoed by the Governor twice (Veto letters are attached as Exhibit A and B) on the grounds that it would erode the uniformity of police disciplinary process and the public confidence that existed throughout the state.

In Governor Schaefer's 1988 veto letter for SB 227 he stated: "Senate Bill 227 would erode the uniformity of the system by allowing police officers in different jurisdictions to elect to be covered by the terms of the collective bargaining agreement in effect in that jurisdiction. The result would be an inconsistent application of the Law Enforcement Officers' Bill of Rights in a patchwork of supplemental protections under collective bargaining agreements. In addition, these protections could be altered on a yearly basis as various collective bargaining agreements were renegotiated. … I continue to believe that great weight should be given to the Law Enforcement Officers' Bill of Rights in any interplay between it and collective bargaining agreements." (Attached as Exhibit B)

In 1989 , the enactment of HB 687 / SB91 (Copy attached as Exhibit C) made two key changes to LEOBR:

(1.) HB 687 / SB91 allowed law enforcement officers to choose between the method for forming a hearing board in the manner set forth in LEOBR or the method established in a CBA.

(2.) HB 687 / SB91 allowed parties to a CBA to make the hearing board decision final and not subject to the chief's discretion.

These bills were opposed by Baltimore City Police, MACO, and MML and were supported by AFL-CIO.

In 2000, HB 1296 proposed to amend LEOBR such that disputes regarding hearing boards would be subjected to binding arbitration. That bill was rejected by the General

Assembly out of concern that binding arbitration provisions would mean that elected officials accountability for resolving allegations of police misconduct would be removed.

The most impactful changes to LEOBR were made in 2006. Disregarding the cautionary advice in Governor Schaefer's 1988 veto letter, the General Assembly enacted SB 420 which completely removed the prohibition on the use of binding arbitration to determine the procedures to be used in resolving officer discipline related matters. The opposition to this bill are, like Governor Schaefer's earlier veto letter, both instructive and prophetic:

> MACO's Opposition to SB420: "Citizens demand that law enforcement officers be held accountable. Police chiefs and sheriffs ultimately answer to the citizens of their jurisdiction. But if this bill were enacted, counties would likely be subjected to significant pressure to authorize the use of arbitrators whose appointment would likely be restricted by union agreement, who are not accountable, and whose decision would be final.... In addition, the proposed binding arbitration authorization creates the prospect of inconsistent departmental discipline. Different arbitrators cold render different punishment decisions for similar incidents. With the arbitrators' decision being binding, the Police Chief or Sheriff loses the discretion necessary to ensure that discipline for similar incidents is consistent or that desired public policy is implemented. .... Accountability should not be subject to decisions from an unaccountable third party." (Exhibit D)
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> Prince George's County's Opposition to SB420 – "The Bill, if passed, would start police agencies that have collective bargaining **on the path to losing control of the disciplinary process** within their respective departments. (Exhibit D)
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> MACO's Veto Request Letter for SB420 - "Implementation of SB 420 would ultimately erode the authority and accountability of chiefs for officer discipline, **denying citizens recourse and citizen confidence in the credibility of law enforcement**. ... The bills enactment could lead to the chiefs who supervise the vast majority of officers in Maryland not having discipline authority over those officers." MACOs letter (attached as Exhibit D) includes a number of attachments. Attachment A to that letter outlines 11 incidences where chiefs elected to terminate officers where hearing boards recommended minimal punishment for misconduct; authority those chiefs no longer have. Attachment B to MACO's letter is a Baltimore Sun editorial warning of the negative impact of a system that amounted to the fox watching the hen house.

Governor Ehrlich declined MACO's requested veto and SB 420 is the current law.

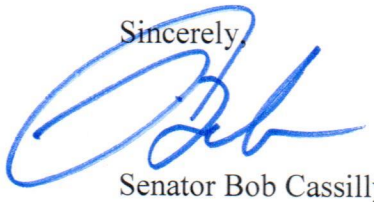
Presently, in all of the major jurisdictions the county law enforcement bodies operate under CBAs. In each, as Governor Schaefer predicted, the CBA provides for different policies and procedures regarding police misconduct investigations and discipline. The one element all of those CBAs have in common is the realization of the concerns as expressed by Governor Schaefer and others who warned of the dangers of the present system:

- citizens have been denied recourse and confidence in the credibility of law enforcement,

- Chiefs & Sheriffs have lost the discretion necessary to ensure that discipline for similar incidents is consistent or that desired public policy is implemented,
- police accountability is subject to decisions from an unaccountable third party, and
- police leaders are well down the path to losing control of the police disciplinary process

My bill is very simple, let us remove the 2006 amendments to LEOBR.

Sincerely,



Senator Bob Cassilly