



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: January 28, 2021

RE: **SB 482 Public Safety – Law Enforcement Officers – Whistleblower Protections**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE SB 482**. While in agreement that officers should not face retaliation coming forward to report abuses of authority, actions that question an officer's integrity, violations of the law, and other wrongful actions; MCPA and MSA have concerns with certain aspects of this bill.

Under the current Law Enforcement Officers Bill of Rights (LEOBR), statute clearly states an officer may not be discharged, disciplined, demoted, or denied promotion, transferred, or reassignment or otherwise discriminated against for disclosing information that evidences gross mismanagement, a gross waste of government resources, a substantial and specific danger to public health or safety, or a violation of law committed by another law enforcement officer.

The proposed whistle blower provisions in SB 482 provide protections that duplicate existing anti-retaliation provisions of the LEOBR and provide an additional avenue for potentially delaying disciplinary proceedings and effectively defeating attempts to hold an officer administratively responsible for misconduct. Further, the bill would expand the definition of "retaliatory action" in such broad and all-encompassing terms that even a low-level supervisor's recommendation, or threat to take some minor corrective action that a police officer believed was adverse could be actionable and subject to a civil litigation against the law enforcement agency that would take years to resolve. Such a claim could be used to forestall legitimate corrective or disciplinary actions and thus frustrate the current efforts for increased law enforcement officer accountability. Additional concerns are listed below.

- This provision is not needed; there is no evidence that officers are reluctant to come forward to report misconduct *and* the law already protects those who do.
- The "protection" will create an artificial but effective safe haven for officers who have committed acts of misconduct and allow them to delay disciplinary proceedings.
- The section has numerous legal deficiencies, is unworkable, violates governmental immunity and may be unconstitutional.

- The proposal undermines the ability of management to hold its employees accountable and will mire law enforcement employees in expensive and fruitless litigation, resulting in the abandonment of disciplinary proceedings.
- The burden of proof of the law enforcement agency in defending a whistleblower civil action, which is a clear and convincing, is an extreme standard that will encourage expensive litigation and compromise disciplinary investigations.

For these reasons, MCPA and MSA OPPOSE SB 482 and urge an UNFAVORABLE report.