Bill Number: HB 670
Scott D. Shellenberger, State's Attorney for Baltimore County
Support with Amendments

WRITTEN TESTIMONY OF THE MARYLAND STATES ATTORNEYS ASSOCIATION IN SUPPORT OF WITH AMENDMENTS TO HOUSE BILL 670 POLICE REFORM AND ACCOUNTABILITY ACT OF 2021

The Maryland States Attorneys Association and all of the elected States Attorneys in the State of Maryland strongly support all police reform which will better assure that all persons within this State be treated with the dignity and respect they deserve as human beings. We acknowledge that some action is necessary to assure that every police officer acts within the bounds of behavior to assure this goal. We support the proposed purpose of this legislation within House Bill 670. In taking action by legislation, however, it is important that the manner chosen to accomplish the goals of police reform not overreach and cause harm to another crucial part of our duty as States Attorneys. That is to protect the people of this State and to deter and punish crime which occurs within our boundaries.

For that reason and after an analysis of the proposed legislation we offer our support for the Bill in principle but wish to address a number of particular pieces of the legislation which could cause harm to our aim of detecting and prosecuting crime in our counties and Baltimore City. We intend to address those issues which could have a direct or indirect effect on our goals. Some of the issues within House Bill 670 do not affect our responsibilities and would defer to those better able to address any concerns with those issues amongst the police, sheriffs, legislators and citizens of this State.

First, with regard to the proposed changes Criminal Procedure §1-203 regarding the execution of a search warrant without giving notice of the authority or purpose of entry before entry, we are concerned that the amendments would cause significant harm to the ability to both assure the safety of the officers involved in the execution of the warrant and to assure that property subject to seizure is not destroyed, disposed or better secreted. It is a reality that, when forewarned, there are many who have chosen to engage in serious criminal acts will react when and if they know that the police are about to detect them and the evidence against them. This could include taking up arms against the officers or destroying the evidence the police are coming to locate. There are so many different situations which could be illustrated by this proposed limitation. For example, if an individual is dealing controlled dangerous substances and possesses what would seem to be a small amount of fentanyl (quickly flushable), with prior notice, that individual will dispose of the fentanyl. This would mean that a dealer who possesses the easy ability to take many lives by distributing fentanyl will not be brought to justice and will be free to restock as soon as the police leave. This would greatly affect our ability to bring violent criminals to justice also. If, for example, a murderer has

not envisioned the possibility that the police could track him or her down and has not hidden well enough the evidence of their crime, a knock, announcement and calm wait at the door for someone to answer will give that person the time to realize what must be quickly destroyed or so well hidden that a search may not locate the evidence and prevent bringing a killer to justice. Further, telling criminals the hours on which the police can execute a warrant will advertise the time periods when they need not worry about detection.

We acknowledge that a "no-knock" warrant is something which bears the risk of harm to innocent individuals and should not be requested or carried out in a cavalier manner. We propose that other than the proposed changes to the statute in this Bill that instead CP § 2-103(a)(2)(vi) be amended to open with the language IF PREAPPROVED BY THE APPLICANT'S SUPERVISOR AND THE STATE'S ATTORNEY. In doing so, the statute will require that utilizing the ability to enter and carrying out a search warrant without announcing the entry will be scrutinized by several other authorities in addition to a Judge who already must make such an authorization. This will assure that such a warrant will not occur unless necessary and will clearly send the message to the police executing the warrant that such an action is significant and must be carried out appropriately and with as much safety as possible.

The newly proposed Public Safety Article Section 3-207(j) states the Maryland Police Training and Standards Commission "shall" revoke the police certification of any officer who has been "found to have violated the Use of Force Statute" or was "previously fired or resigned while being investigated for serious misconduct or use of excessive force". The new sections do not state how and by whom an officer could be "found" to have violated the Use of Force Statute nor does it address whether or not it is relevant if the fired or resigning officer actually committed any serious misconduct or use of excessive force. We can envision circumstances where someone may have not met the letter of the law with regard to the new Use of Force statute (say for example, a supervisor who did not and may not have been able to respond to the scene of an incident where an officer used force and caused injury- which would violate the newly proposed PS §3-524(c)(4)(i)) and yet this section would require the Commission to revoke that persons certification. The Commission would be required to revoke the certification of an officer who leaves a police force because he has been unjustly accused of misconduct and is later exonerated.

We would recommend that the word "shall" in the first line of the proposed §3-207 (j) simply be changed to "may."

The next concern of the MSAA is with regard to the creation of an "independent investigative agency" for the investigation of any police-involved shooting or any use of force by a police officer which results in death or "serious injury".[Footnote - the bill states that serious injury is as defined at §3-201 of the Criminal Law Article. In fact "serious injury" is not defined at §3-201 of the Criminal Law Article. "Serious physical injury", however, is defined there].

The MSAA is opposed to the creation of an "independent investigative agency" which could potentially usurp the authority and investigative efforts of each of the States Attorneys.

In the event this agency is created through this legislation, the MSAA is greatly concerned about the direction of the bill about what is to occur with the resulting report of investigation in any case handled by the agency. The bill directs that the agency "shall publicize" its' report after the States Attorney makes a decision whether or not to prosecute. If the States Attorney has elected to prosecute anyone as a result of the investigation, the publication of the investigative report causes a significant risk of affecting the ability to prosecute the case and give the charged person a fair trial due to all of the pretrial publicity created by the release of the report.

In addition, whether a prosecution occurs or not there are no provisions for redaction of the report to give consideration to the privacy of the investigated individuals or witnesses to the subject of the investigation. Such a release could easily endanger the lives or personal security of individuals within the report. The MSAA would recommend that the disclosure provision of this investigative report be subjected to the same standard set forth for release of an investigatory report set forth in General Provisions Article §4-351 and leave the release decision to the States Attorney in the event a prosecution will or has occurred and to the investigative agency in the event of no prosecution.

The next concern of the MSAA is some within what is referred to as the "Use of Force Statute". We fully endorse the principle that an officer should not use any more force than that which is objectively reasonable and appears to be necessary under the circumstances. The concern is the broad categorization of that which would be a crime under this statute. The bill would propose to make any knowing and willful or even reckless violation of anything within subsection (c) of the statute a crime. Subsection (c) contains many directions which would be the first impression to create as a crime. For example, within the subsection is a requirement that law enforcement agencies write a de-escalation of force policy and adopt some written policies. There are requirements that officers receive specific trainings. In addition, a number of those prohibitions within the act which are more justifiable to make a crime are so general and vague that compliance would be impossible in some circumstance and still create criminal liability. The requirement to provide basic first aid to a person injured under (c)(3)(iii) does not provide for a provision that such act is safe and appropriate to do so. It is very realistic that an officer may be in a situation where rendering aid would risk the life of the officer or others. (c)(3)(iv) requires an officer to fully document all use of force incidents that the officer observed or was involved in. It would create a very difficult situation for an individual in certain circumstances. If an officer was wrong in his or her application of force or feared that someone would view it as such, this section would now make it a crime for the officer to elect not to incriminate themselves. Subsection (c)(4) would make it a crime for a police supervisor to not respond to the scene of an incident or to

not gather and review all known recordings of an incident. Clearly, there will be occasions in which a supervisor (and how many supervisors are there of any given officer) cannot respond to the scene. In addition, this bill proposes to have an independent investigative agency investigate many of these use of force incidents. Does the Legislature want the supervisor of the potentially accused officer now investigating the offense and make it a crime if they do not? Subsection (c)(9)(ii) completely prohibits the use of a chokehold or neck restraint by a police officer. The MSAA agrees that the use of a chokehold or neck restraint when not necessary is reprehensible and should be banned. However, there can be a circumstance where such an act is the only option available to an officer to protect his or her life or the life of another. We recommend that the subsection be amended to include a provision at the end to state "except in defense of death or serious bodily injury".

The last portion of the bill addresses the creation of an Administrative Charging Committee regarding the discipline of officers. Without addressing the wisdom or appropriateness of the creation of this committee or any other part of the membership, the MSAA is concerned about the presence of a representative from the States Attorneys Office and a representative of the Public Defender on the committee. This committee will have access to and knowledge of many pieces of internal information about individuals who may very well be witnesses in cases where the States Attorneys Office and the Public Defenders Office are involved. There is no provision in the creation of this committee which would protect the use of information gained in participation in any other setting. This would put a prosecutor in an untenable position without regard to information gained which are not directly relevant to a particular case or relevant to honesty and credibility. More importantly, a Public Defender would now have information which they ordinarily should not have and are placed in a situation where they or a person in the office is representing a client with the officer as a witness in the case. If the legislation were to place restrictions on the use of the information obtained through the committee, it would create even a greater problem for the public defender and their obligation to their client.

The Maryland States Attorneys Association supports police reform and measures to assure the control of any abuse of power by law enforcement. We only ask that the actions taken be balanced and not have adverse effect on the pursuit of justice. We are willing to work with the Legislature to better fine tune this bill or any bill deemed most appropriate by the Legislature to address these important issues.