



BALTIMORE POLICE DEPARTMENT



Brandon M. Scott
Mayor

Michael S. Harrison
Police Commissioner

TO: The Honorable Members of the House Judiciary Committee

FROM: Michelle Wirzberger, Esq., Director of Government Affairs, Baltimore Police Dept.

RE: House Bill 670 Police Reform and Accountability Act of 2021

DATE: February 9, 2021

POSITION: SUPPORT WITH AMENDMENTS

Chair Clippinger, Vice-Chair Atterbear, and members of the Committee, please be advised that the Baltimore Police Department **supports with amendments** House Bill 670.

House Bill 670 repeals the current version of the Law Enforcement Officers' Bill of Rights; authorizes a judge to issue "No Knock" search warrants under certain circumstances; provides free tuition to those individuals attending public institutions of higher education who study criminal justice and pledge to serve as a law enforcement officer for 5 years; changes the composition of the Maryland Police Training and Standards Commission; establishes use of force standards for officers, supervisors and agencies; and specifies procedures by which misconduct allegations are to be adjudicated.

Police Commissioner Michael Harrison and the Baltimore Police Department's Executive Team are committed to reforming not only BPD but leading the way in reforming the policing profession at the state and local level. We are happy to report that BPD has already embraced and begun implementing some of the measures contemplated within this bill.

In fact, as departments across the nation are facing similar reform efforts, a number of our policies have been considered the national standard including but not limited to: our use of force policy suite; our community policing plan; our Body Worn Camera policy suite; etc.

We appreciate that this comprehensive bill is the result of a lot of hard work and a sincere attempt to address the community's concerns regarding how law enforcement officers exercise their powers and how agencies process complaints of misconduct. There are many concepts within this bill that the Baltimore Police Department fully support and some that we believe could be improved upon by amendment.

For instance, one of Commissioner Harrison's personal priorities is ensuring that he can live up to the expectations of city residents and city leaders. In order to do that, he must have the authority to take immediate action when an officer acts outside of law, training or policy. Right now, he cannot. We have provided some draft language that would empower him to take that disciplinary action that the community expects and deserve. We have also attempted to provide you with insight into additional items that we believe will have the greatest impact on our agency. We look forward to talking with you further about these suggestions.

WARRANTS

We support limiting “no-knock” warrants to those instances when the life or safety of the executing officer or another may be endangered. However, as written, the bill would limit the execution of all warrants to the hours of 8:00 a.m. to 7:00 p.m. This provision would remove the tactical advantage that we often need to safely and successfully execute a warrant on a high-risk offender while also safeguarding our officers, the public, the suspect and children or other family members within the vicinity. It could also hamper proper evidence collection that is often associated with high risk warrant execution.

Therefore, we suggest that page 6, lines 7 and 8 be deleted.

PRIOR MARIJUANA USE

The Baltimore Police Department supports the provision that indicates that prior marijuana use may not be the basis for disqualifying an applicant for a position as a police officer; however, we do want to clarify that any applicant who *fails* our drug/alcohol test would be immediately disqualified. Moreover, any current active employee who fails our random drug/alcohol tests would be subject to termination.

MARYLAND POLICE TRAINING AND STANDARDS COMMISSION (MPTSC)

This bill broadens the scope of the MPTSC authority and empowers them to take action against both individual law enforcement officers and agencies who fail to comply with the law. The proposals we **support** are as follows:

- ✓ The ability and responsibility to revoke the certification of officers who have:
 - Been found to have violated the use of force statute under section 3-524 of this title;
 - Convicted of a felony;
 - Convicted of perjury or another misdemeanor relating to truthfulness and veracity; or
 - Been previously fired or resigned while being investigated for serious misconduct or use of excessive force;
- ✓ The responsibility to create and maintain a statewide database to track officers de-certified due to improper use of force.
- ✓ The mandate to develop training for implicit bias and then require all new officers to complete this training as part of their initial training session and incumbent officers to undergo this training on an annual basis.

The proposals we do not support as written are as follows:

- ✓ On page 10, lines 25-28 the bill mandates that only officers who have successfully completed a mental health assessment and physical agility assessment can be certified by MPTSC to serve as law enforcement officers. We suggest that this section be deleted.

Earlier this session, the BPD supported House Bill 88 which requires all law enforcement agencies to develop and implement an employee assistance program for police officers that the agency employs and provide confidential mental health services. Law enforcement officers leave their families every day to protect and serve others. On their best days, they experience trauma when arriving at crash scenes; addressing incidents of domestic violence; investigating shootings and murders; searching for lost children and vulnerable adults. If untreated, that trauma accumulates over time and can threaten the mental health and productivity of the officer.

Our officers deserve our support and assistance in relieving themselves of that trauma and ensuring that they are healthy. That is why the Baltimore Police Department has developed a comprehensive and well-regarded Health and Wellness Program that is led by a professional who has experienced trauma when he served as a Maryland

State Trooper and who all too well understands the shame, stress and pain of seeking mental health counseling to deal with that trauma. He has worked tirelessly to de-stigmatize seeking mental health assistance; drug and alcohol counseling and other healthy methods of stress relief such as yoga, hiking, etc. That work will only. Supporting House Bill 88 will help all agencies across the state achieve the goal of ensuring that our officers are healthy mentally and physically.

SWAT REPORTING

This bill requires agencies who employ a SWAT team to submit a report every 6 months on the following items:

- ✓ The number of times the SWAT team was activated and deployed;
- ✓ The zip code of the location where the SWAT team was deployed for each activation;
- ✓ The reason for each activation and deployment;
- ✓ The legal authority, including type of warrant, if any, for each activation
- ✓ The result of each activation, including:
 - The number of arrests made, if any;
 - Whether property was seized;
 - Whether a forcible entry was made;
 - Whether a weapon was discharged by a SWAT team member; and
 - Whether a person or domestic animal was injured or killed by a SWAT team member.

We support the reporting requirement but ask that the reporting cycle be annual and that the following changes be made: on page 12, line 9 and page 13, line be changed to 12-month period.

INDEPENDENT INVESTIGATIVE AGENCY

This bill would create an independent investigative agency (IIA) which would be required to investigate instances when an officer was involved in a shooting and any incidents of use of force that caused death or serious injury. We do not support this proposal for a variety of reasons, the most important of which is that our federal Consent Decree mandates that we establish and maintain a Serious Incident Response Team (SIRT) which is composed of sworn officers who have received special training to investigate the incidents described in this section of the law. Our federal Consent Decree Monitoring Team and the Department of Justice both are immediately notified of incidents in this category and receive on-site briefings and then 24-hour briefings. They are responsible for evaluating how we handled the incident and ensuring that every investigation is conducted fully and professionally.

We fear that the creation of the IIA would limit our ability to comply with the Consent Decree and/or that the IIA would be subject to the mandates of the Consent Decree. Therefore, we respectfully request that page 15, lines 19-32 and page 16, lines 1-12 and 18-20 be deleted. In their place, we suggest that the bill be amended to establish a mandate that upon completion of investigations of all police involved shootings and use of force that caused death or serious injury, a report be submitted to the State's Attorney with jurisdiction of the matter.

USE OF FORCE

HB 670 establishes uniform use of force standards that, in many ways, mirrors the Baltimore Police Department's suite of use of force policies. As such, we support the following requirements:

- ✓ Every officer must sign an affirmative written sanctity of life pledge to respect every human life and act with compassion toward others;
- ✓ When time, circumstances and safety allow, take steps to gain compliance and de-escalate conflict without using physical force;

- ✓ Intervene to prevent or terminate the use of force by another officer;
- ✓ Render basic first aid to a person injured as a result of police action (note: we would add when safe to do so) and promptly request medical assistance;
- ✓ Fully document all use of force incidents that the officer observed or was involved in;
- ✓ Require police supervisors to respond to the scene of any incident during which an officer caused physical injury through the use of force and review all known video recordings of the incident;
- ✓ Require agencies to establish a written de-escalation policy as well as a written policy requiring supervisory and command-level review of all use of force incidents. (in this section, we would add a requirement that an agency must effectively train both officers and supervisors on these new requirements).
- ✓ Officers must undergo scenario-based training on less-lethal enforcement tactics, sign a document indicating that the officer understands and will comply with the Maryland use of force statute, and be equipped with less-lethal weapons.
- ✓ An officer may only use deadly force to stop an imminent threat of death or serious injury to the officer or another person;
- ✓ An officer may not discharge a firearm at a moving vehicle unless the vehicle is being used as a deadly weapon toward the officer or another and the deadly force is the only reasonable means available to stop the threat.
- ✓ The withholding of grant funding for those agencies who fail to comply with the use of force requirements in this bill.

The elements of this section that we believe should be amended are as follows:

- ✓ On page 18, line 25, after the word that, add “is intended to.” And after the word person on that line, add “except for those situations where the officer must act to stop an imminent threat of death or serious injury to the officer or another person.”
- ✓ Delete page 19, lines 1-9. The law already provides a mechanism through which State Attorneys may bring criminal charges against an officer who intentionally and unlawfully uses excessive force. This section is not necessary and could have a chilling effect on our ability to recruit and keep officers who truly are committed to protecting and serving but who are afraid that they would be subject to additional criminal penalties if they make a mistake while acting under extreme circumstances and in good faith.

LEOBR

The Baltimore Police Department strongly supports a universal system of discipline that is fair, provides for due process but also empowers the head of the law enforcement agency with the ability to take the swift disciplinary action that his/her constituents expect and deserve when an officer fails to act in accordance with policy, training and/or law. We believe that this section of the bill, with the amendments discussed below, would allow a Chief to take responsible action and ensures that agencies are not required to continue to break the public trust by continuing to pay and/or employ law enforcement officers who have demonstrated an extreme lack of respect for the sanctity of life and/or a flagrant failure to comply with law. To that end, we support the following proposals contained within the bill:

- ✓ Every agency shall establish and implement a disciplinary process that is open and transparent;
- ✓ Includes the use of a trial board that includes civilians with voting power (Note: we would change the standard on page 20, line 7 from one-third membership to say at least 2 members);
- ✓ Before disciplinary action is taken against an officer, provide the right to a trial board for the police officer
- ✓ Prohibits the use of a trial board for the discipline of an officer but empowers the Chief to determine discipline for those officers who have been convicted of or received probation before judgement for a crime;
- ✓ Every agency must post the discipline process on the agency's website;
- ✓ Civilian members of each trial board shall receive training approved by MPTSC on matters relating to police procedures (Note: the MPTSC should be required to approve, not provide the training)
- ✓ A collective bargaining agreement may not be inconsistent with the provisions of the bill. This ensures that discipline is consistent amongst all agencies which will ensure that agencies can hold officers accountable for any misdeeds;

We respectfully request that the following elements be added to further strengthen the bill and to provide the Chief with the authority to impose discipline that is consistent with community standards. Given the number of proposals we are offering, we have not provided suggestions on exactly where these elements would be added:

- ✓ Allow a Chief to suspend an officer with or without pay on an emergency basis if the suspension appears to be in the best interest of the public and the law enforcement agency;
- ✓ Allow a Chief or his/her designee to suspend an officer without pay and suspend his/her police powers if he/she is charged with a crime.
 - Allow the Chief or his/her designee to immediately terminate an officer once he has been charged; and
 - Allow the Chief or his/her designee to immediately terminate an officer *prior* to charging if the officer has committed a criminal offense that is so egregious and apparent as to shock the conscience and to terminate would be in the best interest of the public and the law enforcement agency.

PLEASE NOTE: *As the bill is currently written, a Maryland Chief would not be permitted to fire Derek Chauvin, the officer who killed George Floyd by kneeling on his neck for a sustained amount of time, until he was convicted of the killing. That incident was so heinous that the only appropriate course of action was to immediately fire Gauvin. Without the ability to take that action, residents will believe that the Chief is not equally outraged by the incident.*

- ✓ Provide that both law enforcement officers and civilians employed by law enforcement agencies are empowered to conduct misconduct investigations. This would allow the BPD to hire civilians, with proper training, to help address the Department's misconduct backlog;
- ✓ Provide the Chief or his designee with the authority to compel involuntary statements and grant use immunity to overcome the Officer's constitutional 5th Amendment right against compelled self-incrimination under *Garrity v. New Jersey*, 385 U.S. 493 (1967);
- ✓ Provide the Chief or his designee with the authority to compel:
 - The taking of blood, breath, or urine tests for presence of alcohol or drugs;
 - Other usual investigative tests including DNA, handwriting and voice exemplars.
 - The submission to polygraph examination.
- ✓ Authorize the Chief to adopt reasonable regulations for secondary employment;
- ✓ Authorize an officer investigating a misconduct claim to issue subpoenas to produce documents;
- ✓ Require interrogations to be video and audio recorded. Funding may be needed for agencies that lack the capability currently;
- ✓ Provide the Chief with an option to overturn exoneration when the exoneration was not supported by the evidence.
- ✓ Allow for simplified processing of minor disciplinary matters when the facts are not in dispute and provide that sanctions for summary punishment cases could be a \$1,000 fine and/or 5 days suspension without pay in order to encourage resolution of disciplinary matters that do not involve the most serious sanctions;

ADMINISTRATIVE CHARGING COMMITTEE

This bill proposes the creation of an administrative charging committee that would make the decision on whether to charge or not charge an officer for matters involving allegations of misconduct made by a member of the public and any allegation relating to dishonesty, a violation of a criminal statute, sexual harassment, and racial harassment.

According to the bill, the committee would be comprised of the following individuals:

- ✓ Director of Internal Affairs for the agency that employs the officer subject to the investigation (or his/her designee);
- ✓ Head attorney for the superior governmental authority of the agency that employs the officer (or his/her designee);
 - This individual would serve as the chair of the administrative charging committee
- ✓ Designee of the public defender who is a member of the MD Bar
- ✓ Designee of the State's Attorney for the jurisdiction where the alleged misconduct occurred who is a member of the MD Bar;
- ✓ One civilian representative selected by the police accountability board for the jurisdiction where the alleged misconduct occurred.

The Baltimore Police Department fully embraces the goal of establishing oversight and accountability for all law enforcement agencies. Its leadership believes that citizens should play a part in imposing discipline which is why the BPD is the first agency in the state to have 2 voting members on their hearing boards. However, we do believe that Section 3-525, as written, provides circumstances through which the Chief would not manage the disciplinary process. In no other profession is there a situation where the CEO is not empowered to hold their employees accountable for transgressions.

Rather than limit the Chief's ability to impose discipline, you should empower him to appropriately take action and then hold him/her accountable if he/she fails to do so. To support that point, in the US Conference of Mayors' report titled *Report on Police Reform and Racial Justice* released in August of 2020, they say, "if we want action, we need to empower the leadership of our police departments and hold those leaders accountable for delivering the results that our communities want and deserve."

What we propose is to repurpose the proposed administrative charging committee so that rather than make a determination as to whether an officer is to be administratively charged, they would be empowered and required to conduct audits on all complete disciplinary actions and then report out any deficiencies or anomalies such that the Chiefs could then be held accountable by the leadership of the county or political jurisdiction that had hired him/her. To support that change, we suggest the following amendments:

Delete page 22, lines 21 through 30, and delete page 23, lines 1 through 10 and replace with:

- ✓ Conduct annual audits of finalized disciplinary cases including the investigative file, to determine the following:
 - that all cases reviewed were investigated fully; and
 - The disciplinary imposed was in line with the agency's established disciplinary matrix;
- ✓ Add a section that states:
 - Annually, the board shall make widely available the following information:
 - Number of audits conducted;
 - Findings of conducted audits
- ✓ If the oversight body finds any discrepancies, they shall immediately report that finding to the Maryland Police Training and Standards Commission and the Governor's Office of Crime, Prevention, Youth, and Victim Services.
- ✓ In executing its duties in accordance with this subsection, an oversight body may request additional information from the law enforcement agency that conducted the investigation.

The Baltimore Police Department firmly believes that the amendments proposed within the body of this letter will serve to improve the policing profession in Maryland, allow Chiefs to improve their relationships with residents and ultimately make the disciplinary system uniform, fair, transparent and effective in rooting out those officers who engage in heinous abuses of power.

Therefore, the Baltimore Police Department respectfully requests a **favorable with amendments** report on House Bill 670. Thank you for allowing us to comment on this important piece of legislation. If you should have any questions, feel free to reach me at michelle.wirzberger@baltimorepolice.org or via telephone at 443-915-3155.