



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: February 9, 2021

BILL NUMBER: House Bill 670 **POSITION:** Support w/amendments

BILL TITLE: Police Reform and Accountability Act of 2021

The Maryland Department of State Police (MDSP) supports the efforts of the Committee as it relates to police reform and would like to work collaboratively to develop amendments designed to ensure successful implementation and compliance. Our initial evaluation, suggestions and recommendations are outlined below.

This legislation seeks to make a number of changes to Maryland law impacting day to day police operations and systemic accountability. The bill repeals the Law Enforcement Officer's Bill of Rights, mandates body cameras for every police agency, makes changes to certain processes involving "no knock" warrants, investigation of citizen complaints, and police disciplinary actions. The bill also provides the mechanism for tuition free college education for a person who later becomes a police officer.

The MDSP firmly supports police accountability and transparency. Since 2015, the MDSP has been committed to following the identified best practices recommended by President Obama's Task Force on 21st Century Policing which promotes effective crime reduction while building public trust and fostering strong, collaborative relationships between police and the communities they serve. To that end, the Department commits a substantial amount of resources, both fiscal and human, at the beginning of a police officer's career. Recruitment, selection and hiring is an essential pillar in the foundation of accountability, followed by exceptional training and active supervision.

Since 2015, the Department has made tremendous strides in examining its hiring practices and partnering with the community to enhance recruiting. In 2016, the Department launched a five-year, \$500,000, statewide, targeted marketing and media campaign focused on increasing under-represented categories of employees by race, ethnicity and gender. Our campaign successfully implemented a targeted mass transit media marketing campaign in Baltimore City and allowed the Department to participate in Spanish radio and other radio stations in the Washington metropolitan markets. Our social media campaign however, has seen the greatest impact. The Department's robust Google advertising campaigns have seen dramatic increases in impressions and click through rates over the five years. This, in addition to our partnerships with Maryland, Pennsylvania, Delaware & the District of Columbia HBCUs, MDNG, ArmyPays program, training camps/colleges for all military branches and the Junior Achievement Academy in Baltimore City, to name a few, have led to the hiring of highly qualified diverse Maryland State Troopers.

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The Department has a 9 phase competitive application process that is validated by Standards & Associates (POST test), Fit Force© (FFAT) and an in depth job task analysis to ensure oral interview questions are job related. The Department exceeds State standards in the background investigative and medical/physiological testing phases.

Our residential academy, which has been accredited to award an Associate's Degree, free of charge to the candidate upon graduation and service, is designed to provide troopers with the academic, physical and tactical skills needed to professionally deliver police services. Additionally, our academy provides the cognitive, emotional, social and moral skills required to succeed as a public servant and peace officer. Our training academy exceeds 930 hours of training which includes de-escalation, implicit bias, physical fitness, use of force, defensive tactics as well as training required to effectively deliver public safety services to individuals in crisis and those with developmental disabilities and mental illness.

The MDSP has a highly effective, pro-active continuing education and incumbent annual service training program. These curriculums and courses are evaluated annually to ensure community relevance, legal competency and professional standards. Recently, the Maryland State Police Education and Training Division (ETD) announced a unique opportunity for employees, both sworn and civilian, to further their professional development through a college education by partnering with three additional colleges/universities willing to provide multiple options to suit individual needs, interests, and educational goals. The institutions are University of Maryland Global Campus (UMGC), American Public University System (APUS) and, Stevenson University Online (SUO). Coupled with Executive Order 01.01.2018.17 - Student Loan Repayment Benefits to Relieve Workforce Shortages, these agreements will allow all Maryland State Police employees to further their education for, what could eventually be, little to no out of pocket cost.

The MDSP agrees that the Law Enforcement Officer's Bill of Rights needs to be changed and police chiefs should be able to terminate officers convicted of criminal offenses without first having a hearing. However, the Department cautions that a repeal, without consideration for a statewide standard of police discipline, may have detrimental consequences. It is important that any legislation protects a police officer's right to due process, right to legal counsel, provides an option to accept responsibility "summary punishment", and provides the ability of the police department to compel an officer to submit to an interrogation.

The MDSP endorses the value, albeit restrictive, of the "no knock" search warrant. Restricting hours of service makes the service predictable and easier to defeat presenting challenges for the safe service of high-risk search warrants. Rather than legislating overly restrictive standards on a valuable law enforcement tool, the MDSP recommends requiring State's Attorney review and approval for every "no knock" provision before service. This would allow for the real time regulation of the tool to ensure compliance and keep both law enforcement and our communities safe.

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The MDSP, as noted above, endorses any effort to support police officers in their pursuit of higher education. The tuition assistance benefit and obligated service requirement will go far to benefit police department's recruitment and retention efforts.

The MDSP supports the training of citizens appointed to serve on the Commission and the creation of a statewide database to track police officer decertification due to improper use of force.

Regarding implicit bias testing and training, the Department supports a statewide implicit bias training and education program. It does however recommend adding language to any implicit bias testing requirement that qualifies that the test created be generally accepted/endorsed within the psychological/psychiatric community. MDSP has had extensive conversations with its medical and psychological team who have advised that current available implicit bias testing has not been validated or approved for diagnosing bias. Our experts warn that using currently available testing may result in erroneous findings and keep police officers, who may otherwise seek mental health services from doing so, which could be catastrophic to police health and wellbeing.

The MDSP supports mental health screenings and physical agility assessments of all applicants to become a police officer. Additionally, the Department supports annual physical agility and mental health assessments but not as conditions of employment. As written, the legislation fails to consider the inability of some employees to comply with mandatory testing or the ability to retake an assessment should the officer not pass. House Bill 670 does not allow for gradual implementation of these requirements or provide consideration for officers employed under other conditions. A mandatory annual testing program is expensive both in time and cost. Should this legislation pass, police departments will have to provide police employees with either time during the workday to exercise, physically and mentally and/or with financial compensation to exercise while not on-duty. These costs are in addition to the financial costs for the professional fees these medical programs will require. It is important to note that according to our medical staff, this type of testing, without cause, may preclude medical professionals from releasing testing results and subject police departments to legal challenges or law suits for violations of the Americans with Disabilities Act.

The Department recommends, in lieu of mandatory testing as a condition of employment, police departments consider providing mandatory mental health services for its personnel. These services should remain confidential and have as its goal the service of police employees who show signs of stress or other emotional duress and who may be referred for mental health services. These services should be mandatory for any officer involved in a shooting involving death or serious injury and/or those who experience a traumatic event, or who may be assigned to an emotionally distressing assignment like child pornography/sex trafficking units.

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The MSP supports the reporting requirement for SWAT Teams. In 2009, Senate Bill 447 was enacted requiring SWAT teams to report similar data for five years. The law sunset in 2014.

The MDSP endorses police use of cameras, body worn or in-car. A camera program of any type, and the subsequent storage and maintenance of data collected, is costly. More than 70% of our sworn workforce deliver police services from or around their mobile offices (vehicles). Hence, the Department has invested in in-car cameras. To date, the MSP has a total of 403 camera systems currently operational within our patrol fleet. By the end of CY2021 an additional 137 systems will be installed. Our in-car camera system is compatible with a body worn feature. That said, the MDSP supports the use of body-worn cameras providing the mandate comes with adequate and appropriate funding supportive of implementation and data storage.

The MDSP supports the requirement to establish an early intervention system to identify police officers who are at risk for engaging in the use of excessive force and to provide all officers who are identified with retraining and behavioral interventions, reassignments, or other appropriate responses. The Department currently uses a professional standards software, IAPro, for these purposes. IAPro is a database that works in conjunction with the frontline documentation platform, BlueTeam. The early intervention or alert program allows supervisors and commanders visual indicators of potential concerns. The oversight provided by the system allows for multiple incident types to be tracked and the appropriate action to be taken and documented.

The MDSP endorses the independent investigation agency provision. Given that the establishment of such an agency and the subsequent training of its members will take several months, the Department recommends adding language that would authorize a police department to continue to investigate its own shootings or incidents involving use of force that result in death or serious bodily injury until such time as the independent agency may be established and properly trained/equipped. In addition, 3-523 (D) (2) as written may achieve the objective of transparency but may jeopardize the integrity of any prosecution. The Committee might wish to consider immediate disclosure of the investigation if the decision is made not to prosecute, however if prosecution is determined, premature publication of the report before trial or jury selection may harm to the criminal defendant's right to a fair trial, or may require a change in venue.

For purposes of clarity, the MDSP recommends striking "and appears to be necessary" in 3-524 (C) (2). MDSP supports the requirements to intervene, render aid, and fully document use of force incidents. MDSP currently requires supervisory and command level reviews of all use of force incidents. Our policies include prohibiting the

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discharge of a firearm at or from a moving vehicle and the use of chokeholds unless deadly force is authorized.

MDSP does not support the criminal penalties associated with failure to comply with the legislation, 3-524 (c). Failure to fully document all use of force incidents carries a maximum of 10 years in prison. Failure to get the training mandated in the bill could amount to 10 years in prison. These penalties are excessive and seek to criminalize administrative oversights or inactions. The MDSP supports a statewide law to require adoption of a use of force policy, developed by the Commission, that provides administrative sanctions which could result in termination and decertification instead of incarceration.

Under Section 3-525, the MDSP does not support the creation of what would be more than 148 independent policies detailing individual processes for disciplining police officers. As previously stated, MDSP supports a statewide standard of police discipline that protects a police officer's right to due process, right to legal counsel, provides an option to accept responsibility and compels an officer to submit to an interrogation. Paragraph (E) on line 23, state troopers will be investigated by county independent agencies. This provision makes a State's executive agency subservient to local authority. Additionally, it subjects every Maryland State Trooper to several processes, requirements and obligations in, some cases, within a single workday. This condition is unmanageable, ineffective and inequitable. The MDSP does not support the use of charging committees as written. Our concern relates to committee membership and body establishment. As defined in the bill, the MDSP would have to create 24 separate charging committees to accommodate 3-526. Each state law enforcement agency would need enough charging committees to accommodate the police officer's travel and primary duty assignment. Should this concept move forward, the MDSP recommends one statewide committee responsible for state law enforcement agencies thereby maintaining executive oversight, standardization, and limits or eliminates disparate treatment of State law enforcement officers.

The Maryland Department of State Police would like to work with the Committee to develop specific amendments to ensure the MDSP's compliance with the enumerated portions of House Bill 670 as outlined.

For these reasons, the Department urges the Committee to give House Bill 670 a favorable report as amended.