



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable Luke Clippinger, Chairman and
Members of the Judiciary 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: February 9, 2021

RE: **HB 670 Police Reform and Accountability Act of 2021**

POSITION: **SUPPORT WITH AMENDMENTS**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **SUPPORT HB 670 WITH AMENDMENTS**. This bill implements the recommendations from the Workgroup to Address Police Reform and Accountability in Maryland.

MCPA and MSA appreciated being part of the Workgroup discussions and thanks the Committee for the opportunity to offer comment on this important piece of legislation. MCPA and MSA also seek greater accountability and transparency in policing across the state and hopes to offer what are viewed as constructive thoughts and suggestions to get there.

AREAS OF SUPPORT

Scholarship Program for Student Enrolled in Criminal Law, Criminology, or Criminal Justice – Law enforcement agencies across the State are having difficulty recruiting officers. MCPA and MSA support all efforts to expand the pool of eligible officers.

Prohibition of the Collective Bargaining of Disciplinary Actions – In some jurisdictions the final authority of the chief or sheriff to impose disciplinary actions has been lost due to collective bargaining negotiations. This language in the bill would prohibit this from occurring and maintain the chief's or sheriff's final authority.

Discipline Process That is Open and Transparent – MCPA and MSA support an open and transparent process as it will promote community trust.

Officers Convicted of a Misdemeanor or Who Received a PBJ Do Not Receive a Trial Board Hearing – Misdemeanors carrying more than one-year possible incarceration can be equally as serious than some felonies. Officers receiving a PBJ for these types of offenses tarnish the reputation of an agency and affect community trust. The ability to take swift action in these circumstances is warranted. Punishment in this instance should be decided by chief.

SUPPORT WITH AMENDMENTS

No-Knock Warrants – Support providing greater oversight and accountability; concerned with “clear and convincing” standard and limitation on time to execute warrants.

The standard in the bill that a request for a “no knock” warrant be supported by “clear and convincing” evidence sets a very high bar that exceeds the preponderance of the evidence standard that applies to civil litigation and the requirement that an arrest be supported by probable cause. Further, limiting the time for executing warrants to between 8:00 am and 7:00 pm is untenable and could place officers at risk. To provide more accountability and oversight, MCPA and MSA recommend amending the bill to instead require preapproval by a law enforcement official with the appropriate level of authority and experience and require sign-off by the State’s Attorney or designee.

Maryland Police Training and Standards Commission (MPTSC) – Support a better balance of law enforcement and civilian membership.

Should civilians who are properly trained for the role be added to the MPTSC, MCPA and MSA suggest the law enforcement members who have been deleted be added back onto the MPTSC. MPTSC work is very demanding and relies on the expertise of its members. The law enforcement members have played a vital role in this work and should be allowed to continue. Although MCPA and MSA are not objecting to the addition of citizens members, we are concerned that without the requisite expertise (despite training) or the time to commit, Commission work would be significantly delayed.

Body Cameras – Support requiring body cameras for all law enforcement agencies, request funding consideration be given to establish and maintain programs.

It is important to recognize that body camera costs are more than just equipment. It also includes storage, redacting, auditing, and staffing. Opportunity for outside funding to offset costs should be considered. Further, cost savings and funding measures adopted by the Body-Worn Camera Task Force should be given serious consideration.

Statewide Use of Force Statute – Support a statewide use of force statute ensuring MPTSC has authority to develop and modify as needed; concerned with “appears to be necessary,” restriction on armored vehicles, and criminal penalty for violations of use of force policy.

The term “ appears to be necessary” is a speculative, subjective legal standard that differs from person to person and is contrary to Supreme Court and Maryland law. Armored vehicles protect officers who enter very volatile situations. Just recently in Howard County a man shot at the driver’s side window of an armored vehicle as law enforcement approached to serve a search warrant. If it were not for the ballistic glass in the vehicle, the officer would have been shot. MCPA and MSA object to criminal penalties for officers who may violate a statewide use of force policy. Chiefs and Sheriffs should be held accountable to take appropriate disciplinary action should an officer not comply with specified training and policies through administrative recourse or criminal should the situation warrant.

Test for Implicit Bias Training for new hires and continued certification, Annual Mental Health Assessment and Physical Agility Assessment – support implicit bias training and resiliency checks; concerned valid implicit bias test does not exist, mental health and physical agility assessment violates ADA, and mental health assessments lack confidentiality.

MCPA and MSA fully support implicit bias training for officers, however, to our knowledge, a valid a test mechanism has not been developed to predict how an officer should score or consider learned behaviors. As this test may determine the employment of a future Officer, it is vital that an accurate and validated standard of measurement is utilized. At this point in time, it is uncertain if such a standard exists. It is our recommendation that MPTSC explore national research to develop the proper testing mechanism to meet this objective.

An annual mental health assessment, besides being costly, is typically used to determine fitness for duty and includes a reporting requirement to the commanding officer and/or Chief and Sheriff. MCPA and MSA prefer the approach outlined in HB 88 with proposed amendments for a resiliency session as there is the expectation of complete confidentiality, except for whether the officer attended the session. This approach is used to facilitate an officer's capacity to prepare for, recover from, and adapt to the mental, emotional, and physical effects caused by stress and adversity, without creating a stigma for needing help. Physical agility assessments, besides being expensive, if improperly administered or recorded could violate discrimination law (ADA, ADEA) and procedural due process, resulting in liability.

Early Intervention Systems – support all law enforcement agencies establishing a data-based early intervention system, concerned data would not be confidential.

Early intervention systems are designed to identify officer behavior and put steps in place to address it before circumstances escalate. If an officer's specific circumstances are not held in confidence, officers will refuse to take part in these programs. It may be possible to report information in the aggregate, but we would not want personal information to be made public about an officer that jeopardizes his or her career and put family members or others in potential harm.

Civilians on Trial Boards – Support but concerned about difficulties for smaller agencies and a back log in cases if civilians are not available or not trained to serve.

MCPA and MSA support expanding trial boards to include at least one-third membership by civilians. However, they are concerned for smaller agencies that have limited capacity and resources and a potential back log of cases should civilians not be available and trained. Consideration should be given for exempting smaller agencies or providing flexibility for smaller agencies to seek assistance from other jurisdictions as currently exists. Further, to prevent a back log in cases, hearings should be allowed to continue until such time an adequate number of civilians are trained and available.

AREAS OF CONCERN

Lack of a Statewide Uniform Complaint and Investigative Process

HB 670 repeals Law Enforcement Officers' Bill of Rights but puts nothing in its place. MCPA and MSA feel strongly that there needs to be a statewide uniform complaint and investigative process.

Without that, law enforcement officers will be subject to a jurisdiction's general personnel rules resulting in disparate policies governing the actions of officers. Given the nature of the work, uniform processes are necessary to hold officers across the State accountable to the highest degree.

Chiefs and Sheriffs are requesting more authority and oversight to hold officers accountable. They respectfully request the appropriate tools be provided to assist them with this mission, not diminish their role.

Prior Marijuana Use is Not a Disqualifier Certification

The MPTSC has adopted a policy governing the certification of officers who have previously used marijuana. This policy, which currently sets a timeframe of 3 years in which a potential officer may have not used the substance, is being reviewed by a subcommittee for modifications. This issue has been effectively addressed through a policy and the MPTSC has the flexibility to change this policy as appropriate. This criterion does not need to be placed in statute.

Charging Committee, Independent Agency at State Level to Investigate Use of Force Incidents, County Independent Agency to Investigate and Review Complaints of Misconduct, and Random Mention of Police Accountability Board

MCPA and MSA are very concerned with these requirements in the bill. These actions diminish the role of the Chief or Sheriff by removing disciplinary and investigative authority from that office and limits their ability to hold officers accountable in the circumstances outlined in the bill.

Being required to turn over an investigation to an administrative charging committee, composed of various members, for final discipline diminishes the role of the Chief or Sheriff. MCPA and MSA understand the intent is to have the charging committee determine whether charges should move forward, but the process could still be burdensome, create delays and prove impossible for smaller agencies to manage. Further, smaller agencies do not have an Internal Affairs director.

Under current operational practices, law enforcement agencies may seek the assistance of outside agencies to investigate officer involved shootings. Many smaller agencies routinely seek the assistance of the Maryland State Police or other large policing agencies. This discretion allows an agency to determine the most effective approach for these investigations and to discuss matters of process, both administrative and criminal, as appropriate with the investigative agency. An independent state agency is not needed for this purpose.

Further establishing an independent agency at the county level to investigate and review complaints seems duplicative and it is not clear what the role of such an entity would be. Lastly, there is a random mention of "Police Accountability Board" on page 21 in lines 30-31 that seems out of place.