



Department of Public Safety and Correctional Services

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Police Training and Standards Commission
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BILL: HOUSE BILL 670

POSITION: LETTER OF INFORMATION

EXPLANATION: House Bill (HB) 670 proposes an overhaul for policing in the State.

COMMENTS:

- The Police Training and Standards Commission (PTSC) is an independent Commission within the Department of Public Safety and Correctional Services. The PTSC is tasked with setting standards and training for approximately 160 police/law enforcement agencies and 18,000 State, county, and municipal officers in the State.
- The Maryland legislature established a Police Training Commission in 1966 and reconstituted the Commission as the Police Training and Standards Commission, October 1, 2016.
- HB 670 proposes requiring an application for a search warrant under Criminal Procedure §1-203 include clear and convincing evidence. The standard for police officers requesting a warrant has been **reasonable suspicion**. The standard clear and convincing evidence exceeds even the preponderance of the evidence standard that applies to civil litigation, exceeds the requirement that an arrest be supported by probable cause and very nearly reaches the "beyond a reasonable doubt" standard required for conviction in a criminal case. If adopted, this standard will create untenable safety risks for officers and result in the escape of suspects and destruction of critical evidence.
- HB 670 proposes exempting individuals enrolled in a 4-year degree, studying criminal law, criminology, or criminal justice be exempt from tuition in return for working as a police officer for at least 5 years in an 8-year period post-graduation. As a training and standards Commission, we strongly support all opportunities for increased education to benefit officers and police/law enforcement agencies.

- Also proposed in Criminal Procedure Article, §1-203, is a requirement to serve a search warrant only between the hours of 8:00 a.m. - 7:00 p.m., absent exigent circumstances. Establishing a statute that is publicly accessible creates an environment that facilitates criminal behavior. In other words, suspects will know when warrants may be served.
- Additionally, prior to serving a warrant, risks analysis are often conducted. These include finding information out about the residence to include the layout of the property and who may reside in the property. Analysis is conducted to determine the best time to serve a warrant, minimizing safety threats for the officers and citizens who may also be present at the location. For example, there may be less threat to other occupants of a property when a warrant is served during the early morning hours as these individuals may be sleeping instead of awake and conducting the business of the day, including movement around the property.
- HB 670 proposes changes the membership of the Commission, specifically removing the Chair of the Maryland Municipal League Police Executive Association, the President of the Maryland Law Enforcement Officers, Inc., the President of the Police Chiefs Association of Prince George's County, and a representative from the Wor-Wic Program Advisory Committee - Criminal Justice. The positions HB 670 proposes to eliminate represent the smaller, municipal police agencies from throughout the State as well as training representatives from Wor-Wic. Each of these positions offer direct insight into the performance of police officers and can constructively contribute to standards and training, which are the tasks the Commission is charged with establishing, reviewing, and modifying.
- The proposed changes to Public Safety Article 3-203 also include expanding the membership of the individual with expertise in mental health to ensure that this individual does not have a relationship with law enforcement and adds nine citizens of the State without relationship to law enforcement. First, once an individual, regardless of position, is appointed to the Commission, the individual now has a relationship to law enforcement. Therefore, these appointments could only serve one term of appointment. Second, and specific to the nine citizens, citizens do not establish standards for other professions such as doctors, attorneys, or educators; raising the question about what the contribution to the professional standards for law enforcement professionals would be?
- Composing the Commission with nearly half of its membership as private citizens is unworkable and unrealistic. MPTSC work is very demanding and relies on the expertise of its members. Citizens would not have the requisite expertise (despite training) or the time to commit and Commission work would be paralyzed. Commission meetings are open to the public and public comment

is always welcome. Citizens are welcome to provide input without appointment to the Commission.

- Public Safety Article, §3-207, proposes a training program on matters relating to police procedures for citizens who intend to qualify to participate as a member of a trial board or charging committee under §3-525 of this title. The Police Training and Standards Commission has the powers and duties under Public Safety Article §3-208 to adopt regulations necessary or appropriate to carry out this subtitle. The Commission is not involved with personnel matters outside of setting selection standards for the certification of police officers **unless** an officer has violated the selection standards and is brought to the Commission for a de-certification hearing. The proposed change in (g) (1) of this section places the Commission in a role specific to personnel matters. The newly proposed section of §3-525 is specific to the establishment and implementation of a discipline process - a personnel matter.
- The Commission currently has standards allowing agencies to deal with personnel matters that suspend an individual's authority to perform the duties of a police officer. This is done through the submission of a Notice of Personnel Action in which an officer is assigned to Non-Officer Status (non-active duty) due to departmental suspension for
 - Administrative investigation or charge;
 - Criminal investigation or charge;
 - Disciplinary suspension; or
 - Reassigned to non-mandated/non-sworn duty (temporary).
- Regarding (g) (2), the Commission recognizes the value of providing training on matters relating to duties of the Police Training and Standards Commission for ALL members.
- Public Safety Article, §3-207 (J), establishes a level of accountability for police agencies that has not previously existed. The Commission proposes that (J) (1) (i) and (ii) could be consolidated into one statement by changing (1) (i) from "this title; and" to "this title; by working with the Comptroller..."
- (J) (2) creates two standards to which a police officer should be held accountable and fails to consider technical violations vs. substantive violations. Also, (i) is subjective as "found" is not defined. (J) also creates an inconsistency with §3-212 of the Public Safety Article. Finally regarding (J) (2), (ii)-(iv) includes violations of existing standards and apply to §3-212.
- Public Safety Article, §3-207, (K) proposes the Commission shall develop a test and training for implicit bias. Although the exact amount is not able to be provided, the Commission does not have staff who are experts in implicit bias. The Commission would be required to consult and contract with subject matter

experts in implicit bias to develop a test and training. The estimated initial cost for this is projected to be \$100,000 or more. The Commission is required to ensure annual training on implicit bias is conducted annually for all certified officers. To maintain relevance, the training would need to be evaluated and updated on a regular basis and the projected costs to consult and contract with subject matter experts is projected to be between \$50,000 - \$100,000 annually.

- Public Safety Article, §3-209, mandates (a) the Commission shall certify as a police officer each individual who (2) submits to a mental health screening by a licensed mental health professional and (3) submits to a physical agility assessment as determined by the Commission. Applicants to law enforcement complete a physical agility test as a component of the hiring process. The standard for a mental health screening and a physical already exist in COMAR 12.04.01.04.
- This section also mandates annual mental health and physical agility assessments which would have a fiscal impact for EVERY law enforcement agency in the State. Mental health and physical agility assessments are expensive, must be validated for job necessity and, if improperly administered or recorded may violate discrimination law (ADA, ADEA), and procedural due process, resulting in liability.
- Also proposed in (F) of this section and 3-215 (E), is language prohibiting prior marijuana use as a disqualifier for certification as a police officer. The Commission considered a proposal at the most recent Commission meeting to change the standards for prior use of marijuana.
- Public Safety Article, §3-508, re-enacts reporting requirements that have previously existed. Depending on the number of SWAT deployments, the Commission may need to add an administrative position to ensure the reports are collected, compiled, and submitted in accordance with this section.
- Public Safety Article, §3-511, will have both an operational and fiscal impact on law enforcement agencies that do not have body worn cameras (BWC). A 2020 survey of law enforcement agencies in Maryland determined the costs of BWCs to include storage was the primary reason agencies did not have cameras.
- Public Safety Article, §3-516, requires the Commission to establish guidelines for an early intervention system to identify police officers who are at risk for engaging in the use of excessive force. The Commission would be required to consult and contract with experts in use of force to establish guidelines. Although the exact cost is unknown, the fiscal is projected to be between \$50,000 - \$100,000.
- Public Safety Article, §3-523, is not expected to have an operational or fiscal impact on the Police Training and Standards Commission; however, (C) (1)

uses the language “potential shooting.” The Commission seeks clarification for the term “potential shooting” should HB 670 be enacted.

- Public Safety Article, §3-524, mandates the Commission shall submit a report that lists the law enforcement agencies that violated subsection (C) of this section during the preceding 12 months and describes the nature of each violation. This requirement will result in the need for an administrative position to liaison with the agencies to collect the data, analyze it to ensure compliance, and compile the data.
- Public Safety Article, §3-525, requires in subsection (D) that civilian members of trial boards and administrative charging committees shall receive training administered by the Commission on matters related to police procedures. The Commission is able to comply with this requirement with no anticipated fiscal impact.

CONCLUSION: For these reasons, the Police Training and Standards Commission respectfully requests the Committee consider this information as it deliberates on House Bill 670.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Troy A. Berry". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Sheriff Troy Berry, Chair
Police Training and Standards Commission