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POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 625 - Public Safety – Police Accountability – Investigation Records
Unfounded and Exonerated Complaints

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 12, 2025 (JPR)

The Maryland Office of the Public Defender respectfully requests that this Committee issue an unfavorable report on Senate Bill 625, which requires that all investigation records relating to a complaint of misconduct by a police officer be removed from the police officer's personnel record 3 years after an administrative charging committee or a trial board issues a finding that the complaint is unfounded or exonerated.

Senate Bill 625 will obstruct any progress in policing reform in Maryland because (1) administrative charging committees (ACCs) have yet to be successfully implemented across the State; (2) many of the committees are backlogged, not properly trained, and delayed, resulting in inadequate conclusions; and (3) amending the law to allow for expungements would authorize the destruction of potential impeachment material, which is required by law to be preserved and disclosed in criminal cases.

While the Police Accountability Act of 2021, which provides for the establishment of administrative charging committees, is nearly four years old, Maryland has been slow to fully staff the committees or properly train its members. *See* William J. Ford, Rollout has been uneven for accountability boards required by 2021 police reform effort, Md. Matters, May 1, 2023. As the Capital News Service revealed just last year, “roughly a quarter of Maryland jurisdictions did not get their police oversight systems up and running before the July 2022 deadlines set by state lawmakers. The new oversight bodies in Baltimore City, along with Dorchester, Cecil and Kent Counties, did not meet until 2023.” Paul Kiefer, Legal gray areas hinder police watchdogs, Md. Matters, May 8,

2024. In the four years since “state lawmakers celebrated the passage of the Maryland Police Accountability Act, the rollout of the new police oversight systems has proven slow, inconsistent and rife with disagreements about how to implement the new oversight process - challenges that frustrate critics and administrators alike.” *Id.*

And in jurisdictions where ACCs did get off to a timely start, some charging committees have been hampered by local police departments who delay providing committees with enough information to determine whether misconduct has occurred. More specifically, when determining whether misconduct has occurred, administrative charging committees are not authorized to complete their own investigations. Rather, they rely on the local police department to conduct the investigation for them, and when the committee needs more information, they are at the mercy of the local police department to gather that information. This process has resulted in incomplete, ineffective and untimely investigations in Baltimore City: “According to two members of the five-person ‘administrative charging committee,’ the group has been receiving documents, either new or updated, from the Baltimore Police Department just as the misconduct cases are set to expire, leaving little time for a thorough and thoughtful review. Of the roughly 1,000 cases the committee has reviewed, nearly half of them were received within 15 days of their expiration, according to city data.” Ben Conarck, Frustrations with civilian oversight of Baltimore police are boiling over, *Balt. Banner*, Dec. 2, 2024.

When information from the police department is delayed, ineffective and incomplete investigations result, leading to findings that are not reliable:

The cases are often complex. One that was reviewed last week involved eight officers, two different events, a variety of allegations, and body-worn camera footage that was not yet available for viewing, civil rights attorney and committee member Jesmond Riggins said. The night before the committee was set to meet and discuss the case, Riggins said the Police Department changed the investigative report, altering a “disposition” for one of the allegations against an officer who was previously listed as exonerated. That officer was now found to have committed an improper search, Riggins said.

As the committee attempted to parse out the different officers and allegations at its weekly meeting the next day, ‘none of us were able to go through all of the evidence ourselves to develop a solid opinion,’ Riggins said. ‘It was just too much at one time.’

Ben Conarck, Frustrations with civilian oversight of Baltimore police are boiling over, Balt. Banner, Dec. 2, 2024.

In addition to the challenges that result from charging committees having to gather additional information from local police departments, administrative charging committees have to base their decisions on the local police department's internal investigation, which can be woefully inadequate. For example, after a thorough investigation into the internal affairs division of the Baltimore Police Department (BPD), the United States Department of Justice (DOJ) concluded that Baltimore's internal affairs division is incapable of reviewing, investigating, and following up on misconduct: "For years, the Department's process of investigating and adjudicating complaints has been plagued by systemic failures, including: discouraging individuals from filing complaints; poor investigative techniques; unnecessary delays; minimal review and supervision; and a persistent failure to discipline officers for misconduct, even in cases of repeated or egregious violations." United States Department of Justice, Investigation into the Baltimore Police Department, Aug. 2016, at 140-150, available at https://www.justice.gov/d9/bpd_findings_8-10-16.pdf. The DOJ further concluded that the BPD "fails to investigate complaints in a timely manner or with effective techniques; that it uses "ineffective methods to investigate misconduct allegations;" it "fails to adequately supervise investigations;" and it fails to "consistently sustain complaints." *See id.* at 145-150 available at https://www.justice.gov/d9/bpd_findings_8-10-16.pdf.

The same DOJ report resulted in the BPD entering into a federal consent decree, which is *still ongoing* and from which the Baltimore Police Department has not been released. In other words, there has not been a determination by the federal court that BPD's internal affairs system has developed into a reliable and trustworthy system. As a result, it is not yet time to allow for, yet alone require, "unfounded" complaints to be expunged from a law enforcement officer's record before there is complete certainty about the effectiveness and quality of the underlying investigations.

Further, and arguably more importantly, Maryland law requires prosecutors to provide defense counsel with impeachment material, *in any form*, whether or not admissible, that tends to impeach a state's witness, negates or mitigates a defendant's guilt, or could "lead to the discovery of usable evidence at trial." *Fields v. State*, 432 Md. 650, 670 (2013) (quoting *Zaal v. State*, 326 Md. 54, 88 (1992)); *see also Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v.*

State, 337 Md. 112 (1995); *Lyba v. State*, 321 Md. 564 (1991); Md. R. 4-263; 4-262; and 11-418; While a complaint may be deemed unfounded by an internal affairs division of a local police department, that does not make that information undiscoverable in a criminal proceeding, particularly where there is not always confidence in the manner in which the underlying investigation was conducted. Put simply, this body, composed of several officers of the Court, would be reaching too far to authorize the destruction of evidence that may qualify as impeachment or discoverable material.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an UNFAVORABLE report on Senate Bill 625.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.

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