

SB 50 - PGCEX - Support.pdf

Uploaded by: Alsobrooks, Angela

Position: FAV



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

BILL: Senate Bill 50 - Criminal Procedure - Police Officers
- Duty to Intervene

SPONSOR: Senator Carter

HEARING DATE: January 28, 2021

COMMITTEE: Judicial Proceedings

CONTACT: Intergovernmental Affairs Office, 301-780-8411

POSITION: SUPPORT

The Office of the Prince George's County Executive **SUPPORTS Senate Bill 50 - Criminal Procedure - Police Officers - Duty to Intervene**, which establishes a duty for police officers to intervene. Specifically, the bill requires a police officer to intervene when they know of/see another police officer on the verge of using, or already using, excessive force. The bill also requires entry-level and recurring in-service training for police officers on their duty to intervene.

Given that authority that we grant police officers in their day-to-day dealings with the public, police officers are uniquely empowered to step in and shield the public from a fellow officer who is going too far in their use of force. The Prince George's Police Department already teaches entry-level recruits and existing police officers that they must intervene in the circumstances described in this bill. It is time these policies are made standardized across the State.

For these reasons, the Office of the Prince George's County Executive **SUPPORTS Senate Bill 50** and asks for a **FAVORABLE** report.

SB0050 Duty to Intervene.pdf

Uploaded by: Britt, Adiena

Position: FAV

SB0050 Criminal Procedure - Police Officers - Duty to Intervene

Stance: Support

Testimony: My name is Adiena C. Britt and I reside in the 45th Legislative District of Baltimore City. I am writing to offer my support for SB0050 requiring any police officer that observes misconduct by one or more of their fellow officers to report such conduct for investigation and discipline. Currently, there is a code of silence for “members of the blue line” and it needs to come to an end. Having this failure result in potential jail time and/or fines provides the motivation for police officers to do the right thing. It is a shame that they need to be threatened with such a law in order to get them to do what is right.

Every day in our state there are civilians reporting such incidents, and they go largely unheard, uninvestigated, and unpunished. There are currently repeat offender officers on the many police forces within our state that feel they are above the law, simply because they can bully, harass, and threaten their co-workers into silence. One such egregious case was here in Baltimore City, where an officer attempted to report misconduct and was harassed out of a job. Even the leadership of the Department partook in the cover-up and mishandling of the Officer Crystal case, and we can no longer tolerate these things. Please allow this bill to pass through committee and be brought forth before the entire Senate and House to be passed into Law. It is BEYOND the time for this and will aid in preserving the “good apples” while addressing the rotten ones.

Thank you.

Adiena C. Britt

6014 Old Harford Rd.

Baltimore, MD 21214

Testimony_JPC_SB0050 - Google Docs.pdf

Uploaded by: Carter, Jill

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter
In Favor of SB0050 - Criminal Procedure - Police Officers - Duty to
Intervene
Before the Judicial Proceedings Committee
on January 28, 2021**

Mr. Chairman, Vice chair, and Members of the Committee:

Today I present Senate Bill 0050. This bill puts into statute something we should not have to codify. It demands that police officers simply do the right thing - to step in - when they see one of their own going too far. With this law we are insisting that police officers stop other officers from using excessive force. Specifically, this bill creates a duty to intervene if a police officer witnesses excessive force from another officer. Additionally, this bill requires preliminary and continued training for officers on how to intervene when excessive force is used.

The reasons for Senate Bill 50 are two-fold. First, under current Maryland law, an officer has no duty to intervene when witnessing another officer use excessive force. Second, incidents of police officers using excessive force have been seared into our public consciousness recently. For example, the recent murder George Floyd that sparked protests and unrest, as well as the Freddy Gray homicide that took place right here in Maryland only a few years ago.

The more practical need for this bill is simple, a large portion of the population have interactions with police officers. As of 2018, about 61.5 million residents, 16 or older, had at least one contact with police. This means that nearly a quarter(24%) of our country has come in contact with law enforcement at least once. With this amount of people interacting with law enforcement, there is a need for internal oversight to ensure that there is no excessive force or other misconduct. Furthermore, the need for this bill here in Maryland is strikingly evident. During a five year period, in Baltimore City alone, there were 13,392 complaints of misconduct filed against 1,826 Baltimore City police officers and 22,884 use of force incidents. Additionally, this bill will help correct the inherent racism embedded in the use of excessive force, given that African American citizens make up 91% of excessive force victims and 63% of those killed by police.

As the duty to intervene becomes ingrained in the police departments' culture, benefits would include fewer citizen complaints, fewer instances of misconduct, a decrease in the use of excessive force, an increase in officer safety and wellness, fewer disciplinary issues, increased retention of employees, and, most critically, increased trust within the community.

Officers already have a legal duty to intervene under Section 1983 of the Federal Civil Rights Act of 1871. Section 1983 applies to situations such as unjustifiable arrests, excessive force by a fellow officer, and any constitutional violation by a law enforcement official. If an officer does not act to intervene in a situation where a fellow law enforcement official is engaging in misconduct they can be held liable under Section 1983. This bill adds effective teeth to that federal mandate.

Beyond legal obligations, police officers promise to protect and serve their community. Those words are emblazoned on police cars, badges

and all manner of other police paraphernalia. It is a phrase that has become synonymous with the role of police in our society. But, looking at the facts surrounding the death of Freddie Gray, knowing the facts surrounding the killings of Tyrone West, Robert Saylor, many others, and watching videos of the prolonged execution of George Floyd and other such incidents, we are forced to ask who is being protected and served. In both cases, other officers were present who could have intervened to protect the victims and serve the community's best interests. Police officers stood by and watched these crimes unfold in front of their eyes. Protecting their fellow officers. Serving their more narrow and craven interests by standing by, idly. The reluctance to interfere with another officer's arrest is understandable to an extent. Being branded a "rat" or a "snitch" can have real and serious consequences behind the Blue Wall of Silence. This law attempts to protect officers from that. The choice is very clear - either take reasonable steps to keep a fellow officer from using excessive force or face criminal prosecution yourself. This is a substantial step to restoring public confidence in our law enforcement personnel. With this bill the motto "To Protect and Serve" reclaims its original meaning - to protect and serve the whole of our State.

As such, I urge this committee to give a favorable report on SB0050. Thank you.

Respectfully,

A handwritten signature in blue ink that reads "Jill P. Carter". The signature is written in a cursive, flowing style.

Jill P. Carter

Legislative Testimony 50.pdf

Uploaded by: Elliott, Richard DeShay

Position: FAV

Legislative Testimony:
SB50

I support Senator Jill P. Carter's Senate Bill 50 to require police officers to intervene when their comrades in blue are violating the human rights of members of the community.

**RICHARD
ELLIOTT**
FOR MARYLAND

By Authority: Rich Elliott For Maryland Keanu Smith-Brown, Campaign Chair Christian Hillian, Treasurer

2021-01-28 SB 50 & SB 419 (Support in Concept).pdf

Uploaded by: Kemerer, Hannibal

Position: FAV

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

January 28, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: Senate Bill 50: Criminal Procedure - Police Officers - Duty to Intervene and
Senate Bill 419: No-Knock Warrants - Elimination (SUPPORT IN CONCEPT)

The Office of the Attorney General submits this general statement in support of efforts to advance criminal justice reform. Despite variations in specifics, the proposals in Senate Bill 50 and Senate Bill 419 reflect two important guiding principles: the need to end excessive force and re-evaluate the standards for middle-of-the-night no-knock warrants. Policies implementing these principles would help prevent horrific outcomes while supporting the majority of police officers who perform difficult jobs responsibly.

Central to achieving meaningful police reform is ending the use of excessive force.

First, the State should codify a standard that restricts police use of deadly force, including the use of chokeholds, to that which is necessary to protect the officer or other persons from the imminent threat of death or serious bodily injury. Some common-sense measures include: requiring officers to rely on de-escalation techniques where possible and to intervene to stop another officer from using excessive force; requiring officers to report misconduct by other officers; and requiring agencies to report all use of force incidents for internal and external review and tracking.

Senate Bill 50 seeks to prevent the use of excessive force by establishing a duty for a police officer to intervene if the officer knows or reasonably should know that another officer is using or intends to use excessive force and prescribing criminal penalties for a failure to perform that duty. That an officer should be obligated to intercede to stop or prevent another officer's use of excessive force is a critical component of ending the use of excessive force and improving community trust. Particularly when employed with de-escalation techniques, such intervention

also promotes the increased safety for both civilians and officers. Perhaps for these reasons, the duty to intervene enjoys broad stakeholder support from law enforcement agencies and reform advocates: it is among the list of best practices for police use of force issued by the Maryland Police Training and Standards Commission (MPTSC), is endorsed by the International Association of the Chiefs of Police, and has been incorporated into the policies of many of the largest police departments in the United States, including the Baltimore City and Baltimore County Police Departments.

All Maryland law enforcement officers should be obligated to intervene to stop or prevent another officer's use of force where it is feasible to do so. While we have reservations about whether criminal liability is the appropriate sanction, a duty to intervene should be a part of every law enforcement agency's administrative policies, and officers failing to comply with that policy should face discipline or be terminated consistent with their agency's administrative procedures. To ensure that officers know how and when to intervene, officers should be trained regularly on intervention strategies and scenarios.

No-knock warrants should be used only where they are necessary to protect officer safety.

Breonna Taylor was killed in the middle of the night after police secured a no-knock warrant to enter her home. A woman should not be killed in her own home because the police were authorized to force down her door in the middle of the night to execute a warrant related to a drug investigation of an ex-boyfriend who did not even live there.

Senate Bill 419 eliminates the use of no-knock warrants entirely. Although no-knock warrants are an important tool to protect the safety of law enforcement officers, the enactment of several reforms can reduce the tragic consequences that result from their overuse.

No-knock warrants should be authorized only when necessary to secure the safety of police—not to avoid the destruction of evidence. The level of scrutiny needed for no-knock warrants should also be considered—perhaps requiring high-level approvals within the Police Department and review by the State's Attorneys. Finally, the time at which warrants like these are served—a factor which clearly contributed to Breonna Taylor's death—should be examined. Middle-of-the-night warrant execution should be limited to situations where police and public safety truly require it.

For these reasons, the Office of the Attorney General supports the goals of Senate Bill 50 and Senate Bill 419.

cc: Committee Members

OPD Testimony SB 50 FINAL.pdf

Uploaded by: Martinez, Roberto

Position: FAV



POSITION ON PROPOSED LEGISLATION

BILL: Senate Bill 50, Criminal Procedure – Police Officers – Duty to Intervene
POSITION: Favorable
DATE: Tuesday, January 26, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on Senate Bill 0050.

An officer's intervention saved my client's life. John¹ was walking home from the store when he saw a police cruiser perform an abrupt U-Turn, causing oncoming traffic to slam on the breaks. The officer mounted the curb and out emerged with a gun and pointed it at my client. John was terrified, staring at the person that could quickly end his life for no reason.

According to law enforcement, there were reports of an individual running from a store after committing a felony with a weapon to wit a butter knife. John was not running; he couldn't, his health didn't allow for it. John had his bag with his receipt; he didn't rob anyone.

At no point did the police officer ask John to turn out his pockets, ask him to sit, or wait for nearby officers to arrive. Instead, the officer pointed a gun, forced him to the ground, and placed his knee on his back. John was diminished to a helpless animal begging and pleading for his life. Not only was a 200 plus pound man kneeling on top of him, but the weight was also crushing his ribs and making it difficult to breathe. Minutes felt like hours.

Eventually, at least ten officers were on the scene, but only one assessed that John was no threat, that his life was in danger, and that the proper course of action was to treat John with dignity and respect. This should never be the exception. Officers must safeguard life and property and protect the rights of *all citizens*. Memorializing a duty to intervene is a step towards this mission.

For these reasons, the Maryland Office of the Public Defender urges a favorable report on Senate Bill 0050.

Respectfully submitted,

/s/ Roberto C. Martinez

Roberto C. Martinez, Esq.
Assistant Public Defender, Montgomery County
Office: (301) 563-8952
roberto.martinez@maryland.gov

¹ My client's name and some of the non-essential facts were changed to protect my client's identity and privacy.
For further information please contact Krystal Williams, Director, Government Relations Division, by email at krystal.williams@maryland.gov or by phone at 443-908-0241.

TESTIMONY FOR SB0050 Criminal Procedure - Police O

Uploaded by: Plante, Cecilia

Position: FAV



**TESTIMONY FOR SB0050
CRIMINAL PROCEDURE – POLICE OFFICERS – DUTY TO INTERVENE**

Bill Sponsor: Senator Carter

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: **FAVORABLE**

I am submitting this testimony in favor of SB0050 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

Our members believe that the duty to intervene when a police officer is using excessive force is a paramount duty for any compassionate person. Many citizens have intervened in such situations without having a thought for their own safety or the consequences to them.

What no one really understands is how another officer will fail to do the compassionate thing and allow a fellow officer to hurt a vulnerable individual. This behavior should not have to be legislated, but we have witnessed the inexplicable failure to stand up and speak up over and over again.

So, here we are. At the very least, there will be penalties – both monetary and potential time in jail. The officer will also be subject to civil litigation from the injured party. Perhaps this will make officers find their courage.

We support this bill and recommend a **FAVORABLE** report in committee.

Use of Force Testimony - RGR.pdf

Uploaded by: Roshong, Riley

Position: FAV



YouTube: [rileygraceroshong](https://www.youtube.com/rileygraceroshong) | Twitch: [rileygraceroshong](https://www.twitch.tv/rileygraceroshong) | Twitter: [@rileygroshong](https://twitter.com/rileygroshong) | Discord: discord.gg/rgr

1 ON THE NATURE OF whether police use of excessive force is an issue in the United States:

2 WHEREAS “[t]he feature distinguishing police from all other groups in society is their authority to apply coercive
3 force when circumstances call for it.”^[1]

4 WHEREAS according to the US Commission on Civil Rights, “police officers must operate with the highest
5 standards of professionalism and accountability.”^[2]

6 WHEREAS police in the US kill civilians at rates 5x higher than police in Canada, 40x higher than in Germany,
7 140x higher than in England and Wales, and kill more people than most developed democratic countries.^{[3][4][5]}

8 WHEREAS “many situations that provoke police to use undue force closely resemble . . . assaults by private
9 citizens” and “[i]n both cases, the force is exerted in quick anger against real or imagined aggression.”^[6]

10 WHEREAS cities with restrictive use of force policies are associated with fewer police killings.^{[7][8]}

11 WHEREAS levels of violent crime in US cities do not determine rates of police violence.^[9]

12 WHEREAS in 2020, while the majority of people killed by police were white, black people were 28% of those
13 killed by police despite being only 13% of the population.^{[10][11]}

14 WHEREAS general use of force research is unclear, current evidence shows that black people are 3x more likely
15 to be killed by police than white people despite being 1.3x more likely to be unarmed.^{[12][13][14][15][16][17][18]}

16 WHEREAS in 2013-20, police killed black people at higher rates than white people in 47/50 largest US cities.^[19]

17 WHEREAS “the various mechanisms through which police brutality may increase the death rates among the
18 Black community include physical injuries and deaths, psychological stress, racist public reactions, economic and
19 financial strain, and systematic disempowerment among the Black community.”^[20]

20 WHEREAS police generally defend killing unarmed suspects or using excessive force because “[c]ops who report
21 wrongdoing are routinely ostracized as ‘rats’ and denied promotions.”^{[21][22][23][24][25]}

22 WHEREAS 98.3% of killings by police from 2013-20 have not resulted in officers being charged with a crime.^[26]

23 WHEREAS higher levels of peer misconduct among police increases an officer's misconduct rate, and the norm
24 of rerouting offending police officers to new locations in the force exacerbates this issue.^{[27][28]}

25 WHEREAS giving police departments collective bargaining rights and unionization has led to higher levels of
26 violent police misconduct.^[29]

27 WHEREAS it is not unusual for officers to ignore improper conduct by their fellow officers, and it is not
28 uncommon for officers to recognize that others use more force than necessary when making an arrest.^{[30][31]}

29 WHEREAS there is evidence that although police officers who are most likely to have fired their weapons are
30 white men, evidence suggests that the causes for use of force against black people may be rather motivated by
31 institutional, organizational, and systemic causes.^{[32][33][34]}

32 THEREFORE, police use excessive force disproportionately against people of color, police are complicit in and
33 defend fellow officers' use of excessive force, and these issues require systemic solutions to resolve.

Sincerely,

Riley Grace Roshong

MCPA-MSA_SB 50-Duty to Intervene_Support with Amen

Uploaded by: Mansfield, Andrea

Position: FWA



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and
Members of the Judicial Proceedings 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: January 28, 2021

RE: **SB 50 Criminal Procedure – Police Officers – Duty to Intervene**

POSITION: **SUPPORT WITH AMENDMENTS**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **SUPPORT SB 50 WITH AMENDMENTS**. This bill establishes a duty for a police officer to intervene. A police officer who knowingly and willfully violates the duty to intervene is guilty of a misdemeanor and on conviction is subject to a maximum penalty of five years imprisonment and/or a \$10,000 fine.

MCPA and MSA supports efforts to hold officers accountable and agree officers should have a duty to intervene to make a reasonable attempt to stop or prevent the use of excessive force if a police officer knows or reasonably should know that another officer is using or intends to use excessive force.

Instead of an approach that includes criminal penalties such as those specified in SB 50 and other legislation, a uniform statewide use of force policy could be specified in statute that addresses an officer's duty to intervene, report misconduct, and other key elements. The actual policy could still be developed by the Maryland Police Training and Standards Commission providing flexibility for other requirements to be incorporated resulting from court decisions or best practices developed by certifying agencies.

Incorporating these concepts into mandated policies authorize the Chief or Sheriff to take appropriate disciplinary action should an officer not comply with specified training and policies. The behaviors specified in SB 50 are unacceptable and question an officer's integrity likely resulting in severe disciplinary and criminal actions if upheld. Chiefs and Sheriffs should be held accountable in disciplining their officers and adopting a statewide use of force policy to address these matters provides this opportunity. For these reasons, MCPA and MSA **SUPPORT SB 50 WITH AMENDMENTS** to mandate a statewide use of force policy that establishes a duty for a police officer to intervene.

WDC Testimony HB0050_FINAL.pdf

Uploaded by: Tomasello, Beth

Position: FWA



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

www.womensdemocraticclub.org

**SENATE BILL 50-CRIMINAL PROCEDURE-POLICE OFFICERS-DUTY TO INTERVENE
JUDICIAL PROCEEDINGS COMMITTEE-JANUARY 28, 2021
SUPPORT WITH AMENDMENT**

Thank you for this opportunity to submit written testimony to the Judicial Proceedings Committee concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)**. WDC is one of the largest and most active Democratic Clubs in our County with hundreds of politically active women and men, including many elected officials.

SB0050 requires intervention by police officers when a fellow officer is using or intends to use excessive force. WDC believes that this legislation is an important first step in creating police accountability for failure to intervene in the use of excessive force. This legislation is also consistent with the U.S. Department of Justice's policy to prosecute law enforcement officers for failure to intervene to prevent use of excessive force and other civil rights violations, but the penalties under federal law can be much more severe than a misdemeanor.¹

Accordingly, WDC believes that SB0050 does not go far enough in protecting Maryland's men and women—particularly its Black men and women—from use of excessive force by law enforcement officers. WDC urges the members of the Judicial Proceedings Committee to amend SB0050 to: 1) change the definition of "EXCESSIVE FORCE" to "PHYSICAL FORCE THAT, UNDER THE TOTALITY OF THE CIRCUMSTANCES, IS OBJECTIVELY UNNECESSARY", 2) clarify the definition of "REASONABLE" in proposed Section 2-109 (B) to make clear that the reasonableness of the attempt to intervene should be judged from the perspective of an objective observer of the totality of the circumstances and not solely from the perspective of the reasonable officer on the scene, and 3) amend proposed Section 2-109 (D) to allow prosecutors to charge an officer who violates Section 2-109 with more than a misdemeanor.

First, WDC urges *amendment* to SB0050 to replace the "objectively unreasonable" standard to define Excessive Force with an objectively unnecessary standard. This standard is proposed in **HB139-Law**

¹ "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or an officer who purposefully allows a fellow officer to violate a victim's Constitutional rights may be prosecuted for failure to intervene to stop the Constitutional violation. To prosecute such an officer, the government must show that the defendant officer was aware of the Constitutional violation, had an opportunity to intervene, and chose not to do so. This charge is often appropriate for supervisory officers who observe uses of excessive force without stopping them, or who actively encourage uses of excessive force but do not directly participate in them." www.justice.gov/crt/law-enforcement-misconduct. Penalties for civil rights violations are set forth in 18 U.S.C. Section 242, which states: "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, *shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.* (emphasis added).



MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB

P.O. Box 34047, Bethesda, MD 20827

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Enforcement Officers-Use of Force. The current language in the bill uses the term “objectively unreasonable” standard, which leaves too much leeway for officers to justify the use-of-force, and we believe that officers should use force only when necessary, and as a last resort. The Montgomery County Council recently adopted the “necessary” standard for use of force in Montgomery County Council [Bill 27-20E](#). This use-of-force law permits the use of force only when necessary, which “means that another reasonable law enforcement officer could objectively conclude, under the totality of the circumstances, that there was no alternative to the use of force” (MCC Bill 27-20E, Line 46), and that “such force is necessary, as a last resort, to prevent imminent and serious bodily injury or death to the officer or another person” (Line 99).

Second, WDC believes that judging the reasonableness (or unreasonableness) of the use of force should not be judged solely from the point of view of the “objectively reasonable” officer on the scene, because it is difficult to define who is the “objectively reasonable” officer. Are they the officers in *Graham v. Conner* (referenced in the [Fiscal and Policy Note](#)) who injured and denied medical help to a victim in a diabetic crisis who did nothing more than enter and leave a convenience store quickly rather than wait in a long line to purchase a product containing glucose? Are they the officers who idly watched George Floyd and Eric Garner beg for their lives? The multitude of Americans protesting police violence tell us that a police officer’s view of what is objectively reasonable is not what Americans think is objectively reasonable.

There are several additional reasons to use a different measure of what use of force is objectively reasonable:

- The “objectively reasonable” standard considers neither the officer’s nor the victim’s race, which, within our structurally racist criminal system, too often makes use of force against Black people seem reasonable. As Georgetown University Law professor Paul Butler wrote, “what happens in places like Ferguson, Missouri, and Baltimore, Maryland, where the police routinely harass and discriminate against African-Americans, is not a flaw in the criminal justice system. [They] are examples of how the system [of structural racism and racial subordination] are *supposed* to work.”²
- The “objectively reasonable” standard does not consider the offense the police believe the victim committed. Are there ever circumstances in which it is reasonable to cause injury or death for suspicion of using a counterfeit \$20 bill, selling single cigarettes, or in the case of *Graham v. Connor* itself, committing no crime at all?
- The “objectively reasonable” standard does not clearly consider all the actions of the officer(s) from the beginning of the encounter with the victim as opposed to considering only the situation at the exact moment of the use of force.

Third, WDC believes that higher penalties should be available to prosecutors, particularly when the use of force involves injury or loss of life. Therefore, WDC proposes amending subsection 2-109 (D) to allow prosecutors to charge stand-by officers with a crime that carries higher penalties than a misdemeanor. WDC suggests this amendment for two reasons. First, in the killings of George Floyd and Eric Garner, the attending officers had every opportunity to stop those foreseeable deaths. Limiting charges to misdemeanors in those situations does not serve justice. Second, WDC has stated its opposition to Maryland’s felony-murder rule in its testimony submitted on [HB385-Criminal Law-Felony Murder-Limitation and Review of Convictions for Juveniles](#). It seems entirely

² Paul Butler, *Chokehold: Policing Black Men*, 6 (2017)



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unjust that individuals—including juveniles—may be sentenced to life imprisonment (possibly without parole) for a killing that they did not intend, did not commit, and may have had no opportunity to prevent, while a trained officer who knew or should have known of a fellow officer's use of excessive force and had an opportunity to intervene to stop it, is guilty only of a misdemeanor even if the use of force results in death. The state cannot have it both ways. Since WDC opposes over-incarceration, we would support imposing misdemeanor liability under SB0050 for stand-by police officers *only* if this Committee abolishes felony-murder entirely.

We ask for your support for SB0050 and urge the Committee to issue a favorable report with the amendments noted in this testimony.

Respectfully,

Diana Conway
President

SB50.pdf

Uploaded by: Plaut, Ari

Position: UNF



CLYDE BOATWRIGHT
STATE PRESIDENT

Maryland State Lodge
Fraternal Order of Police®

8302 COVE ROAD, BALTIMORE, MD 21222



KENNETH SCHUBERT
SECRETARY
EARL KRATSCHE
TREASURER

The Honorable William C. Smith Jr., Chairman
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St. Annapolis, MD 21401 -1991

Dear Chairman Smith,

I am writing on behalf of the Maryland State Lodge of the Fraternal Order Police in opposition of Senate Bill50 (Criminal Procedure – Police Officers – Duty to Intervene).

While the women and men of the Fraternal Order of Police support policies governing the duty to intervene, we simply cannot support proposed legislation which seeks to levy excessive punitive measures upon law enforcement officers. As you know, many of Maryland’s law enforcement agencies have implemented duty to intervene policies. Without any evidence to suggest that officers are failing to intervene in excessive force incidents, it is clear that SB50 is only intended to punish police officers.

The Fraternal Order of Police understands the importance of policies which mandate intervention in serious incidents. We also understand the importance of fairness and equality related to criminal penalties. An officer’s proven failure to intervene in another officer’s use of excessive force should most certainly result in disciplinary action by his or her agency, but it should not carry a criminal penalty.

The Maryland Legislature should ensure that each of Maryland’s law enforcement agencies have quality policies regarding the duty to intervene. The legislature should ensure proper supervision and training on such policies and, most importantly, develop a mechanism by which those policies can be measured over time. The legislature’s attempt to enact a duty to intervene law, particularly where there is no current statewide requirement for police departments to have a similar policy, is nothing more than a punitive measure. For these reasons, the Maryland Fraternal Order of Police must oppose SB50.

Fraternally,

William R. “Will” Milam
First Vice President

SB 50 - Duty to Intervene.pdf

Uploaded by: Shellenberger, Scott

Position: UNF

Bill Number: SB 50
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed Requesting Amendments

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
OPPOSED REQUESTING AMENDMENTS OF SENATE BILL 50
CRIMINAL PROCEDURE – POLICE OFFICERS – DUTY TO INTERVENE

Senate Bill 50 is a new law that creates a duty to intervene when one officer knows another officer is using or intends to use excessive force. The bill also requires training every 2 years on the duty to intervene. I do not believe we need this law as currently drafted.

If you are inclined to take action on this topic I do not object to the requirement of intervention. I do not object to the requirement of training. I do object to making the failure to intervene a separate crime punishable by 5 years in jail.

The decision to intervene will most likely be a split second decision. Nowhere else in the law, except maybe child abuse, do we require any other citizen to intervene. More importantly, nowhere else in the law does the failure to act become a crime punishable with incarceration.

While I understand the need to write some legislation in this area rather than a crime perhaps the failure to intervene could be actionable under the current disciplinary system in each police department. That way you would create a requirement to act and have a potential punishment in an existing system.

I oppose Senate Bill 50 as drafted. If you feel it is needed, I request an amendment to eliminate making it a crime but make it subject to disciplinary proceedings.

BaltimoreCounty_LOI_SB0050.pdf

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Position: INFO



JOHN A. OLSZEWSKI, JR.
County Executive

CHARLES R. CONNER III, ESQ.
Director of Government Affairs

JOEL N. BELLER
Deputy Director of Government Affairs

BILL NO.: **SB 50**

TITLE: Criminal Procedure - Police Officers - Duty to Intervene

SPONSOR: Senator Carter

COMMITTEE: Judicial Proceedings

POSITION: **LETTER OF INFORMATION**

DATE: January 28, 2021

Senate Bill 166 – Criminal Procedure - Police Officers - Duty to Report Misconduct (Maryland Police Accountability Act) is a bill that would require a police officer to attempt the stop or prevent the use of excessive force.

In October 2020, Baltimore County passed the SMART Policing Act, a law that set forth policing procedures which modernized policing tactics, updated use of force policy, improved training and accountability, and expanded transparency in the department. The establishment of the duty to intervene was included in this act to codify the prevention of use of excessive force.

Trust in state and local institutions requires faith in the stewards of public safety. Law enforcement officers must intervene in instances where excessive use of force is employed. By making the duty to intervene law, police officers will be able to act as checks on one another’s behavior without fear of retribution.

This legislation would effectively implement policies Baltimore County currently has in place at the State level, and would be adopted by jurisdictions that currently do not have such a law.

For more information, please contact Chuck Conner, Director of Government Affairs, at cconner@baltimorecountymd.gov.

MSP Position paper SB 50.pdf

Uploaded by: Williams, Thomas

Position: INFO



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

POSITION ON PROPOSED LEGISLATION

DATE: January 28, 2021

BILL NUMBER: Senate Bill 50 **Position:** Letter of Information

BILL TITLE: Criminal Procedure – Police Officers – Duty to Intervene

REVIEW AND ANALYSIS:

This legislation seeks to require that a police officer make a reasonable attempt to intervene to terminate or prevent another police officer's use of excessive force. This legislation also requires the Maryland Police Training and Standards Commission to require entrance level and in-service training on the requirements of this bill. This legislation also establishes a criminal penalty for failure to report the witnessed act.

The Maryland State Police supports every officer's duty to intervene to prevent the use of unjustified excessive force. While law enforcement agencies and the officers they employ should be held to a higher standard of conduct, this legislation defines excessive force as that under the totality of the circumstances is objectively unreasonable. An officer who witnesses another officer using force against a person may not know all of the facts the first officer is aware of at the time the decision is made to use force. The second officer may observe another officer using force to subdue a criminal that appears to be reasonable, so they do not intervene. The totality of the circumstances may not be known to any second or third party to the action. But who makes the decision on whether or not the second officer was correct? If the officer acted in good faith, they could still face a criminal penalty.

The penalty for failure to intervene is up to five years imprisonment and/or a \$10,000 fine. Failing to intervene on what appears to the second officer to be a reasonable use of force could result in a maximum penalty more severe than the officer who commits the act. Senate Bill 50 does not define who makes the determination of reasonableness and when that determination is made. When is the reasonableness of the standard applied and by whom?

Instead of creating a criminal penalty for failure to report any sort of misconduct by a police officer, the Department believes that Administrative Sanctions would be a better remedy. There is already a disciplinary matrix employed by law enforcement agencies in Maryland. Depending on the severity of the misconduct, there should be a sliding scale of punishment. This scale could be from written reprimand and additional training for failing to report minor acts of misconduct, to decertification or termination for failing to report major misconduct.

State of Maryland
Department of State Police
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POSITION ON PROPOSED LEGISLATION

Instead of subjecting an officer to a criminal charge and potential jail, a mandatory uniform statewide policy incorporating the use of force, duty to intervene, reporting of misconduct, and other key elements, developed by the Maryland Police Training and Standards Commission, should be required in law as opposed to just training on how to intervene when a use of force is observed. This would give the Superintendent broad authority and discretion in dealing with officers who violate the policy. The Department believes this is truly the goal of both law enforcement and the citizens of Maryland, to ensure police officers are held accountable and remove those who are violating the oath to protect and serve.