



## POSITION ON PROPOSED LEGISLATION

Bill: SB 0071 Criminal Law – Police Officers – Testimony – Presumption of Inadmissibility Maryland Police Accountability Act of 2021

Position: Favorable

Date: January 15, 2021

“. . . . [E]vidence which derives so immediately from an unlawful . . . . officers' action . . . . is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion.” – *Wong Sun v. U.S.*<sup>1</sup>

Dear **Chairman Smith and Members of the Judicial Proceedings Committee:**

The Maryland Office of the Public Defender supports SB0071, because it is common sense legislation necessary to rebuild community trust in law enforcement. Police accountability and transparency are of highest importance, and the recent deaths of Breonna Taylor, George Floyd, and many others at the hands of law enforcement have further brought to light why this bill is so important. In the midst of social unrest of this past year following these untimely deaths, the consensus for police accountability and transparency only continues to grow.

The Fourth Amendment protects individuals from unwarranted searches and seizures.<sup>2</sup> Stemming in Fourth Amendment jurisprudence, the exclusionary rule enables courts to exclude

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<sup>1</sup> *Wong Sun v. United States*, 83 S. Ct. 407, 416 (1963). “Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion.” *Id.*

<sup>2</sup> U.S. Const. amend. IV.

incriminating evidence introduced in a case where proof exists that it was obtained unconstitutionally.<sup>3</sup> Further, under the fruit of the poisonous tree doctrine, a court may not only exclude from a trial evidence that itself was seized unconstitutionally, but also any other evidence that is derived from an illegal search.<sup>4</sup> In upholding our Constitution and following American jurisprudence, it is our duty to use every tool available to protect Marylanders from unconstitutional searches and seizures by law enforcement officers. Moreover, law enforcement's role in recovering evidence is critical in ensuring that a standard of justice is fairly and equitably administered to every individual the Office of the Public Defender represents accused of a crime. Body cameras on law enforcement officers allow us to see exactly what happened at the time it was happening, which is important context when someone's life and freedom is at stake. Adding an exclusionary rule for body cam usage will incentivize police departments to follow appropriate body camera guidelines.

Body cameras are a key tool in holding police accountable and have filmed Baltimore Police engaging in illegal conduct, such as when a Baltimore Police officer who turned off his body camera was found guilty of fabricating evidence.<sup>5</sup> In this case, a Baltimore Police officer is recorded placing a soup can down in a lot, walking to the street, turning his camera on, and returning to the soup can where he "uncovers" a plastic bag full of white capsules.<sup>6</sup> The body

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<sup>3</sup> Mapp v. Ohio, 81 S.Ct. 1684, 1693 (1961).

<sup>4</sup> Wong Sun v. United States, 83 S. Ct. 407, 416 (1963).

<sup>5</sup> Justin Fenton, Baltimore Police Officer who turned off body camera charged with tampering with evidence; others cleared, BALTIMORE SUN (Jan. 24, 2018) <https://www.baltimoresun.com/news/crime/bs-md-ci-body-camera-tampering-20180124-story.html> (citing where a Baltimore Police Officer body camera automatically recorded 30 seconds of footage before the officer activated his body camera of the officer placing a soup can down in a lot, walking to the street, turning his camera on, and returning to the soup can where he "uncovers" a plastic bag full of white capsules); Kevin Rector, *Baltimore Police officer found guilty of fabricating evidence in case where his own body captured the act*, BALTIMORE SUN (Nov. 9, 2018) <https://www.baltimoresun.com/news/crime/bs-md-ci-pinheiro-ruling-20181109-story.html>.

<sup>6</sup> *Id.*

camera, however, automatically recorded the 30 seconds before the officer activated his body camera, capturing him planting the drugs in the soup can. The man the Baltimore Police officer arrested for a heroin possession had the charges against him dropped but was held in jail for six months unable to post bail for a crime he did not commit.<sup>7</sup> This story demonstrates the type of critical evidence prosecuted individuals would be missing when officers fail to record incidents with the body camera.

The importance of this bill cannot be unscored enough in taking this important step forward in holding police officers accountable for their conduct. For these reasons, we urge a favorable report on this bill.

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<sup>7</sup> Fenton, *supra* note 2.