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Written Testimony Senate Bill 166 – Duty to Report Misconduct

“It is curious that physical courage should be so common in the world and moral courage so rare.”
—Mark Twain

The Duty to Report Misconduct codifies the duty to live with a higher moral code while policing in Maryland. The concept, a duty to report, is not new to certain professions. There was no political controversy that I am aware of when Rule 8.3 was established, which created the Duty to Report Misconduct amongst lawyers and judges. The rule, in its entirety, is titled Reporting Professional Misconduct, Maintaining the Integrity of the Profession. As a young lawyer having to pass the professional responsibility exam, it was deeply ingrained in me from the beginning of my professional experience that I have an affirmative duty to report a lawyer or a judge who engages in misconduct in front of me. This duty relieves me of the guilt, fear, or hesitation that might otherwise derail the moral requirement that I report someone more senior than me, or someone with more authority than I have.

I know, first hand, the importance that this requirement had on me when I summoned the courage to report judicial misconduct against a long-time judge. As one of the newest lawyers to my jurisdiction, it was the most courageous act I could take on, to report a veteran judge on the bench for his humiliating acts of misconduct that most clearly interfered with the administration of justice. I knew that to do so could create enemies, injure my career, and result in negative backlash, but my moral compass encouraged it, and my professional duty empowered it.

Without that obligation, the affirmative duty to report, and the consequences that could be imposed by my failure to do so, there is likely no way I would have summoned the courage as a new lawyer in Maryland to complain about the conduct of a senior judge on the bench. My bravery was supported by the rules and the laws of my profession. It enabled me to take action against someone more senior than me, someone more powerful than me, and someone with far more authority than I might ever have. And while the Commission on Judicial Disabilities ended up agreeing with me, I did not know that at the time I summoned the courage to make the report.

The misconduct that this law, Senate Bill 166, is aimed at preventing is far more insidious than words in a courtroom hurled by a judge. The misconduct that this law aims to eliminate is most often violence, and sometimes, tragically, death. There is a sad and unfortunate truth that our country is reconciling with right now, that police are not always good, and that policing gone wrong can have disastrous effects on people and our communities. And Maryland is no exception.

While we are familiar with stories in our state's history that have ended tragically at the hands of police violence, including Anton Black and William Green, there are other less known instances that happen regularly, born out of a strong code of silence that law enforcement officers all too often afford each other. And anyone who tells you otherwise, that there is no code of silence amongst law enforcement, is simply not telling you the truth.

In fact, in acknowledgement of this truth, the strong and historical code of silence, police departments across the county have embraced new trainings aimed at dismantling it. Yet they realize that in order to so, in order to change that code, they must change their culture. But changing culture takes time and courage. Teaching young officers that they are empowered to report and intervene on a more senior officers' acts of misconduct is not something that is going to happen overnight, but it is something the legislature has the power to assist with.

In Baltimore and New York and in jurisdictions across the country, police departments are implementing the ABLE Training, Active Bystandership for Law Enforcement, which is aimed specifically at preventing and stopping harmful behavior by a fellow police officer. Imposing a criminal sanction on the failure to report misconduct only bolsters the officers' courage to report and will directly help change the culture of law enforcement from one that worked in the past to cover things up to one that works together to stop events from happening. As Baltimore Police Commissioner Michael Harrison said on NPR in July of 2020, this type of police training shifts loyalty from after a bad event happens, to its proper place, before the event take place. It helps officers hold each other accountable and keep each other out of trouble, by making the failure to report part of the trouble itself.

It is the sad and unfortunate reality that the courage to report misconduct is not often compelled by law enforcement. But it is the opposite reality that the legislature has the power to make it so, to pass the law that gives the younger, less senior, and less experienced officer the duty and the responsibility to report the misconduct they observe, so that they can enjoy the privilege of holding onto their role in their

profession, while also maintaining its integrity. As a result, I respectfully ask that the legislature pass Senate Bill 166 in its entirety. Thank you.