



BALTIMORE POLICE DEPARTMENT



Brandon M. Scott
Mayor

Michael S. Harrison
Police Commissioner

TO: The Honorable Members of the Senate Judicial Proceedings Committee

FROM: Michelle Wirzberger, Esq., Director of Government Affairs, Baltimore Police Dept.

RE: Senate Bill 627 Law Enforcement Officers' Bill of Rights - Repeal and Procedures for Discipline

DATE: February 4, 2021

POSITION: SUPPORT WITH AMENDMENTS

Chair Smith, Vice-Chair Waldstreicher, and members of the Judicial Proceedings Committee, please be advised that the Baltimore Police Department (BPD) **supports with amendments** Senate Bill 627.

Senate Bill 627 repeals the current version of the Law Enforcement Officers' Bill of Rights and replaces it with a universal system for discipline that ensures consistency amongst agencies across the state of Maryland.

The Baltimore Police Department strongly supports a system of discipline that is fair, provides for due process but also empowers the head of the law enforcement agency with the ability to take the swift disciplinary action that his/her constituents expect and deserve when an officer fails to act in accordance with policy, training and/or law. We believe that this bill, with the amendments discussed below, allows a Chief to take responsible action and ensures that agencies are not required to continue to break the public trust by continuing to pay and/or employ law enforcement officers who have demonstrated an extreme lack of respect for the sanctity of life and/or a flagrant failure to comply with law.

By in large, this bill has a number of important components that the Department strongly supports such as the following elements:

- It mandates that a collective bargaining agreement may not be inconsistent with the provisions of the bill. This ensures that discipline is consistent amongst all agencies which will ensure that agencies can hold officers accountable for any misdeeds;
- Provides that the Chief or his/her designee can take disciplinary action against an officer who has been convicted of a crime, or who receives probation before judgement for a criminal offense, without conducting an investigation or holding a hearing. Individuals who fail to follow the law

should not be permitted to serve as a law enforcement officer. This provision is vital for ensuring that departments are not forced to continue to employ officers who have disgraced the profession, who have credibility issues or who would otherwise be a detriment to their agency;

- The bill indicates that both law enforcement officers and civilians would be empowered to conduct misconduct investigations. This would allow the BPD to hire civilians, with proper training, to help address the Department's misconduct backlog;
- It allows a Chief or his/her designee to suspend an officer without pay and suspend his/her police powers if he/she is charged with a crime. While we wholeheartedly support this provision, we would ask that you go a step further by doing the following:
 - allowing the Chief or his/her designee to immediately terminate an officer once he has been charged; and
 - allowing the Chief or his/her designee to immediately terminate an officer *prior* to charging if the officer has committed a criminal offense that is so egregious and apparent as to shock the conscience and to terminate would be in the best interest of the public and the law enforcement agency.

As currently written, a Maryland Chief would not be permitted to fire Derek Chauvin, the officer who killed George Floyd by kneeling on his neck for a sustained amount of time, until he was charged with the killing. The bill does say that an officer could be suspended with pay on an emergency basis if the suspension "appears to be in the best interest of the public and the law enforcement agency." That incident was so heinous that the only appropriate course of action was to immediately fire Gauvin.

We respectfully request that you empower Maryland Chiefs with the ability to take that action by approving the following amendments:

- Adding the following language on page 15, line 20 after the word may: terminate or...
- Adding a section (D) on line 1 of page 16 which reads: A Chief may terminate a law enforcement officer, who has not yet been charged with a crime, when there is irrefutable evidence that the officer has committed a criminal offense that is so egregious and apparent as to shock the conscience and when termination would be in the best interest of the public and the law enforcement agency to do so.
- To provide law enforcement officers with a means of appeal under this section, we would suggest amending page 18, line 13 by deleting 3-106 and replacing it with section 3-107.

There are similarly a number of elements within the bill that we believe can be improved upon so as to ensure that the disciplinary process is fair yet free of bureaucratic red tape. To that end, we support the following amendments to eliminate some steps that are superfluous and reorder other steps:

- Delete lines 11 through 27 on page 10, all of page 11 and line 1 of page 12 and replace with the following language:
 - If the member does not accept the charges and discipline as explained in the letter provided by the Chief or the Chief's designee, the law enforcement officer may request a hearing within 15 days of receipt of the letter;
 - Within a reasonable amount of time upon receipt of the request for a hearing, the Chief or his designee shall provide notice to the law enforcement officer of:
 - The time and place of the hearing
 - The contested charges to be determined
 - The hearing shall be conducted by a board of 5 members which shall be determined by the Chief. The board shall have at least one Command member who shall serve as the hearing officer and may be made up of a combination of sworn members and up to 2 civilian members as determined by the Chief.
 - The hearing officer selected to preside over the hearing shall not have been involved in the investigation of the allegations of misconduct against the law enforcement officer.
- On page 14, line 10, add the words "or the Chief's designee" so that lines 9 and 10 read as follows: Within 60 days after receiving the proposed findings of fact, the Chief or the Chief's designee shall.
- The Baltimore Police Department fully embraces the goal of establishing oversight and accountability for all law enforcement agencies. Its leadership believes that citizens should play a part in imposing discipline which is why the BPD is the first agency in the state to have 2 voting members on their hearing boards. However, we do believe that Section 3-114, as written, provides circumstances through which the Chief would be completely removed from the disciplinary process. In no other profession is there a situation where the CEO is not empowered to hold their employees accountable for transgressions.

Rather than eliminate the Chief's ability to impose discipline, you should empower him to appropriately take action and then hold him/her accountable if he/she fails to do so. To support that point, in the US Conference of Mayors' report titled *Report on Police Reform and Racial Justice* released in August of 2020, they say, "if we want action, we need to empower the leadership of our police departments and hold those leaders accountable for delivering the results that our communities want and deserve."

What we propose is to repurpose the proposed oversight body so that rather than adjudicate disciplinary matters and impose discipline, they would be empowered to conduct audits on all complete disciplinary actions and then report out any deficiencies or anomalies such that the Chiefs could then be held accountable by the leadership of the county or political jurisdiction that had hired him/her. To support that change, we suggest the following amendments:

- On page 18, lines 18 through 20, strike “adjudicate disciplinary matters and impose disciplinary action for law enforcement officers under this subtitle” and replace with “conduct annual audits of finalized disciplinary cases including the investigative file, to determine the following:
 - that all cases reviewed were investigated fully; and
 - the disciplinary imposed was in line with the agency’s established disciplinary matrix.

- Add a section that states:
 - Annually, the board shall make widely available the following information:
 - number of audits conducted;
 - findings of conducted audits

 - If the oversight body finds any discrepancies, they shall immediately report that finding to the Maryland Police Training and Standards Commission and the Governor’s Office of Crime, Prevention, Youth, and Victim Services.

 - In executing its duties in accordance with this subsection, an oversight body may request additional information from the law enforcement agency that conducted the investigation.

 - Notwithstanding Title 3 of the General Provisions Article, the meetings of an oversight body are not subject to the requirements of the Open Meetings Act.

- On page 18, line 26 after the words subdivision, add the words: who have received training approved by the Maryland Police Training and Standards Commission, on police practices and policies; and...

- On page 19, line 1, strike the word no and add the word “One” so that sentence reads as follows: “One member of the oversight body may be a current law enforcement officer.”

The Baltimore Police Department firmly believes that the amendments proposed within the body of this letter will make the disciplinary system proposed by Senate Bill 627, fair, transparent and effective in rooting out those officers who engage in heinous incidents and thereby allowing all law enforcement agencies to strengthen their relationships with the residents they serve.

Therefore, the Baltimore Police Department respectfully requests a **favorable with amendments** report on Senate Bill 627. Thank you for allowing us to comment on this important piece of legislation. If you should have any questions, feel free to reach me at michelle.wirzberger@baltimorepolice.org or via telephone at 443-915-3155.