



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for SB 166
Criminal Procedure – Police Officers – Duty to Report Misconduct
(Maryland Police Accountability Act)
Before the Judicial Proceedings Committee

Good afternoon Mr. Chair and committee:

This General Assembly has passed variety of laws containing a number of statutory reporting obligations. Mandatory reporting obligations applied to certain professionals have included duties to report information regarding infectious or contagious diseases,¹ abuse of developmentally-delayed individual,² abuse or neglect of vulnerable adults,³ known threats of imminent physical injury,⁴ and injuries apparently caused by auto accidents, lethal weapons, gunshots, and moving vessels.⁵

In 2016 we mandated law enforcement agencies to require a law enforcement officer who was involved in a use of force incident in the line of duty to file an incident report (Use of force incident reports) regarding the use of force by the end of the officer's shift unless the officer is disabled.⁶ What happens when these reports are not filed are a matter of departmental policy and that may make some sense.

As recently as last year, we unanimously passed legislation creating a misdemeanor for a worker to knowingly fail to provide a required notice or make a required report of suspected child abuse or neglect if the worker has actual knowledge of the abuse or neglect. Included on this list of mandatory reporters along with Health care practitioners, educators, and human service workers who are acting in a professional capacity, and who have reason to believe that a child has been subjected to abuse or neglect, were police officers. We made a policy decision that this type of reporting was so important, that we made the failure to do so a misdemeanor and subject to a maximum penalty of up to three years imprisonment and/or a \$10,000 fine.⁷ As noted earlier, it established that law enforcement file these use of force reports, but what should happen when that use of force exceeds what is reasonable? Precedent has been established that when we deem such reporting important as a matter of public policy, we have made the failure for a mandatory reporter to do so a misdemeanor.

This bill requires a police officer with actual knowledge of misconduct committed by another police officer to report this misconduct. The types of misconduct included in the bill are homicide, sexual crimes, theft, perjury, fraud, and tampering with or fabricating evidence. An officer with knowledge of another officer

¹ Health-General §18-201; Health-General §18-205; Health-General §18-207; and Health-General §18.201.1.

² Health-General §7-1005.

³ Family Law §14-302.

⁴ Courts & Judicial Proceedings §5-6099(c)(2).

⁵ Violations of Health-General §20-701, Health General §20-702, and Health General §20-703 are misdemeanors.

⁶ Pub Safety § 3-514.

⁷ HB787 for 2019 Session.

using excessive force must also report this action. Excessive force is defined as force that, under the totality of the circumstances, is objectively unreasonable. Police officers will report misconduct to their own supervisor or the chief of the agency that employs the reporting officer.

In this respect, this bill is similar to our mandatory reporting bill for child abuse or neglect. Outside of the use of excessive force, the types of conduct this bill requires to report are already statutory crimes that one should expect police not only to report, but should really be making an arrest in. A police officer's duty include arresting civilians who have committed crimes and this expectation should not be different when a police officer has broken the law. In its 2016 investigation, the Department of Justice expressed concern about the Baltimore City Police Department's use of excessive force, and these concerns were "compounded by BPD's ineffective oversight of its use of force."⁸ I do not believe it is asking too much for a police officer that has actual knowledge that that a fellow officer has engaged in excessive force or committed one of these enumerated crimes to carry out their responsibility and report the crime.

Police departments throughout Maryland have fostered a culture of officers protecting one another when they know that their colleagues have committed unlawful or inappropriate behavior. In its 2016 investigative report the Department of Justice described how Baltimore City Police personnel "discourage[d] complaints from being filed" within the department and "conduct[ed] little or no investigation" into complaints that were reported.⁹ This culture must be eliminated. Public safety is at risk when the officers who are supposed to promote public safety shield their peers who are guilty of dangerous conduct.

In closing, the expectation for law enforcement to act lawfully is a low bar that our police departments still struggle to meet. Requiring a duty to report misconduct by other officers is a necessary measure to ensure officers are held accountable for their actions. Enacting a duty to report will create better accountability within police departments to deal with officers responsible for using excessive force against civilians.

⁸ "Investigation of the Baltimore City Police Department." *U.S. Department of Justice, Civil Rights Division*, 9 (August 10, 2016).

⁹ "Investigation of the Baltimore City Police Department." *U.S. Department of Justice, Civil Rights Division*, 10 (August 10, 2016).