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January 21, 2021

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

**FROM:** The Office of the Attorney General

**RE:** SB 166 – Criminal Procedure - Police Officers - Duty to Report Misconduct  
(Maryland Police Accountability Act) – **Letter of Support**

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The Office of Attorney General urges the Committee to report favorably on SB 166. Senate Bill 166 requires a police officer to report specified criminal conduct of another officer if the reporting officer has actual knowledge of the criminal conduct. Also, SB 166 establishes a penalty of imprisonment not exceeding five years or a fine not exceeding \$10,000 or both.

Senate Bill 166 allows our State to take up police reform by putting a practical limitation to the use of excessive force. Senate Bill 166 requires a police officer to report a specified criminal conduct of another officer. An officer is best positioned to know of another officer's misconduct, but officers frequently do not report misconduct because of the existence of the code of silence.<sup>1</sup> Senate Bill 166 overcomes this barricade because it creates a mandatory reporting requirement. This requirement does not interfere with police officers conducting their official duties, but is to prevent horrible outcomes and to support and encourage the majority of the officers who responsibly perform their work.<sup>2</sup>

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<sup>1</sup> See Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago's South Side: Acknowledging the Realities*, 2016 U. CHI. LEG. F. 125, 182-84 (2016).

<sup>2</sup> See *id.*, at 184 (“When an officer commits misconduct, a fellow officer who witnesses the abuse must lie when called to give a statement, either by falsely stating . . . [or] denying [misconduct], or providing a false justification for the officer's conduct [because] officer's failure to adhere to the code can jeopardize her career, safety, and even her family.”).

In addition to Senate Bill 166, the Office of the Attorney General urges this Committee to also consider other common sense preventative measures to end the use of excessive force such as, requiring a police officer to use de-escalation techniques and intervene to stop another officer from using excessive force.<sup>3</sup> and requiring agencies to report all use of force incidents, internally and externally review these incidents, and track these incidents.<sup>4</sup> Imposition of these additional preventative measures will allow our State to accomplish meaningful police reform to end the use of excessive force by creating a transparent system that holds officers accountable for their misconduct.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of Senate Bill 166.

cc: Members of the Judicial Proceedings Committee

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<sup>3</sup> This requirement is also known as the duty to intervene. Expressly creating this duty would help to prevent officers from committing misconduct because of potential for sanctions. In general, officers consider potential for sanctions before performing any action. See Lawrence Rosenthal, *Good and Bad Ways to Address Police Violence*, 48 URB. LAW. 675, 717 (2016). Officers knowing that another officer may intervene against their conduct and possibility of sanctions will minimize the use of excessive force because officers will be more cautious before performing any action.

<sup>4</sup> See, e.g., Futterman, Hunt & Kalven, *supra* note 1, at 175-9 (stating general principles and exemplary investigation model for a transparent and credible investigations).