



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: January 28, 2021

BILL NUMBER: Senate Bill 50 **Position:** Letter of Information

BILL TITLE: Criminal Procedure – Police Officers – Duty to Intervene

REVIEW AND ANALYSIS:

This legislation seeks to require that a police officer make a reasonable attempt to intervene to terminate or prevent another police officer's use of excessive force. This legislation also requires the Maryland Police Training and Standards Commission to require entrance level and in-service training on the requirements of this bill. This legislation also establishes a criminal penalty for failure to report the witnessed act.

The Maryland State Police supports every officer's duty to intervene to prevent the use of unjustified excessive force. While law enforcement agencies and the officers they employ should be held to a higher standard of conduct, this legislation defines excessive force as that under the totality of the circumstances is objectively unreasonable. An officer who witnesses another officer using force against a person may not know all of the facts the first officer is aware of at the time the decision is made to use force. The second officer may observe another officer using force to subdue a criminal that appears to be reasonable, so they do not intervene. The totality of the circumstances may not be known to any second or third party to the action. But who makes the decision on whether or not the second officer was correct? If the officer acted in good faith, they could still face a criminal penalty.

The penalty for failure to intervene is up to five years imprisonment and/or a \$10,000 fine. Failing to intervene on what appears to the second officer to be a reasonable use of force could result in a maximum penalty more severe than the officer who commits the act. Senate Bill 50 does not define who makes the determination of reasonableness and when that determination is made. When is the reasonableness of the standard applied and by whom?

Instead of creating a criminal penalty for failure to report any sort of misconduct by a police officer, the Department believes that Administrative Sanctions would be a better remedy. There is already a disciplinary matrix employed by law enforcement agencies in Maryland. Depending on the severity of the misconduct, there should be a sliding scale of punishment. This scale could be from written reprimand and additional training for failing to report minor acts of misconduct, to decertification or termination for failing to report major misconduct.

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Instead of subjecting an officer to a criminal charge and potential jail, a mandatory uniform statewide policy incorporating the use of force, duty to intervene, reporting of misconduct, and other key elements, developed by the Maryland Police Training and Standards Commission, should be required in law as opposed to just training on how to intervene when a use of force is observed. This would give the Superintendent broad authority and discretion in dealing with officers who violate the policy. The Department believes this is truly the goal of both law enforcement and the citizens of Maryland, to ensure police officers are held accountable and remove those who are violating the oath to protect and serve.