



February 2, 2021

Via Electronic Delivery

William C. Smith, Jr., Chair
Jeffrey D. Waldstreicher, Vice-Chair
Maryland Senate Judicial Proceedings Committee
11 Bladen St.
Annapolis, MD 21401

RE: Senate Bill 627: Law Enforcement Officers' Bill of Rights – Repeal and
Procedures for Discipline —**Favorable**

Dear Chairperson Smith and Vice Chairperson Waldstreicher:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ we appreciate the opportunity to provide written testimony for the Senate Judicial Proceedings Committee hearing regarding Senate Bill (SB) 627—Law Enforcement Officers' Bill of Rights – Repeal and Procedures for Discipline. SB 627 repeals and replaces the Maryland Law Enforcement Officers' Bill of Rights (LEOBR), which provides special rights to officers that are not extended to most public employees.² LDF supports the demand of people impacted by police misconduct, activists and advocates,³ and Maryland legislators to repeal the LEOBR, as proposed in SB 627, and provide for a disciplinary process that removes many of the impediments to accountability in the current LEOBR. The bill also creates a disciplinary procedure that is more aligned with the due process afforded to other public employees. SB 627 is a step in the right direction toward the goal of holding law enforcement officers accountable for misconduct.

Last summer, the public killing of George Floyd, a Black man, by a Minneapolis police officer who forced his knee into Mr. Floyd's neck for almost eight minutes until he took his last

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. LDF's work to address racially biased police violence and misconduct dates back to its inception. *See, e.g., Shepherd v. Florida*, 341 U.S. 50 (1951) (reversing the convictions of Black men accused of raping a white woman in 1949; the men were brutally beaten by sheriff's deputies to force confessions). Today, LDF's Justice in Public Safety Project uses litigation, policy advocacy, research, community organizing, and strategic communications to: (1) ensure accountability for police brutality and misconduct through community oversight and changes to laws and policies; (2) promote policing and public safety practices that eliminate the pernicious influence of racial and other biases; and (3) support a new paradigm of public safety that drastically reduces the presence of armed law enforcement in communities of color. For the past six years, we have partnered with advocates, activists, and attorneys to reform unlawful policing practices in Baltimore City by supporting [community demands for federal investigation](#) of the police department, advocating for [fair provisions](#) in the police union contract, and calling for more transparency regarding police misconduct complaints.

² *See* Md. Code Ann., Pub. Safety §3-101 to §3-113.

³ *See* Maryland Coalition for Justice and Police Accountability, <https://www.mcjpa.org/who-we-are>.

breath, sparked worldwide demonstrations during which protesters demanded police accountability and an end to racially biased policing.⁴ Marylanders joined these protests because they knew too well the problem of police violence in communities of color, as we saw in the police-involved killings of Freddie Gray (2015), Korryn Gaines (2016) and Anton Black (2018), and the need for greater accountability for officers' actions in these and similar cases.⁵ And beyond these well-known cases, there are many victims of law enforcement misconduct whose names we will never know because law enforcement activity is often undocumented, many victims of misconduct fear retaliation and thus, do not file complaints, and investigations of misconduct are kept hidden from public view.⁶

Law enforcement officers exercise enormous powers to stop, search, arrest, and use force—sometimes fatally—and do so disproportionately in communities of color.⁷ When officers are found to have committed misconduct following a full and fair investigation, they must be held accountable in an efficient manner. Members of communities that are overpoliced have a strong interest in ensuring that officers who commit misconduct in their communities are held accountable for their actions to deter future misconduct. Likewise, law enforcement agencies have an interest in an effective disciplinary system that promotes a culture of accountability. LDF supports SB 267 because it moves the state of Maryland closer to the goal of an effective disciplinary system for officers who commit misconduct.

1. SB 627 Removes Special Protections that are Barriers to Accountability for Officers who Commit Misconduct.

Maryland's LEOBR, which is among the most restrictive in the nation, grants police officers special rights and protections that are not afforded to ordinary citizens or other civil servants. The provisions in Maryland's current LEOBR limit the ability of agencies to hold officers accountable by enacting strict procedures for administrative investigations and discipline for officer misconduct. This includes, but is not limited to: (1) requiring complaints against officers alleging brutality to be sworn attestations;⁸ (2) providing officers at least 5 days to obtain counsel or other representation before an interrogation may commence;⁹ (3) requiring that an

⁴ See, e.g., Anne-Christine Poujoulat, *Protests Across The Globe After George Floyd's Death*, CNN (June 13, 2020), <https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests/index.html>.

⁵ See, e.g., Tim Prudente, *With Prosecutions Over, Six Baltimore Officers Back at Work After Death of Freddie Gray*, Baltimore Sun (Nov. 30, 2017), <https://www.baltimoresun.com/news/crime/bs-md-ci-officers-back-to-work-20171128-story.html>; Rick Ritter, *Officer Who Fired Shot That Killed Korryn Gaines: 'I Had No Choice'*, CBS Baltimore (Feb. 12, 2018), <https://baltimore.cbslocal.com/2018/02/12/officer-kills-korryn-gaines/>; Rose Velazquez, *'I've never seen anything so brutal': Anton Black's Family Files Use of Force Suit in Death*, Salisbury Daily Times (Dec. 17, 2020), <https://www.delmarvanow.com/story/news/local/maryland/2020/12/17/eastern-shore-police-death-anton-black-lawsuit-caroline-county/3938744001/>.

⁶ LDF has submitted testimony in support of [Senate Bill 178: Public Information Act-Personnel Records](#) – Investigations of Law Enforcement Officers, to provide access to documents related to administrative investigations and decisions for misconduct committed by law enforcement officers.

⁷ See, e.g., U.S. Department of Justice (DOJ), *Investigation of the Baltimore City Police Department*, 47 (Aug. 10, 2016), hereinafter “DOJ Report” (“Statistical evidence shows that the Department intrudes disproportionately upon the lives of African Americans at every stage of its enforcement activities.”), <https://www.justice.gov/crt/file/883296/download>.

⁸ See Md. Code Ann., Pub. Safety §3-104(c)(1).

⁹ See §3-104(j).

investigation or interrogation of a law enforcement officer be done by a sworn law enforcement officer or the Attorney General's office;¹⁰ (4) requiring a hearing board of mostly law enforcement officers, including one officer of the same rank as the accused officer before any discipline is imposed;¹¹ and (5) allowing the expungement of misconduct records.¹² By repealing the current LEOBR, SB 627 removes many of these impediments that insulate officers from accountability, while still protecting the due process rights of officers.¹³

Maryland's current LEOBR causes extensive delays in implementing discipline which is corrosive to accountability and creates a culture of impunity.¹⁴ When officers who are found to have violated policy cannot efficiently be disciplined, it sends a signal that the department will not or cannot enforce its own policies, and can lead to criminal conduct and corruption.¹⁵ For example, former Baltimore Police Department (BPD) officer Wayne Jenkins, who was finally arrested in 2017 for his criminal conduct involving the BPD Gun Trace Task Force, was the subject of an alarming 227 complaints in the four years preceding his arrest.¹⁶ According to a recent study, in a six-year period, law enforcement officers in Maryland were charged with 271 crimes, including 138 crimes of violence.¹⁷

When officers are not held accountable for their violations of policy or law, we must not lose sight of who is most harmed. Officers' misconduct has devastating consequences for people subjected to their law enforcement activity, particularly communities of color that are over-policed and disproportionately subjected to stops, searches, arrests, and uses of force.¹⁸ While Black residents comprise 31 percent of the Maryland population, they make up 63 percent of

¹⁰ See §3-104(b).

¹¹ See §3-107(c)(1)(2).

¹² See §3-110.

¹³ SB 627 removes or limits each of the above-mentioned barriers in whole or in part; *see also*, See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 533, 546-47 (1985) ("...all the process that is due is provided by a pretermination opportunity to respond, coupled with post-termination administrative procedures...").

¹⁴ Baltimore's police "union contract and statutory [LEOBR] provisions discussed in this report create a police culture of impunity, a collective sense among officers that they do not have to be held fully accountable for misconduct." Samuel Walker, *The Baltimore Police Union Contract and the Law Enforcement Officers' [] Bill of Rights: Impediments to Accountability*, 8 (May 2015), <https://samuelwalker.net/wp-content/uploads/2015/06/BALTIMORE-POLICE-UNION-CONTRACTFinal.pdf>; *see* DOJ Report at 146 ("Delays of this magnitude send a message to officers that misconduct is tolerated, frustrating officers and supervisors who are trying to follow and implement Department policies and procedures.")

¹⁵ *See* Jessica Anderson, *Gun Trace Task Force Overview*, Baltimore Sun, <http://data.baltimoresun.com/news/gun-trace-overview/>.

¹⁶ Joe Spielberger, *Chasing Justice: Addressing Police Violence and Corruption in Maryland*, ACLU, 19 (Jan. 2021), https://www.aclu-md.org/sites/default/files/field_documents/chasing_justice_report_2021_final.pdf; Jessica Lussenhop, *Rogue Baltimore Police Unit Ringleader Wayne Jenkins Sentenced*, BBC News (June 7 2018), <https://www.bbc.com/news/world-us-canada-44402948>; U.S. Attorney's Office, District of Maryland Press Statement, *Former GTTF Baltimore City Sergeant Sentenced To 25 Years In Prison For Racketeering, Robberies, Overtime Fraud And Planting Evidence* (June 7, 2018), <https://www.justice.gov/usao-md/pr/former-gttf-baltimore-city-sergeant-sentenced-25-years-prison-racketeering-robberies>.

¹⁷ *See* Spielberger, *supra* n. 16 at 13; Philip Matthew Stinson, Henry A. Wallace *Police Crime Database*, Bowling Green State University, <https://policecrime.bgsu.edu/Home/Map>.

¹⁸ *See* Spielberger, *supra* n. 16 at 9-11; Vera Institute of Justice, *Incarceration trends in Maryland*, (Dec. 2019), <https://www.vera.org/downloads/pdffdownloads/state-incarceration-trends-maryland.pdf>; DOJ Report, *supra* n.7 at 47-48, 53.

those killed by law enforcement in Maryland.¹⁹ In Baltimore, between 2015-2019, 91 percent of officers' uses of force were against Black residents²⁰ although they comprised only 63 percent of City's population.²¹ Thus, SB 627's repeal of the current LEOBR, which removes impediments to the investigation and discipline of officers who have been found to have committed misconduct, is critical to promoting the safety of communities of color.

2. SB 627 Moves Maryland Closer to Aligning with Other States and Jurisdictions that Recognize the Need for Fair Timely Investigations and Discipline of Law Enforcement Officers Accused of Misconduct.

A number of departments, large and small, throughout the United States, have developed disciplinary systems which follow the procedures required to protect officers' federal due process rights, without excessive additional processes.²² Before an officer may be terminated, due process requires only that an officer be given: (1) proper notice and an explanation of the agency's evidence against the officer, and (2) an opportunity to respond to the charges presented by the law enforcement agency.²³ SB 627 provides that after a full and fair investigation, officers are given notice of the charges and evidence against them and an opportunity to respond, as well as a hearing before a hearing officer (instead of the current hearing board comprised primarily of law enforcement officers) during which they may confront witnesses against them.²⁴ The provisions embodied in SB 627 remove the barriers to accountability found in the current LEOBR, yet they continue to protect the due process rights of officers.

Other states that have LEOBRs are also working to remove the barriers to accountability imposed within them. In Illinois, for example, a sweeping police reform bill, championed by the Illinois Legislative Black Caucus passed the House and Senate, included changes to that states LEOBR, such as eliminating the requirement that complainants sign sworn affidavits.²⁵ The bill is currently awaiting the signature of Governor J.B. Pritzker who has indicated he is "very pleased with [it]."²⁶ And in Rhode Island, the legislature passed a [measure](#) to establish the [State Senate Task Force on the Law Enforcement Officer's Bill of Rights](#), which convened and

¹⁹ Spielberger, *supra* n.16 at 11.

²⁰ *Id.* at 5, 15.

²¹ U.S. Census Bureau, Quick Facts,

<https://www.census.gov/quickfacts/fact/table/baltimorecitymarylandcounty/AGE295219>.

²² See e.g. [Alexandria Police Department](#), Virginia; [City of Chino Police Department](#), California; [Metropolitan Nashville Police Department](#), Tennessee; [Seattle Police Department](#), Washington; [Virginia State Police](#); [Virginia Beach Police](#); see also Or. Rev. Stat. Ann. § 236.360(5); Tex. Loc. Gov't Code Ann. § 143.052(b)-(d).

²³ See *Loudermill*, 470 U.S. at 533, 546-47 (1985) ("...all the process that is due is provided by a pretermination opportunity to respond, coupled with post-termination administrative procedures...").

²⁴ See SB 627 §§ 3-104-06.

²⁵ Fran Spielman and Frank Main, *Criminal Justice Reform Bill Puts Chicago FOP On the Clock to Cut a Deal* (Jan. 13, 2021), <https://chicago.suntimes.com/2021/1/13/22229140/chicago-police-reform-bill-union-collective-bargaining-anonymous-complaints-cash-bail>, See 50 Ill. Comp. Stat. Ann. 725/3.8 ("Anyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn affidavit.").

²⁶ Raymon Troncoso, *Lame Duck Look Back: How the Black Caucus Passed Criminal Justice Reform*, The Pantagraph (Jan 21, 2021), https://www.pantagraph.com/news/state-and-regional/govt-and-politics/lame-duck-look-back-how-the-black-caucus-passed-criminal-justice-reform/article_7695f80a-0f6b-522b-8ab0-46f4c2957fc4.html, see also Spielman, *supra* n. 25.

approved recommendations to amend its LEOBR.²⁷

SB 627 takes a critical step in removing the barriers to accountability in Maryland's current LEOBR that insulate officers who commit misconduct from discipline and harm communities in which law enforcement officers exercise their powers. SB 627 removes special protections in Maryland's current LEOBR that are unnecessary to protect officers' due process rights, are not in the interest of the public and counter to the interests of law enforcement agencies which seek to create cultures of accountability. We urge this Committee to vote favorably for SB 627.

Thank you for considering our testimony. If you have questions, please do not hesitate to contact us at 202-682-1300.

Sincerely yours,

Puneet Cheema

Puneet Cheema
Manager, Justice in Public Safety
Project

Lisa Cylar Barrett
Director of Policy

²⁷ See *Report of the Special Legislative Task Force to Review the Rhode Island Law Enforcement Officers' Bill of Rights*, 51 (Dec. 23, 2020), <https://content-prod-ripr.thepublicradio.org/articles/d4e6ec7f-fb5d-460e-99d2-127a27588484/122320leoborcommissionreport.pdf> ("The Task Force endorses extending the maximum period for summary punishment from two days suspension without pay to 14 days.").