

SB 71- PGCEX - Support - 1.21.2021.pdf

Uploaded by: Alsobrooks, Angela

Position: FAV



THE PRINCE GEORGE'S COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

BILL: Senate Bill 71 - Police Officers - Testimony -
Presumption of Inadmissibility (Maryland Police
Accountability Act of 2021)

SPONSOR: Senator Sydnor

HEARING DATE: January 21, 2021

COMMITTEE: Judicial Proceedings

CONTACT: Intergovernmental Affairs Office, 301-780-8411

POSITION: SUPPORT

The Office of the Prince George's County Executive **SUPPORTS Senate Bill 71 - Criminal Procedure - Police Officers - Duty to Report Misconduct (Maryland Police Accountability Act)** which provides that knowing and willful failure by a police officer to activate a body-worn camera creates a rebuttable presumption that any testimony from the officer that is sought during a criminal prosecution related to the incident that was not recorded is inadmissible. The bill allows for the presumption to be rebutted by a showing that:

- The body-worn camera was not activated due to a camera malfunction;
- The police officer was not aware of the malfunction or not able to fix it before the incident; and
- The law enforcement agency's documentation shows that the officer checked the camera's functionality at the beginning of their shift.

Body-worn cameras have become a key part of establishing and maintaining trust between law enforcement and the community in which they operate. By wearing such cameras, law enforcement signals to the community that they have nothing to hide in their interactions with the public. However, incidents have occurred where law enforcement officers have failed to turn on their body-worn camera during an incident where force is used, undercutting the accountability promised by body-worn cameras. **SB 71** will further provide an incentive to law enforcement officers to properly use body-worn cameras.

SB 71 also aligns with the recommendations of the Police Reform Work Group I convened last summer to study and review the policies within the Prince George's County Police Department (PGPD). One of the Work Group's final recommendations is for there to be improved access and operations of all PGPD cameras, including body-cameras. PGPD is in the process of supplying body-worn cameras, especially to patrol officers.

For these reasons, the Office of the Prince George's County Executive **SUPPORTS Senate Bill 71** and asks for a **FAVORABLE** report.

SB0071 PO Body Worn Inadmissability.pdf

Uploaded by: Britt, Adiena

Position: FAV

SB0071 Police Officers - Testimony - Presumption of Inadmissibility

Stance: Support

Testimony: My name is Adiena C. Britt and I am writing to support SB0071 as part of the comprehensive MD Police Accountability Act of 2021. Outside of the fact that body worn cameras should become the standard in our State, failure to properly utilize this equipment should have consequences. It has been brought to light that police agencies all over the country have misused this technology in a manner that equates to criminal cover-up of a crime of misconduct. A police officer should not have the option to turn a body worn camera on and off at his convenience because they feel they may be self-incriminating in misconduct.

I fully support the option to consider any testimony provided by an individual officer who fails to comply with body worn camera usage to me considered inadmissible. This law would encourage proper usage of body worn camera equipment, and force every officer to think twice about engaging in illegal activities and instances of misconduct. Please allow this to be heard and considered by the full Senate and House and passed into law. Comprehensive Police Reforms are needed now!

Thank you.

Adiena C. Britt

6014 Old Harford Rd.

Baltimore, MD 21214

Bill position sb 0071 Presumption of Inadmissibili

Uploaded by: Fraser, Stanford

Position: FAV



POSITION ON PROPOSED LEGISLATION

Bill: SB 0071 Criminal Law – Police Officers – Testimony – Presumption of Inadmissibility Maryland Police Accountability Act of 2021

Position: Favorable

Date: January 15, 2021

“. . . . [E]vidence which derives so immediately from an unlawful officers' action is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion.” – *Wong Sun v. U.S.*¹

Dear **Chairman Smith and Members of the Judicial Proceedings Committee:**

The Maryland Office of the Public Defender supports SB0071, because it is common sense legislation necessary to rebuild community trust in law enforcement. Police accountability and transparency are of highest importance, and the recent deaths of Breonna Taylor, George Floyd, and many others at the hands of law enforcement have further brought to light why this bill is so important. In the midst of social unrest of this past year following these untimely deaths, the consensus for police accountability and transparency only continues to grow.

The Fourth Amendment protects individuals from unwarranted searches and seizures.² Stemming in Fourth Amendment jurisprudence, the exclusionary rule enables courts to exclude

¹ *Wong Sun v. United States*, 83 S. Ct. 407, 416 (1963). “Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officers' action in the present case is no less the 'fruit' of official illegality than the more common tangible fruits of the unwarranted intrusion.” *Id.*

² U.S. Const. amend. IV.

incriminating evidence introduced in a case where proof exists that it was obtained unconstitutionally.³ Further, under the fruit of the poisonous tree doctrine, a court may not only exclude from a trial evidence that itself was seized unconstitutionally, but also any other evidence that is derived from an illegal search.⁴ In upholding our Constitution and following American jurisprudence, it is our duty to use every tool available to protect Marylanders from unconstitutional searches and seizures by law enforcement officers. Moreover, law enforcement's role in recovering evidence is critical in ensuring that a standard of justice is fairly and equitably administered to every individual the Office of the Public Defender represents accused of a crime. Body cameras on law enforcement officers allow us to see exactly what happened at the time it was happening, which is important context when someone's life and freedom is at stake. Adding an exclusionary rule for body cam usage will incentivize police departments to follow appropriate body camera guidelines.

Body cameras are a key tool in holding police accountable and have filmed Baltimore Police engaging in illegal conduct, such as when a Baltimore Police officer who turned off his body camera was found guilty of fabricating evidence.⁵ In this case, a Baltimore Police officer is recorded placing a soup can down in a lot, walking to the street, turning his camera on, and returning to the soup can where he "uncovers" a plastic bag full of white capsules.⁶ The body

³ Mapp v. Ohio, 81 S.Ct. 1684, 1693 (1961).

⁴ Wong Sun v. United States, 83 S. Ct. 407, 416 (1963).

⁵ Justin Fenton, Baltimore Police Officer who turned off body camera charged with tampering with evidence; others cleared, BALTIMORE SUN (Jan. 24, 2018) <https://www.baltimoresun.com/news/crime/bs-md-ci-body-camera-tampering-20180124-story.html> (citing where a Baltimore Police Officer body camera automatically recorded 30 seconds of footage before the officer activated his body camera of the officer placing a soup can down in a lot, walking to the street, turning his camera on, and returning to the soup can where he "uncovers" a plastic bag full of white capsules); Kevin Rector, *Baltimore Police officer found guilty of fabricating evidence in case where his own body captured the act*, BALTIMORE SUN (Nov. 9, 2018) <https://www.baltimoresun.com/news/crime/bs-md-ci-pinheiro-ruling-20181109-story.html>.

⁶ *Id.*

camera, however, automatically recorded the 30 seconds before the officer activated his body camera, capturing him planting the drugs in the soup can. The man the Baltimore Police officer arrested for a heroin possession had the charges against him dropped but was held in jail for six months unable to post bail for a crime he did not commit.⁷ This story demonstrates the type of critical evidence prosecuted individuals would be missing when officers fail to record incidents with the body camera.

The importance of this bill cannot be unscored enough in taking this important step forward in holding police officers accountable for their conduct. For these reasons, we urge a favorable report on this bill.

⁷ Fenton, *supra* note 2.

TESTIMONY FOR SB0071 Police Officers - Testimony -

Uploaded by: Plante, Cecilia

Position: FAV



**TESTIMONY FOR SB0071
POLICE OFFICERS - TESTIMONY – PRESUMPTION OF INADMISSABILITY**

Bill Sponsor: Senator Sydnor

Committee: Judicial Proceedings

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0071 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of individuals and grassroots groups with members in every district in the state with well over 30,000 members.

Our Coalition members understand and appreciate that police officers have a difficult and dangerous job. As we have seen time and again, sometimes the judgement calls that an officer makes can be fraught and they have little time in which to make decisions. Having a body-worn camera on will help either protect and officer who made good decisions in a difficult situation, or show that they either made a mistake or did something reprehensible.

In court, an officer's word is what can cause someone to be fined or put in jail. We know that many officers are trustworthy and their word represents fact. But we have found that not every officer is truthful, and when we can't trust their word, we know that we can trust what we see on camera.

We have seen that when officers turn off their cameras, and they have an altercation with the citizens they are sworn to protect, often other members of the public record those altercations and what they record can differ from the officer's accounts.

The public needs to have confidence that they can look at a situation in which someone was harmed and see what led to the decision that was made. If an officer has turned off their camera, or refused to turn it on in the first place, the bottom line is that we can't and shouldn't trust their word.

We support this bill and recommend a **FAVORABLE** report in committee.

Testimony for SB 71 – Police Accountability Act] (

Uploaded by: Schablein, Jared

Position: FAV

TESTIMONY FOR SB 71

Bill Sponsor: Senator Sydnor

Committee: Senate Judicial Proceedings

Organization Submitting: Lower Shore Progressive Caucus

Person Submitting: Sam Harvey

Position: FAVORABLE

I am submitting this testimony in favor of SB 71 on behalf of the Lower Shore Progressive Caucus. The Caucus is a political and activist organization on the Eastern Shore, unaffiliated with any political party, committed to empowering working people by building a Progressive Movement.

Caucus members consistently support legislation that aspires to deliver perfect justice, as elusive a pursuit as that may seem. I write to you in the hope that you'll support SB 71 this session.

Men and women in law enforcement are subjected to extreme stress in the line of duty, which has a profound impact on them, psychologically and physiologically. This is widely recognized – indeed, law enforcement training especially takes it into account. The ability to continue to perform their duties while experiencing a cascade of instinctual physical responses – elevated heart rate, increased respiration, surging adrenaline – is impressive.

However, while law enforcement training hardens officers, to make them capable of performing under these extremes, they are not superhuman. These conditions have an impact on their own health, both physical and mental. And, while concerned for their well-being, I also have grave concerns regarding their ability not only to successfully perform their duties at 100 percent under these conditions, but even their ability to 100 percent accurately report what happened, after the heat of the moment.

It's not a justice to anyone, neither the law enforcement officers nor the citizens they have interacted with, to ask those officers to recall what just happened, as the adrenaline washes away and the sweat dries on their skin. Neither party may be positioned to answer accurately, never mind objectively.

This is the great benefit of the body-worn camera, now a tiny and inexpensive tech. Safe to say, we all want to progress toward a more perfect administration of justice. The body cam is a great tool for capturing from an objective viewpoint everything that went right, but also everything that went wrong. We can take those lessons, double down on the good – and make improvements where improvements appear necessary.

The idea that anyone, no matter how extensively vetted, trained, and oath-taken they may be – that their testimony should receive preferential treatment, is problematic on its face. We with serious reservation allow it, in the name of social order, but it creates a very imperfect dynamic.

Law enforcement officers enjoy the aegis of rebuttable presumption (the presumption that their account is true unless someone comes forward to contest it and prove otherwise). However, to in the strongest terms encourage law enforcement toward the better way now available to us, SB 71 would create a special case in which citizens, rather than law enforcement officers, are granted a rebuttable presumption themselves.

If officers can't show some very good reason why they haven't availed themselves of the body cam tech, now the civilian parties involved gain the rebuttable presumption that officers' accounts (as they perceived them) of the unrecorded events should and will be inadmissible.

I believe this places the greatest emphasis on the diligent and rigorous use of the body cam, and this seems entirely appropriate to me. I encourage you to support SB 71.

The Lower Shore Progressive Caucus supports this bill and recommends a **FAVORABLE** report in committee.

MCPA-MSA_SB 71 Presumption of Inadmissibility_Oppo

Uploaded by: Mansfield, Andrea

Position: UNF



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: January 21, 2021

RE: **SB 71 – Police Officers – Testimony – Presumption of Inadmissibility**
(Maryland police Accountability Act of 2021)

POSITION: OPPOSE

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE SB 71**. This bill creates a rebuttable presumption to make any testimony of an officer who knowingly and willfully fails to turn on their body-worn camera inadmissible.

MCPA and MSA fully supports requiring body cameras for all law enforcement agencies within a reasonable timeframe and agrees policies should be put in place for their use. However, MCPA and MSA must oppose a rebuttable presumption for this purpose.

Critical incidents erupt, often without warning, in which officers are forced to make split-second judgments, in circumstances that are tense, uncertain, and rapidly changing, responding to the actions of another that pose an imminent threat of death or serious bodily injury. As an example, an officer goes into a convenience store to grab a drink. On the officer's way out, the officer hears shots fired nearby and immediately observes a victim shot and gives chase to suspect. The law of physics states that action is quicker than reaction, already placing an officer at a distinct disadvantage. To expect an officer to delay his/her response to such a threat to activate a camera is both unreasonable and dangerous. Most BWC policies stipulate that at no time is a member expected to jeopardize his/her safety to activate or deactivate a BWC. In certain environments, such as hospitals and detention centers, the activation of body worn cameras may be restricted or prohibited due to security reasons. Officers must comply with the instructions of the facility regarding recording policies, unless the officer believes continuing or activating recording is necessary for evidentiary, safety, or law enforcement reasons. Furthermore, when victims, witnesses or other individuals wish to make a statement or share information they may be uncomfortable and refuse to do so while being recorded.

The Maryland Police Training and Standards Commission (MPTSC) in accordance with 3-511 of the Public Safety Article required the MPTSC to develop and publish online a policy for the issuance and use of a BWC by a law enforcement officer. One of the key policies addresses this situation stating, “officers shall begin recording with their BWCs in the below circumstances unless doing so would be unsafe, impossible, or impractical. If officers are unable to begin recording with the BWC due to circumstances making it unsafe, impossible, or impractical to do so, officers shall begin recording with the BWC at the first reasonable opportunity to do so.”

Statutorily creating a rebuttable presumption to make any testimony of an officer who knowingly and willfully fails to turn on their body-worn camera inadmissible creates an unreasonable burden of proof and may well place lives in danger. For these reasons, MCPA and MSA OPPOSE SB 71 and urge an UNFAVORABLE report.

SB71.pdf

Uploaded by: Plaut, Ari

Position: UNF



CLYDE BOATWRIGHT
STATE PRESIDENT

MARYLAND STATE LODGE FRATERNAL ORDER OF POLICE®

8302 COVE ROAD BALTIMORE, MD 21222



KENNETH SCHUBERT
SECRETARY
EARL KRATSCH
TREASURER

The Honorable William C. Smith Jr., Chairman
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen St. Annapolis, MD 21401 -1991

Dear Chairman Smith,

I am writing on behalf of the Maryland State Lodge of the Fraternal Order Police in opposition of Senate Bill 71 (Police Officers – Testimony – Presumption of Inadmissibility (Maryland Police Accountability Act))

While the Fraternal Order of Police applauds measures aimed at the strengthening of evidence collection, and those with a focus on victim rights, we cannot support legislation which seeks to create a rebuttable presumption that the testimony of a police officer be inadmissible in a criminal prosecution for failing to activate a body worn camera (BWC).

As you know, police officers have an incredibly difficult job. In many cases, officers must make split-second decisions to preserve life and property, apprehend suspects, assist victims, and preserve evidence. While rank and file members of law enforcement agencies are becoming accustomed to the wearing and operation of BWCs, a law which would eliminate the testimony of a police officer for failing to activate one is extreme.

Officers are already subject to departmental disciplinary action for failing to active a BWC, and laws like this would only interfere with justice for the innocent victims we serve. Imagine an officer happening upon an assault in progress where, in an instant, the officer must make the decision to render aid to the victim rather than pursuing the fleeing suspect. During this spontaneous encounter the officer, surprised by what he/she saw, fails to activate his/her BWC. Supposing the only witnesses to the assault were the victim and the police officer, this law would deem the police officer's testimony during a criminal prosecution inadmissible – potentially denying justice for the victim.

Maryland's Legislature has duty to enact responsible laws – not just those which seek to punish police officers. The Legislature must consider the unintended consequences of anti-police legislation and the lasting affect it could have on those most vulnerable in our community. For these reasons, the Maryland Fraternal Order of Police must oppose SB71.

Representing the Professional Police Officers of the State of Maryland

Respectfully,

A handwritten signature in black ink, appearing to read 'W. R. Milam', with a small dot above the final 'm'.

William R. Milam
First Vice President

Senate Bill 71 - Police Officers Testimony.pdf

Uploaded by: Shellenberger, Scott

Position: UNF

Bill Number: SB 71
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION OF SB 71
POLICE OFFICERS TESTIMONY – PRESUMPTION OF INADMISSIBILITY
(MARYLAND POLICE ACCOUNTABILITY ACT OF 2021)

I write in opposition to Senate Bill 71 making testimony inadmissible if a police officer does not turn on their body camera. For hundreds of years anyone, including police officers, have been able to walk into a courtroom and tell a fact finder everything they saw, heard, and smelt. Now that we have put body cameras on officers, the failure to turn it on makes testimony untrustworthy and inadmissible. The only exception is proof of malfunction. Are officers not allowed to make a simple mistake? Are any of us held to that standard? What about the situation when the officer's safety or the safety of another makes it difficult or impossible to turn on their body cameras. If Senate Bill 71 passes an officer who witnesses a homicide or hears a confession would not be able to testify if they did not turn on their body camera. Yet, if a civilian was standing next to that officer and saw and heard the same thing they could testify even if they are an untrustworthy person. This does not make sense.

Picture the circumstances of the L.A. County Deputy Sheriff's shot in the fall. The Deputy was sitting in his car eating lunch when someone walked up to the window and shot him. Assuming they were issued body worn cameras do you think they were on while they were sitting in their car on an apparent break? If the perpetrator is caught does this mean that neither can testify at the trial because the body camera was not on. Body cameras are an excellent tool to bring the best possible evidence to the fact finder. Baltimore County has embraced them. So now, a simple mistake of forgetting or being unable to turn it on makes an officer untrustworthy.

If this bill were to pass the extreme response could be to not require officers to wear body worn cameras or on the opposite extreme require the officers to always have the body worn camera on while they are on duty. We should encourage jurisdictions to obtain and use body cameras. Suppression of testimony will hamper this. This is financially and logistically impossible. It would also impinge on personal matters of the officer during their shift.

I oppose Senate Bill 71 and ask for an unfavorable report.