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March 25, 2021

The Honorable Luke Clippinger, Chair and Members of Judiciary Committee

RE: SB627 Maryland Police Accountability Act of 2021 – Law Enforcement Officers' Bill of Rights – Repeal and Procedures for Discipline

POSITION: OPPOSE

The MTA opposes SB627 and the complete repeal of the Law Enforcement Officers Bill of Rights (LEOBR). Repeal of LEOBR will have the opposite effect that is intended by the well-meaning legislators seeking the repeal.

Per the Supreme Court of the United States, all citizens have the right to refuse to answer questions in any proceeding, civil or criminal, formal or informal, when the answers may incriminate the person in future criminal proceedings. A seminal Supreme Court cases –*Garrity v. New Jersey*¹ – determined that if a law enforcement officer is not provided with immunity, any statement given under threat of adverse personnel action is unconstitutionally coerced.

If the law enforcement officer is not provided with immunity, the talking and threatening to take adverse personnel action in response to the assertion of privilege against compelled self-incrimination has an unconstitutional and chilling effect upon the privilege. However, if immunity is given to the law enforcement officer against adverse personnel action and the officer refuses, the officer may be dismissed.

Thus, the LEOBR was enacted to provide law enforcement officers with the ability to answer questions that could lead to self-incrimination if they are given certain protections that would offer protections against adverse personnel action. **The LEOBR exists in large part to help facilitate *Garrity* in a practical way – make police officers give necessary information to current investigations while retaining their Constitutionally protected rights.** The Maryland legislature – and, in fact, no legislature, can legislate their way around these Constitutionally protected rights.

Without LEOBR, our advice to our law enforcement officer clients will be to remain silent – in the vast majority of circumstances. The vast majority of circumstances could theoretically produce criminal charges against the law enforcement officer. If the LEOBR is repealed, law enforcement officers may not be compelled to provide information that may be adverse or self-

¹ *Garrity v. New Jersey*, 385 U.S. 493 (1967)

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incriminating for fear of facing adverse personnel action. This will result in much greater law enforcement silence – Constitutionally protected silence.

Further, much of what LEOBR does, beyond the above, is provide codification of the same rights afforded public employees in the law enforcement context. It provides a disciplinary framework and common due process. The idea that it provides uncommon or additional due process is a misnomer.

The legislature could change the name from the Law Enforcement Officers Bill of Rights to the Law Enforcement Officers Accountability Act and leave the substance of the law the same, and it would still make sense when read as a whole. In many ways, it would make more sense. The “bill of rights” moniker was a sign of the times in the early 1970’s in a post-*Garrity* era.

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