



# BALTIMORE POLICE DEPARTMENT



**Brandon M. Scott**  
Mayor

**Michael S. Harrison**  
Police Commissioner

TO: The Honorable Members of the House Judiciary Committee

FROM: Michelle Wirzberger, Esq., Director of Government Affairs, Baltimore Police Dept.

RE: House Bill 1316 Baltimore City – Police Officers – Promotional Appointments

DATE: February 23, 2021

## **POSITION: SUPPORT WITH AMENDMENT**

Chair Clippinger, Vice-Chair Atterbeary, and members of the Judiciary Committee, please be advised that the Baltimore Police Department **supports with amendment** House Bill 1316.

In the 2016 Department of Justice investigation conducted after the in-custody death of Freddie Gray, the DOJ found that “*Serious deficiencies in BPD’s supervision of its enforcement activities...contribute to the Department’s failure to identify and correct unconstitutional policing.*” To rectify that, the Consent Decree mandated a number of systemic changes in how the Department supervises its members to provide close and effective supervision. The reasoning behind that is strong, capable leadership is absolutely necessary to not only effectuate the type of cultural transformation needed within the Department but to be able and willing to hold officers accountable if they fail to police in a manner that is consistent with the Constitution, other laws, and BPD policy.

As mandated by the 3<sup>rd</sup> year Monitoring Plan, the Baltimore Police Department worked with its federal Consent Decree Monitoring Team and the Department of Justice to develop the Department’s new policy to guide the promotional process for those seeking to ascend to the ranks of Sergeant and Lieutenant. The policy, which can be viewed at this link: <https://www.baltimorepolice.org/1721-draft-promotion-classified-ranks>, received input from Baltimore City residents as well as members of the Department.

Policy 1721 establishes a fair and equitable promotional process by ensuring that all interested members of the Department are aware of potential openings and understand the criteria for promotion as well as the process for selection. Moreover, it requires a holistic review of each Candidate’s qualifications, including prior performance as observed by their commanders, recognitions, awards, and commendations, early intervention system data, and inquiries into the nature of any complaints and/or sustained disciplinary infractions, regardless of their ultimate disposition.

This holistic assessment of a Candidate’s suitability represents a significant departure from the way that promotional selections were made in the past. The current law actually requires that although a Commissioner may set certain minimum qualifications, he/she is only permitted to consider the Candidate’s score on the promotional exam when making appointments. The Department must make appointments from those applicants

who place within the top five positions on the active promotional list. This requirement is referred to as the “Rule of 5” and does not take into account the distinct possibility that one or, perhaps all of those possessing the top five test scores are unsuitable for supervisory positions.

There have been several instances where candidates have been deemed unsuitable for promotion, but the Department has been forced to promote the candidate anyway because of the Rule of Five. For example:

- One candidate may have been charged or is under active investigation for serious ethical or misconduct allegations.
- Another candidate may have made documented statements that wholly reject the Consent Decree reforms, which would render them incapable of effectively and appropriately supervising subordinates under our new Consent Decree standards.
- Another candidate may have been arrested for criminal charges, but remains active on eligibility lists.
- Another candidate may have as many as five or more sustained disciplinary cases against him/her for serious use of force violations that carried more than 30 days lost wages as a penalty.

In each of these cases, the Rule of Five allows the Department to pass over them for consideration, however, once a total of four unsuitable candidates have been identified, the Department is now forced to authorize promotion for the next person on the list from that moment forward. If a fifth, consecutive, unsuitable candidate is then identified, the Department is forced to choose the “least-worst” option among the five. This is not a theoretical exercise for BPD; indeed, this very scenario has actually happened in the past two years.

The Department is not asking for the law to be struck completely, rather, we are respectfully requesting that you provide the Department with greater flexibility in prioritizing quality candidates for promotion by authorizing the following:

- ✓ Enable the Department to make appointments from those applicants who place within the top **20** positions on the eligibility list; and
- ✓ Empower the Department with the option to strike any Candidate who meets all the following criteria:
  - Found sustained for a misconduct complaint that was received after he/she applied for the promotion but before a position is available for promotion for that applicant AND
  - Termination is a possible punishment for the allegation, if he/she were to be found guilty.

We do respectfully request the following technical amendment to be adopted: on page 2, line 19 after the word BOARD add the words “OR DISCIPLINARY REVIEW COMMITTEE.”

The changes contemplated in this bill are necessary to allow the Department to comply with the Consent Decree paragraphs related to promotions, but more importantly, they will allow the Department to elevate the next generation of reform-minded leaders into supervisory and managerial ranks while also promoting a more positive culture of accountability and a better structure of upward mobility within BPD.

Therefore, the Baltimore Police Department respectfully requests a **favorable with amendment** report on House Bill 1316. Thank you for allowing us to comment on this important piece of legislation. If you should have any questions, feel free to reach me at [michelle.wirzberger@baltimorepolice.org](mailto:michelle.wirzberger@baltimorepolice.org) or via telephone at 443-915-3155.