



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: Senate Bill 866 Baltimore Police Department – Consent Decree – Exceptions to State Law

DATE: March 1, 2022

POSITION: SUPPORT WITH AMENDMENT

Chair Smith, Vice-Chair Waldstreicher, and members of the Committee, please be advised that the Baltimore Police Department **supports with amendment** Senate Bill 866.

Senate Bill 866 provides for a process in which the United States District Court would make the final determination as to whether certain provisions in State law are inconsistent with the federal Consent Decree that was entered into on April 7, 2017 by and between the United States of America, the Mayor and City Council of Baltimore and the Baltimore Police Department.

During the 2021 legislative session, all aspects of police reform were contemplated and debated. Many of the ideas adopted will help establish much needed uniformity and transparency that the community wants and deserves. The Baltimore Police Department actively supported and advocated for many smart legislative changes that would better enable the BPD to be responsive to community expectations while simultaneously reforming the Department in compliance with the Consent Decree. Unfortunately, some of the provisions that were adopted into law are problematic for Baltimore City because they directly conflict with mandates in the Consent Decree and threaten our ability to fully comply with and ultimately be released from the federal order.

Most concerning to us are two provisions located in the Public Safety Article Subtitle 1 that were created by HB 670. We have included the language from §§ 3–103 and 3–105 as well as the language from the corresponding Consent Decree paragraphs below:

- 1. § 3–103. (B) (1) A COMPLAINT OF POLICE MISCONDUCT FILED WITH A POLICE ACCOUNTABILITY BOARD SHALL INCLUDE: (I) THE NAME OF THE POLICE OFFICER ACCUSED OF MISCONDUCT; (II) A DESCRIPTION OF THE FACTS ON WHICH THE COMPLAINT IS BASED; AND (III) CONTACT INFORMATION OF THE COMPLAINANT OR A PERSON FILING ON BEHALF OF THE COMPLAINANT FOR INVESTIGATIVE FOLLOW-UP.**

Consent Decree paragraph 336 establishes several requirements as to how complaints of misconduct are to be received and processed by the Department including the following mandates:

BPD will ensure that the complaint intake process is open and accessible for individuals who wish to file complaints about BPD officers' conduct:

- a. BPD will ensure individuals may make complaints in multiple ways, including in person or anonymously, by telephone, online, and through third parties to ensure broad and easy access to its complaint system:
- b. BPD will ensure that all complaints they receive about BPD officer conduct will be accepted and investigated whether submitted by a BPD employee or a member of the public; whether submitted verbally or in writing; in person, by phone, or online; whether submitted by a complainant, someone acting on the complainant's behalf, or anonymously;

We are concerned that if this difference in language remains, any disciplinary action taken as a result of an anonymous complaint, could be challenged in court.

2. 3-105. (B) EACH LAW ENFORCEMENT AGENCY SHALL ADOPT THE UNIFORM STATE DISCIPLINARY MATRIX.

Consent Decree paragraph 375 mandates that the BPD establish and periodically amend a disciplinary matrix, policies and procedures to ensure that they:

- a. Establish a presumptive range of discipline for each type of violation;
- b. Increase the presumptive discipline based on an officer's prior violations;
- c. Set out defined mitigating and aggravating factors;
- d. Prohibit consideration of the officer's race, religion, gender, gender identity, sexual orientation, national origin, age, ethnicity, or familial relationships;
- e. Prohibit consideration of the high (or low) profile nature of the incident;
- f. Prohibit taking only non-disciplinary corrective action in cases in which the disciplinary matrices call for the imposition of discipline;
- g. Provide that the BPD will consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed; and
- h. Require that any departures from the discipline recommended under the disciplinary matrices be justified in writing.

As was required by the Consent Decree, BPD's Consent Decree Implementation Unit and Public Integrity Bureau worked for over a year with the Monitoring Team and the Department of Justice to develop the required matrix. The final document was submitted to the Court after several rounds of public input so that residents and members of the Department could weigh in on the topic.

Any subsequent future amendments must be established using the same process. We are concerned that if our matrix differs substantially from the matrix established by the MPTSC, we will have to choose to be out of compliance with the state law or out of compliance with the Consent Decree.

As drafted, SB 866 would allow for the Court to determine if § 6-106.2 of the State Government Article conflicts with the Consent Decree. This section of law, which was changed last session through SB 600, establishes the Independent Investigative Unit within the Office of the Attorney General for the purpose of investigating all alleged or potential police-involved deaths of civilians. The Baltimore Police Department has an MOU with the Office of the Attorney General that details how all relevant investigations are to be conducted.

To date, the BPD believes that the process is working as it should and that the independent investigations will help reassure the public that these types of circumstances are not swept under the rug and that officers are held accountable when the facts of the situation so require. As such, the BPD supports an amendment to strike all references to § 6-106.2 of the State Government Article within the bill.

Therefore, the Baltimore Police Department respectfully requests a **favorable with amendment** report on Senate Bill 866.