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: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 2, 2023

RE: **SB 22 – Criminal Procedure - Custodial Interrogation - Codification**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) OPPOSE SB 22. This bill would greatly impair the ability of law enforcement to interact with individuals and goes far beyond existing rules intended to protect the right against compelled self-incrimination.

The Fifth Amendment to the United States Constitution provides, "No person…shall be compelled in any criminal case to be a witness against himself…." In order to help ensure that stationhouse confessions made to police were voluntary, the United States Supreme Court created the *"Miranda* rules." *Miranda v. Arizona*, 384 U.S. 436 (1966). These rules are prophylactic only and not part of the Constitution. *Vega v. Tekoh*, 142 S.Ct. 2095, 2101 (2012). The Supreme Court of Maryland has consistently adopted the United States Supreme Court's *Miranda* decisions and has held that Art. 22 of the Maryland Declaration of Rights.[1] *See, e.g.*, *Madrid v. State*, 474 Md. 273 (2021) (determining that *Miranda* had been complied with and a custodial statement was properly admitted into evidence).

Miranda involved a stationhouse confession; the United States Supreme Court intended the new rules to apply to those or similar situations. Accordingly, "custody," for *Miranda* purposes occurs only when a person's freedom of action is curtailed to a degree associated with formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983). A brief detention – a "*Terry* stop" – is not custody. *Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984). A routine traffic stop is also not custody. Id..

SB 22 changes the definition of "custody" to include *any* detention, no matter how brief. Under SB 22, before an officer can ask a driver of a vehicle, "Do you know how fast you were going?" or even "Do you have an emergency?" the officer must present a written notification of rights. A traffic stop – and all *Terry* stops – are intended to be brief, limited, and focused on resolving the reason for the stop as soon as reasonable. The requirements of SB 22 needlessly extend and complicate the routine stop.

Furthermore Senate Bill 22 would impact traffic stops and the processing of drivers under suspicion of Driving While Intoxicated (DWI) in violation of Transportation Article §21-902. These traffic stops are currently established by the Courts through a number of federal and state decisions. Under most

[1] Article 22 provides, "That no man ought to be compelled to give evidence against himself in a criminal case."

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circumstances the engagement between a police officer and someone suspected of driving under the influence (DUI) does not rise to the level of an arrest that would trigger providing a suspect Miranda rights through the entire "Per Se" process outlined in Transportation Article §16-205.1. Senate Bill 22 would lower the threshold as to what type of interaction between police and a driver would require an officer to advise a driver if a law enforcement officer wishes to use any of the responses as part of a criminal case under §21-902 as noted by MCPA and MSA above.

This poses a problem in DWI enforcement as one of the main purposes of §16-205.1 is to assist law enforcement in gathering evidence related to a driver's sobriety that may be used in a criminal case related to violations of §21-902. Currently, Miranda is not required until a person is "under arrest" which is defined by the Courts.

To the extent SB 22 is intended to provide protections for the right against self-incrimination, SB 22 goes much farther than necessary. *Terry* stops do not have the same potential for coercion as an arrest. *See, e.g., United States v. Leggette*, 2023 U.S.App. LEXIS 521 (4th Cir. 2023) ("For example, during a traffic stop, a driver may not be free to drive away, but such stops still do not ordinarily constitute 'custody' because they are not coercive enough.") Under the Maryland common law, statements are admissible only if found to have been voluntary. *Madrid*, 474 Md. at 320. Maryland law also requires other safeguards when an officer is interacting with a citizen, including:

- A requirement that interrogation rooms be equipped with audiovisual recording equipment. Crim. Pro. §2-402
- A requirement that law enforcement agencies issue body-worn cameras. Pub. Safety §3-511
- A requirement that an officer provide certain information at the commencement of a stop. Crim. Pro. §2-109
- Mandatory attorney consultation for juveniles subject to custodial interrogation. Cts. & Jud. Proc. §3-8A-14.2

Case law, statutes, and the sound discretion of judges and juries already help ensure that only voluntary statements are admitted in evidence.

Finally, unlike *Miranda*, SB 22 does not provide an exception for exigent circumstances. *New York v. Quarles*, 467 U.S. 649 (1984). Police officers are expected to act in a manner that protects the public, and that includes asking questions related to threats to public safety. Excluding from evidence answers given to those questions penalizes "offices for asking the very questions which are most crucial to their efforts to protect themselves and the public." *Quarles*, 467 U.S. at 656, n.6.

For these reasons, MCPA and MSA OPPOSE SB 22.

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