



House Bill 430 - Oppose

Police Immunity and Accountability Act

Letter of opposition to the House Judiciary Committee

February 21, 2023

Mr. Chairman and Members of the House Judiciary Committee, I am pleased to submit my written testimony in opposition to House Bill 430.

In the last two years, the Maryland Legislature has made significant changes to the profession of law enforcement in the State of Maryland. Police reform measures have changed the administrative disciplinary procedures, the definition of when and how force can be used, the composition of the board members overseeing police training and standards, and changes that give the public access to personnel files of law enforcement officers (making them the only government employees where this is applicable).

With all these changes, most law enforcement agencies around the State of Maryland are seeing a significant decline in young men and women interested in joining the profession. Some agencies are reporting a 50% to 60% decline in the number of applications received during an open process for new law enforcement recruits.

Today, we have another piece of legislation which will make law enforcement even less attractive to perspective applicants and make it more difficult to hire and retain police officers, while adding more changes and stress on those that are already serving in the profession.

This legislation seeks to remove qualified immunity for law enforcement officers who are accused of violating an individual's constitutional rights. It is disappointing that we never hear those sponsors and advocates for this concept point out that qualified immunity does not cover acts resulting from criminal behavior or gross negligence. Once again, this targets one specific governmental employment group (police) by



implementing an unreasonable and unnecessary removal of qualified immunity.

A timely example of this can be found in a recent decision out of the U.S. 4th Circuit Court of Appeals. Just this month, the Court ruled that a North Carolina town's policy that banned individuals from video livestreaming of the police during traffic stops was found to be unconstitutional and a violation of the first amendment. Contrary to simply filming or recording police activities, the officer (and his Agency) believed livestreaming was not permitted by law because it created a heightened concern for officer safety. Well after the arrest, the Court has now made it clear that livestreaming is also protected by the 1st Amendment. This case is a good example of an officer's actions, while acting without gross negligence or in a criminal manner, could be subject to personal civil liability for trying to act within the law and policy. This should not be our standard.

As stated, if this Bill were to pass in Maryland, a law enforcement officer who is attempting to do the right thing (as in the case above), could be personally held responsible when he or she were just trying to do the job they are required to do.

Law enforcement officers can already be held personally responsible if they engage in behavior that they should have known violates a citizen's constitutional rights, act outside the scope of their responsibilities, or act with gross negligence.

This legislation goes too far. It would allow for an individual to personally seek compensatory and punitive damages from the law enforcement officer even in situations where the officer was following their training and policies, but mistakes were made, and rights were found to be violated.

I ask the members of the committee to continue to keep the standards we currently have in place for law enforcement and other government employees when it comes to qualified immunity and reject this attempt to take away this protection from one profession. I ask for an unfavorable report on HB 430.

Respectfully Offered,

Sheriff Jeffrey R. Gahler