



**Testimony for the House Judiciary Committee
March 3, 2020**

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PUBLIC POLICY DIRECTOR

**HB 1090 Law Enforcement – Complaints and Investigations and Use
of Force (Anton’s Law)**

FAVORABLE with AMENDMENTS

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The ACLU of Maryland urges a favorable report on HB 1090, which seeks comprehensive reforms to policing across the state, specifically addressing transparency over disciplinary records, the law enforcement officers’ bill of rights, uniform complaint processes, and limits to use of force by law enforcement.

We focus our testimony on our support for the transparency mechanism included in HB 1090 and offer suggestions for future consideration regarding use of force.

Under current law, if you file a complaint of police misconduct, you cannot find out how the department investigates your complaint. All you can find out is the outcome and the discipline. You cannot find out whether the department conducted a thorough or lackluster investigation of your complaint. This is because Maryland’s Public Information Act (PIA) prohibits disclosure of disciplinary files.

The amendments made to the PIA in HB 1090 would rectify the problems created by the Court in *Dashiell*. It does two things:

1. Overturns *Dashiell*, and says that records of investigations into alleged police misconduct are not “personnel records,” and thus are not categorically barred from disclosure under the MPIA; and
2. Makes all investigations into police misconduct subject to permissive, rather than mandatory denial under the MPIA. Custodians have broad discretion to withhold such records to protect legitimate public interests, and narrower discretion to withhold such records to “persons in interest,” that is the people who are the subjects of those records.



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The net effect would be to lift the veil of secrecy from the basic facts about investigations into alleged misconduct, and ensure that the victims of such misconduct could get appropriate information about their own complaints, subject to the existing restrictions in the MPIA that protect against the release of sensitive information.

Regarding the use of force provisions, we laud the sponsor for drawing attention to the long-overdue need to limit the force that law enforcement is permitted to use in interacting with the public. Should this body advance legislation to address use of force, we encourage the committee to examine closely the current constitutional standards governing use of force and attempt to raise the standard to offer greater statutory protections than that to which Marylanders are currently entitled. We would also encourage the committee to frame legislation to prohibit what force is barred, as opposed to permissive language allowing force to be used in certain circumstances.

For the foregoing reasons, the ACLU of Maryland supports the transparency reforms in HB 1090 and would welcome the opportunity to work with the committee to craft use of force limitations.