



M a r y l a n d Troopers Association



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March 3, 2020

The Honorable Luke Clippinger, Chairman and Members of the House Judiciary Committee

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

POSITION: OPPOSE

The Maryland Troopers Association (MTA) has a membership strength of approximately 2,629 members of which 1,120 are active sworn Troopers involved in traffic enforcement throughout the State of Maryland.

HB1090 uses overly broad terms such as "Any" discharge of a firearm is deadly force. What about accidental discharge. The test of reasonableness for use of force is dictated by the 4th Amendment. It cannot be defined in statute as the Supreme Court found in *Connor v. Graham*, 490 U.S. 386 (1989). Use of force is examined under a totality of the circumstances and under an objectively reasonable standard. The facts of each situation are carefully considered. Troopers/officers also cannot be expected to ponder or consider multiple factors in split second situations where the lives and safety of citizens and officers are at issue.

HB1090 creates a hesitation by the officer in many cases that require split second decisions which could put the officer’s life or the life of the public in further danger. The reasonableness of the officer’s actions must be based on the information the officer has at the moment force is used. When a Law Enforcement Officer unfortunately has to use deadly force there is a subsequent extensive investigation and review.

HB1090 makes all law enforcement complaint files open to the public. This legislation would establish that a record related to a formal complaint of job-related misconduct made against a law enforcement officer, including an investigation record, a hearing record, or disciplinary decision, is not a personnel record and therefore not subject to the mandatory denial of inspection under the Public Information Act regardless of the complaint being sustained, unsustained or dismissed.

The bill repeals the requirement in Law Enforcement Officers Bill of Rights (LEOBR) that the investigating officer or interrogating officer be a sworn law enforcement officer or, if requested by the Governor, the Attorney General or a designee of the Attorney General, for an investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal.

The Maryland Court of Appeals recently ruled in *Maryland Department of State Police v. Dashiell* that records pertaining to an internal police investigation of an officer are personnel records and not required to be disclosed under the MPIA. The Court of Appeals went to great effort to highlight the sensitive nature of these internal records and the long-established and justified precedent of shielding the specifics

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of such an investigation under the PIA.

The MTA feels that the Maryland Police Training and Standards Commission is required to develop a uniform complaint process that required a complainant be informed of the final disposition of the complainant's complaint and any discipline imposed as a result. Further, it is to be posted on the website of the Commission and each law enforcement agency. These changes provide the transparency being sought in a manner that does not negatively affect investigations or place Troopers and their families in harmful situations.

The information that could be released under this bill may include whistleblower information or other confidential information that could undermine a particular law enforcement investigation or other investigations. Any person would be able to obtain the information regardless of the connection to the complaint. In today's age of social media, this could expose sensitive information about the Law Enforcement Officer and their families as well as having things taken out of context.

Therefore, the Maryland Troopers Association OPPOSES HB1090 and requests an unfavorable report.

Brian Blubaugh
President
Maryland Troopers Association