I. Call to order

II. Sponsor presentation of bills and Member Q&A (1:00 PM – 1:45 PM)

III. Panel witnesses and Member Q&A (1:45 PM – 3:15 PM)

IV. Public testimony (3:15 PM – 5:00 PM)
   - Individuals Registered from 3:15 PM – 3:30 PM
   - Individuals Registered from 3:30 PM – 4:00 PM
   - Individuals Registered from 4:00 PM – 4:30 PM
   - Individuals Registered from 4:30 PM – 5:00 PM

V. Adjournment
By: Senator Sydnor

A BILL ENTITLED

AN ACT concerning

Public Information Act – Police Body–Worn Camera Recordings
(Maryland Police Accountability Act of 2021)

FOR the purpose of requiring a certain custodian to grant inspection of a police body–worn camera recording, data, or related information, with certain exceptions; requiring a certain custodian to redact a certain police body–worn camera recording, data, or related information for a certain purpose under certain circumstances; requiring that certain actions be taken when a certain redaction is performed by a certain custodian; and generally relating to police body–worn camera recordings and the Public Information Act.

BY adding to

Article – General Provisions
Section 4–357
Annotated Code of Maryland
(2019 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – General Provisions

4–357.

(A) A CUSTODIAN SHALL GRANT INSPECTION OF A POLICE BODY–WORN CAMERA RECORDING, DATA, OR RELATED INFORMATION, UNLESS THE INSPECTION WOULD:

(1) INTERFERE WITH A VALID AND PROPER LAW ENFORCEMENT PROCEEDING;
(2) DEPRIVE ANOTHER PERSON OF A RIGHT TO A FAIR TRIAL OR AN IMPARTIAL ADJUDICATION;

(3) CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY;

(4) DISCLOSE THE IDENTITY OF A CONFIDENTIAL SOURCE;

(5) DISCLOSE A UNIQUE INVESTIGATIVE TECHNIQUE OR PROCEDURE;

(6) PREJUDICE AN INVESTIGATION;

(7) ENDANGER THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL;

(8) EXPOSE INFORMATION THAT WOULD REASONABLY BE EXPECTED TO CAUSE HARASSMENT OR EMBARRASSMENT TO A VICTIM DEPICTED IN THE RECORDING; OR

(9) OTHERWISE BE PROHIBITED UNDER THIS TITLE.

(B) (1) A CUSTODIAN SHALL TAKE REASONABLE STEPS TO REDACT A POLICE BODY–WORN CAMERA RECORDING, DATA, OR RELATED INFORMATION IF NECESSARY TO RENDER IT SUBJECT TO INSPECTION UNDER SUBSECTION (A) OF THIS SECTION, PROVIDED THAT THE REDACTION DOES NOT INTERFERE WITH THE ABILITY TO FULLY, COMPLETELY, AND ACCURATELY COMPREHEND THE PUBLIC RECORD.

(2) WHEN REDACTION IS PERFORMED BY A CUSTODIAN UNDER PARAGRAPH (1) OF THIS SUBSECTION:

   (I) THE REDACTED VERSION SHALL BE CLEARLY LABELED AS HAVING BEEN ALTERED; AND

   (II) AN UNEDITED, ORIGINAL VERSION OF THE INFORMATION SHALL BE RETAINED BY THE CUSTODIAN.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.
Summary of Draft Bill

Inspection of Police Body-worn Camera Records

This draft bill requires a custodian of a public record to grant inspection under Maryland’s Public Information Act (PIA) of a police body-worn camera recording, data, or related information, unless the inspection would (1) interfere with a valid and proper law enforcement proceeding; (2) deprive another person of a right to a fair trial or an impartial adjudication; (3) constitute an unwarranted invasion of personal privacy; (4) disclose the identity of a confidential source; (5) disclose a unique investigative technique or procedure; (6) prejudice an investigation; (7) endanger the life or physical safety of an individual; (8) expose information that would reasonably be expected to cause harassment or embarrassment to a victim depicted in the recording; or (9) otherwise be prohibited under PIA.

Redaction

A custodian must take reasonable steps to redact a police body-worn camera recording, data, or related information if necessary to render it subject to inspection, provided that the redaction does not interfere with the ability to fully, completely, and accurately comprehend the public record. When a custodian redacts such records under the draft bill, the redacted version must be clearly labeled as having been altered, and the custodian must retain an unedited, original version of the information.
By: Senator Sydnor

A BILL ENTITLED

AN ACT concerning

Police Officers – Testimony – Presumption of Inadmissibility
(Maryland Police Accountability Act of 2021)

FOR the purpose of providing that a knowing and willful failure of a certain police officer to activate a body–worn camera creates a rebuttable presumption that certain testimony is inadmissible in a certain proceeding; providing that a certain presumption may be rebutted by a certain showing; providing for the application of this Act; defining certain terms; and generally relating to testimony of police officers.

BY adding to

Article – Criminal Procedure
Section 2–109
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

2–109.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3–201 OF THE PUBLIC SAFETY ARTICLE.
(3) “POLICE OFFICER” has the meaning stated in § 3–201 of the Public Safety Article.

(B) This section applies only to a police officer who is required to use a body–worn camera while on duty by the law enforcement agency that employs the police officer.

(C) (1) The knowing and willful failure of a police officer to activate a body–worn camera, in violation of the policy of the law enforcement agency that employs the police officer, creates a rebuttable presumption that any testimony of the police officer sought to be introduced in a criminal prosecution relating to the incident that was not recorded is inadmissible.

(2) The presumption may be rebutted by a showing that:

(I) The body–worn camera was not activated due to a malfunction of the camera;

(II) The police officer was:

1. Not aware of the malfunction; or

2. Not able to fix the malfunction before the incident; and

(III) The law enforcement agency’s documentation shows that the police officer checked the functionality of the body–worn camera at the beginning of the police officer’s shift.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.
This draft bill establishes that the knowing and willful failure of a police officer to activate a body-worn camera, in violation of the policy of the officer’s employing law enforcement agency, creates a rebuttable presumption that any testimony of the police officer relating to the incident that was not recorded is inadmissible in a criminal prosecution. The presumption may be rebutted by a showing that (1) the body-worn camera was not activated due to a malfunction of the camera; (2) the police officer was not aware of the malfunction or was not able to repair the malfunction prior to the incident; and (3) the law enforcement agency’s documentation shows that the officer checked the camera’s functionality at the beginning of the officer’s shift. The draft bill’s provisions apply only to a police officer who is required by the officer’s employing law enforcement agency to use a body-worn camera while on duty.
JPR 10

By: Senator Smith

A BILL ENTITLED

AN ACT concerning

State Prosecutor – Investigation of Crimes Committed by Police Officers
(Maryland Police Accountability Act of 2021)

FOR the purpose of authorizing the State Prosecutor to investigate a criminal offense involving serious physical injury or death resulting from the use of physical force by a police officer; authorizing the State Prosecutor to investigate any criminal offense committed by a police officer while in the performance of the police officer’s official duties if requested by a certain State’s Attorney or the Attorney General; requiring the State Prosecutor to take certain actions with regard to the investigation of a certain criminal offense; requiring the State Prosecutor to establish a pool of investigators to investigate criminal offenses committed by law enforcement officers and employ staff to assist the investigators; requiring a certain investigator to be a certain police officer; requiring the State Prosecutor to hold a certain recruitment events at certain colleges and universities in the State for a certain purpose; requiring that a certain percentage of candidates interviewed for certain positions be certain individuals; providing that any costs associated with a certain investigation by the State Prosecutor be borne by the State Prosecutor; requiring the State Prosecutor to place a certain report on a certain website at a certain time; requiring a certain annual report to contain information relating to certain investigations; establishing the Police Criminal Misconduct Policy Board in the Governor’s Office of Crime Prevention, Youth, and Victim Services; providing for the composition, terms, chair, and staffing of the Board; prohibiting a member of the Board from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Board to develop and publish certain best practices and policies; requiring a law enforcement agency to notify the Office of the State Prosecutor of a potential certain incident at a certain time; requiring a State’s Attorney to immediately notify the Office of the State Prosecutor of the existence of
certain video evidence; defining certain terms; making a conforming change; and generally relating to the Office of the State Prosecutor.

BY repealing and reenacting, with amendments,  
Article – Criminal Procedure 
Section 14–101, 14–107, 14–108, and 14–114  
Annotated Code of Maryland  
(2018 Replacement Volume and 2020 Supplement)

BY adding to  
Article – Criminal Procedure 
Section 14–115  
Annotated Code of Maryland  
(2018 Replacement Volume and 2020 Supplement)

BY adding to  
Article – Public Safety  
Section 3–522  
Annotated Code of Maryland  
(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

14–101.

(1) In this title[,] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “Commission” means the State Prosecutor Selection and Disabilities Commission.

(3) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3–201 OF THE PUBLIC SAFETY ARTICLE.

(4) “POLICE OFFICER” HAS THE MEANING STATED IN § 3–201 OF THE PUBLIC SAFETY ARTICLE.
Except as provided in paragraph (2) of this subsection, the State Prosecutor may investigate:

(i) a criminal offense under the State election laws;

(ii) a criminal offense under the State Public Ethics Law;

(iii) a violation of the State bribery laws in which an official or employee of the State, a political subdivision of the State, or a bicounty or multicounty unit of the State was the offeror, offeree, or intended offeror or offeree of a bribe;

(iv) an offense constituting criminal malfeasance, misfeasance, or nonfeasance in office committed by an officer or employee of the State, of a political subdivision of the State, or of a bicounty or multicounty unit of the State;

(v) a violation of the State extortion, perjury, or obstruction of justice laws related to an activity described in this paragraph; and

(vi) a criminal offense related to voting in a municipal election under § 4–108.1 of the Local Government Article;

(VII) A CRIMINAL OFFENSE INVOLVING SERIOUS PHYSICAL INJURY OR DEATH RESULTING FROM THE USE OF PHYSICAL FORCE BY A POLICE OFFICER; AND

(VIII) ANY CRIMINAL OFFENSE COMMITTED BY A POLICE OFFICER WHILE IN PERFORMANCE OF THE POLICE OFFICER’S OFFICIAL DUTIES IF REQUESTED BY:

1. A STATE’S ATTORNEY WITH JURISDICTION TO PROSECUTE THE OFFENSE; OR

2. THE ATTORNEY GENERAL.

The State Prosecutor may not investigate an offense alleged to have been committed by the State Prosecutor or a member of the State Prosecutor’s staff.
(3) [The] EXCEPT AS PROVIDED IN SUBPARAGRAPH (1)(VIII) OF THIS SUBSECTION, THE State Prosecutor may investigate an alleged offense under paragraph (1) of this subsection on the State Prosecutor’s own initiative or on request of:

(i) the Governor;

(ii) the Attorney General;

(iii) the General Assembly;

(iv) the State Ethics Commission; or

(v) a State’s Attorney.

(4) An individual who is advised by the State Prosecutor that the individual is under investigation under paragraph (1)(iv) of this subsection may release this information to the public, as well as any results of the investigation that pertain to the individual.

(b) On request of the Governor, the Attorney General, the General Assembly, or a State’s Attorney, the State Prosecutor may investigate criminal activity that is committed:

(1) partly in the State and partly in another jurisdiction; or

(2) in more than one political subdivision of the State.

(C) WITH REGARD TO AN INVESTIGATION INVOLVING AN ALLEGED CRIMINAL OFFENSE DESCRIBED IN SUBSECTION (A)(1)(VII) OF THIS SECTION, THE STATE PROSECUTOR SHALL:

(1) COORDINATE WITH THE STATE’S ATTORNEY FOR THE JURISDICTION IN WHICH THE OFFENSE IS ALLEGED TO HAVE OCCURRED TO ASSESS POTENTIAL CONFLICTS OF INTEREST THAT COULD AFFECT THE IMPARTIALITY OF INVESTIGATORS ASSIGNED TO THE INVESTIGATION;
(2) DETERMINE, IN THE STATE PROSECUTOR’S SOLE DISCRETION NOTWITHSTANDING ANY OBJECTION OF A STATE’S ATTORNEY, WHETHER THE STATE PROSECUTOR OR THE STATE’S ATTORNEY SHALL BE RESPONSIBLE FOR INVESTIGATING THE OFFENSE; AND

(3) IF THE STATE PROSECUTOR ELECTS TO INVESTIGATE THE OFFENSE, ASSIGN INVESTIGATORS TO THE INVESTIGATION AND DIRECT AND OVERSEE THE INVESTIGATION.

(D) (1) THE STATE PROSECUTOR SHALL:

   (I) ESTABLISH A POOL OF INVESTIGATORS TO INVESTIGATE ALLEGED CRIMINAL OFFENSES COMMITTED BY POLICE OFFICERS; AND

   (II) EMPLOY STAFF TO ASSIST THE INVESTIGATORS.

(2) AN INVESTIGATOR SHALL BE A POLICE OFFICER EMPLOYED BY A LAW ENFORCEMENT AGENCY IN THE STATE.

(3) THE STATE PROSECUTOR SHALL HOLD AT LEAST ONE EVENT ANNUALLY AT EACH OF THE HISTORICALLY BLACK COLLEGES AND UNIVERSITIES IN THE STATE TO RECRUIT INVESTIGATORS AND INVESTIGATIVE STAFF.

(4) AT LEAST 20 PERCENT OF THE CANDIDATES INTERVIEWED BY THE STATE PROSECUTOR FOR A POSITION AS INVESTIGATOR OR INVESTIGATIVE STAFF SHALL BE SOCially AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR SOCIALLy DISADVANTAGED INDIVIDUALS, AS THOSE TERMS ARE DEFINED IN § 14–301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(E) ANY COSTS ASSOCIATED WITH AN INVESTIGATION BY THE STATE PROSECUTOR OF A CRIMINAL OFFENSE COMMITTED BY A LAW ENFORCEMENT OFFICER WHILE IN THE PERFORMANCE OF THE LAW ENFORCEMENT OFFICER’S OFFICIAL DUTIES SHALL BE BORNE BY THE OFFICE OF THE STATE PROSECUTOR.

14–108.

(a) (1) Except as provided in paragraph (2) of this subsection, if the State Prosecutor finds that an alleged violation of the criminal law set forth in § 14–107 of this
title has occurred, the State Prosecutor shall make a confidential report of the findings and any recommendations for prosecution to the Attorney General and the State’s Attorney for the county in which jurisdiction exists to prosecute the matter.

(2) A report of the findings and recommendations regarding allegations of offenses committed by a State’s Attorney need not be made to that State’s Attorney.

(b) (1) If the State Prosecutor finds that there has not been a violation of criminal law or the State Prosecutor does not recommend prosecution, the State Prosecutor shall report the findings to the person who requested the investigation.

(2) If the General Assembly requested the investigation, the report shall be made to the President of the Senate and the Speaker of the House of Delegates.

(3) On request of the person who was the subject of the investigation, the report shall be made available to the public as soon as possible.

(C) NOTWITHSTANDING SUBSECTION (A) OR (B) OF THIS SECTION, AFTER THE COMPLETION OF AN INVESTIGATION INVOLVING AN ALLEGED CRIMINAL OFFENSE DESCRIBED IN § 14–107(A)(1)(VII) OR (VIII) OF THIS SUBTITLE, THE STATE PROSECUTOR SHALL PLACE A REPORT OF THE STATE PROSECUTOR’S INVESTIGATIVE FINDINGS AND RECOMMENDATIONS REGARDING PROSECUTION ON ITS PUBLIC WEBSITE.

14–114.

(A) The State Prosecutor shall submit an annual report on activities of the Office of the State Prosecutor that are not confidential to:

(1) the Governor;

(2) the Attorney General; and

(3) subject to § 2–1257 of the State Government Article, the General Assembly.
(B) The report required under subsection (A) of this section shall specifically include information on the State Prosecutor’s investigations of:

(1) Incidents involving serious physical injury or death resulting from the use of physical force by a police officer in the State; and

(2) Commission of crime by police officers in the State.

14–115.

(A) In this section, “Board” means the Police Criminal Misconduct Policy Board.

(B) There is a Police Criminal Misconduct Policy Board in the Governor’s Office of Crime Prevention, Youth, and Victim Services.

(C) The Governor’s Office of Crime Prevention, Youth, and Victim Services shall provide staff for the Board.

(D) The Board consists of:

(1) The State Prosecutor, or the State Prosecutor’s designee;

(2) The Attorney General, or the Attorney General’s designee;

(3) The Secretary of State Police, or the Secretary’s designee;

(4) The Public Defender, or the Public Defender’s designee; and

(5) Nine individuals appointed by the Governor as follows:
(I) TWO INDIVIDUALS APPOINTED FROM A LIST OF TWO OR MORE NOMINEES SUBMITTED BY THE PRESIDENT OF THE SENATE:

1. ONE AND ONLY ONE OF WHICH SHALL BE A LAWYER;

2. ONE OF WHICH SHALL BE A MEMBER OF THE COMMISSION; AND

3. NONE OF WHICH MAY BE A MEMBER OF THE GENERAL ASSEMBLY OR A FULL–TIME STATE EMPLOYEE;

(II) TWO INDIVIDUALS APPOINTED FROM A LIST OF TWO OR MORE NOMINEES SUBMITTED BY THE SPEAKER OF THE HOUSE OF DELEGATES:

1. ONE AND ONLY ONE OF WHICH SHALL BE A LAWYER;

2. ONE OF WHICH SHALL BE A MEMBER OF THE COMMISSION; AND

3. NONE OF WHICH MAY BE A MEMBER OF THE GENERAL ASSEMBLY OR A FULL–TIME STATE EMPLOYEE;

(III) TWO INDIVIDUALS APPOINTED FROM A LIST OF TWO OR MORE NOMINEES SUBMITTED BY THE PUBLIC DEFENDER:

1. ONE OF WHICH SHALL BE A RESIDENT OF A JURISDICTION SERVED BY THE LAW ENFORCEMENT AGENCY OF A COUNTY WITH THE HIGHEST NUMBER OF CIVILIAN COMPLAINTS AGAINST POLICE OFFICERS IN THE STATE;

2. ONE OF WHICH SHALL BE A RESIDENT OF A JURISDICTION SERVED BY THE LAW ENFORCEMENT AGENCY OF A COUNTY WITH THE SECOND HIGHEST NUMBER OF CIVILIAN COMPLAINTS AGAINST POLICE OFFICERS IN THE STATE; AND

3. NONE OF WHICH MAY BE A MEMBER OF THE GENERAL ASSEMBLY OR A FULL–TIME STATE OR LOCAL GOVERNMENT EMPLOYEE;
(IV) TWO INDIVIDUALS APPOINTED FROM A LIST OF TWO OR MORE NOMINEES SUBMITTED BY THE PRESIDENT OF THE MARYLAND STATE’S ATTORNEYS’ ASSOCIATION; AND

(V) ONE INDIVIDUAL APPOINTED FROM A LIST OF ONE OR MORE NOMINEES SUBMITTED BY THE BOARD OF GOVERNORS OF THE MARYLAND STATE BAR ASSOCIATION WHO IS A LAWYER ADMITTED TO PRACTICE LAW IN THE STATE.

(E) (1) The Governor may reject an individual as a nominee only for cause.

(2) If the Governor rejects an individual as a nominee, the Governor shall request the appropriate nominating authority to submit another nominee.

(F) (1) The term of an appointed member is 4 years.

(2) The terms of appointed members are staggered as required by the terms in effect for members on October 1, 2021.

(3) An appointed member serves until a successor is appointed and qualifies.

(4) An appointed member is eligible for reappointment.

(G) FROM AMONG THE MEMBERS, THE GOVERNOR SHALL DESIGNATE THE CHAIR OF THE BOARD FOR THE PERIOD THAT THE GOVERNOR DETERMINES.

(H) A MEMBER OF THE BOARD:

(1) MAY NOT RECEIVE COMPENSATION FOR SERVING ON THE BOARD; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(I) THE BOARD SHALL DEVELOP AND PUBLISH BEST PRACTICES AND POLICIES RELATING TO:
(1) THE INVESTIGATION OF CRIMINAL OFFENSES COMMITTED BY POLICE OFFICERS IN THE COURSE OF THEIR OFFICIAL DUTIES FOR:

(i) THE State Prosecutor;

(ii) State’s Attorneys; and

(iii) Law Enforcement Agencies; and

(2) SELECTION OF INVESTIGATORS AND STAFF ASSIGNED TO INVESTIGATE OR PERFORM WORK RELATING TO THE INVESTIGATION OF CRIMINAL OFFENSES COMMITTED BY POLICE OFFICERS IN THE COURSE OF THEIR OFFICIAL DUTIES.

Article – Public Safety

3–522.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3–201 OF THE PUBLIC SAFETY ARTICLE.

(3) “POLICE OFFICER” HAS THE MEANING STATED IN § 3–201 OF THE PUBLIC SAFETY ARTICLE.

(B) A LAW ENFORCEMENT AGENCY SHALL NOTIFY THE OFFICE OF THE State Prosecutor OF ANY ALLEGED OR POTENTIAL INCIDENT INVOLVING THE USE OF PHYSICAL FORCE CAUSING SERIOUS PHYSICAL INJURY OR DEATH BY A POLICE OFFICER AS SOON AS THE LAW ENFORCEMENT AGENCY BECOMES AWARE OF THE INCIDENT.

(C) A State’s Attorney SHALL IMMEDIATELY NOTIFY THE Office of the State Prosecutor OF THE EXISTENCE OF ANY VIDEO EVIDENCE KNOWN TO THE State’s Attorney RELATING TO A CRIMINAL INVESTIGATION OF A POLICE
OFFICER BY THE STATE PROSECUTOR UNDER § 14–107 OF THE CRIMINAL PROCEDURE ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021
State Prosecutor’s Expanded Investigative and Prosecutorial Authority

Investigative Authority

This draft bill authorizes the State Prosecutor to investigate:

- a criminal offense involving serious physical injury or death resulting from the use of physical force by a police officer; and

- any criminal offense committed by a police officer while in performance of the police officer’s official duties if requested by (1) a State’s Attorney with jurisdiction to prosecute the offense or (2) the Attorney General.

The draft bill requires a law enforcement agency to notify the Office of the State Prosecutor (OSP) of any alleged or potential incident involving the use of physical force causing serious physical injury or death by a police officer as soon as the law enforcement agency becomes aware of the incident. In addition, a State’s Attorney must immediately notify OSP of the existence of any video evidence known to the State’s Attorney relating to a criminal investigation of a police officer by the State Prosecutor.

Investigations of Serious Physical Injury or Death

Under the draft bill, the State Prosecutor’s authority to investigate a criminal offense involving serious physical injury or death resulting from the use of physical force by a police officer is subject to an existing provision authorizing the State Prosecutor to investigate specified offenses on the State Prosecutor’s own initiative or on request of the Governor, the Attorney General, the General Assembly, the State Ethics Commission, or a State’s Attorney.

The State Prosecutor must coordinate with the State’s Attorney for the jurisdiction in which the offense is alleged to have occurred to assess potential conflicts of interest that could affect the impartiality of investigators assigned to the investigation. The State Prosecutor must determine, in the State Prosecutor’s sole discretion and notwithstanding any objection of a State’s Attorney, whether the State Prosecutor or the State’s Attorney is to be responsible for investigating the
offense. If the State Prosecutor elects to investigate the offense, the State Prosecutor must assign investigators to the investigation and direct and oversee the investigation.

**Investigators, Investigative Staff, and Costs of Investigations**

The State Prosecutor must establish a pool of investigators to investigate alleged criminal offenses committed by police officers and employ staff to assist the investigators. An investigator must be a police officer employed by a law enforcement agency in the State. Any costs associated with an investigation by the State Prosecutor of a criminal offense committed by a law enforcement officer while in the performance of the law enforcement officer’s official duties must be borne by OSP.

The State Prosecutor must hold at least one event annually at each of the historically black colleges and universities in the State to recruit investigators and investigative staff. In addition, at least 20% of the candidates interviewed by the State Prosecutor for a position as investigator or investigative staff must be socially and economically disadvantaged individuals or socially disadvantaged individuals, as those terms are defined under minority business enterprise provisions of State procurement law.

**Reporting of Findings and Recommendations for Prosecution**

After the completion of an investigation pursuant to the draft bill’s provisions, the State Prosecutor must place a report of the State Prosecutor’s investigative findings and recommendations regarding prosecution on OSP’s website. As required under existing provisions, if the State Prosecutor finds that an alleged violation of the criminal law has occurred, a report must also be made to the Attorney General and the State’s Attorney for the county in which jurisdiction exists to prosecute the matter. Statutory provisions set forth additional requirements related to the reporting of findings to specified individuals and entities.

Pursuant to existing law, the State Prosecutor may prosecute a criminal offense set forth in the report of findings and recommendations if, within 45 days after receipt of the report, the State’s Attorney fails to file charges and begin prosecution in accordance with the recommendations.

**State Prosecutor’s Annual Report**

The draft bill requires the State Prosecutor’s annual report to the Governor, Attorney General, and the General Assembly to specifically include information on the State Prosecutor’s investigations of (1) incidents involving serious physical injury or death resulting from the use of physical force by a police officer in the State and (2) commission of crime by police officers in the State.
Creation of the Police Criminal Misconduct Policy Board

The draft bill establishes a Police Criminal Misconduct Policy Board within, and staffed by, the Governor’s Office of Crime Prevention, Youth, and Victim Services. The board must develop and publish best practices and policies relating to:

- the investigation of criminal offenses committed by police officers in the course of their official duties for (1) the State Prosecutor; (2) State’s Attorneys; and (3) law enforcement agencies; and

- selection of investigators and staff assigned to investigate or perform work relating to the investigation of criminal offenses committed by police officers in the course of their official duties.

The draft bill establishes the membership of the board, consisting of specified State officials as well as members appointed by the Governor. Appointed members serve staggered, four-year terms and are eligible for reappointment. The Governor designates the chair of the board. A member of the board may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.
By: Senator Smith

A BILL ENTITLED

AN ACT concerning

Tort Claims Acts – Limits on Liability – Law Enforcement Officers
(Maryland Police Accountability Act of 2021)

FOR the purpose of altering the limits on liability of a local government and the State and its units for claims arising from tortious acts or omissions committed by a law enforcement officer; and generally relating to liability under the Local Government Tort Claims Act and the Maryland Tort Claims Act.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 5–303
Annotated Code of Maryland
(2013 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–104
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5–303.

(a) (1) Subject to [paragraph (2)] PARAGRAPHS (2) AND (3) of this subsection, the liability of a local government may not exceed $400,000 per an individual claim, and $800,000 per total claims that arise from the same occurrence for damages
resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.

(2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

(3) (i) If the liability of a local government arises from tortious acts or omissions committed by a law enforcement officer, the limits on liability provided under paragraph (1) of this subsection:

1. Do not apply to economic damages; and

2. Shall increase for noneconomic damages:

A. For individual claims, by $15,000 on October 1 of each year beginning on October 1, 2021; and

B. For total claims that arise from the same occurrence, by $30,000 on October 1 of each year beginning on October 1, 2021.

(ii) An increase in a limit on liability under this paragraph shall apply to causes of action arising between October 1 of the year the increase occurs and September 30 of the following year.

(b) (1) Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.

(2) A local government may not assert governmental or sovereign immunity to avoid the duty to defend or indemnify an employee established in this subsection.

(c) (1) A local government may not be liable for punitive damages.

(2) (i) Subject to subsection (a) of this section and except as provided in subparagraph (ii) of this paragraph, a local government may indemnify an employee for a judgment for punitive damages entered against the employee.
(ii) A local government may not indemnify a law enforcement officer for a judgment for punitive damages if the law enforcement officer has been found guilty under § 3–108 of the Public Safety Article as a result of the act or omission giving rise to the judgment, if the act or omission would constitute a felony under the laws of this State.

(3) A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

(d) Notwithstanding the provisions of subsection (b) of this section, this subtitle does not waive any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by an employee of a local government.

(e) A local government may assert on its own behalf any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by its employee for whose tortious act or omission the claim against the local government is premised and a local government may only be held liable to the extent that a judgment could have been rendered against such an employee under this subtitle.

(f) (1) Lexington Market, Inc., in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5–406 of this title.

(2) Baltimore Public Markets Corporation, in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under § 5–406 of this title.

Article – State Government

12–104.

(a) (1) Subject to the exclusions and limitations in this subtitle and notwithstanding any other provision of law, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent provided under paragraph (2) of this subsection.

(2) (I) [The] SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE liability of the State and its units may not exceed $400,000 to a single claimant for injuries arising from a single incident or occurrence.

(II) IF LIABILITY OF THE STATE OR ITS UNITS ARISES FROM TORTIOUS ACTS OR OMISSIONS COMMITTED BY A LAW ENFORCEMENT OFFICER, THE LIMITATION ON LIABILITY UNDER SUBPARAGRAPH (I) THIS PARAGRAPH:

2. DOES NOT APPLY TO ECONOMIC DAMAGES; AND
3. SHALL INCREASE FOR NONECONOMIC DAMAGES BY $15,000 ON OCTOBER 1 OF EACH YEAR BEGINNING ON OCTOBER 1, 2021, AND THE INCREASED AMOUNT SHALL APPLY TO CAUSES OF ACTION ARISING BETWEEN OCTOBER 1 OF THAT YEAR AND SEPTEMBER 30 OF THE FOLLOWING YEAR, INCLUSIVE.

(b) Immunity is not waived under this section as described under § 5-522(a) of the Courts and Judicial Proceedings Article.

(c) (1) The Treasurer may pay from the State Insurance Trust Fund all or part of that portion of a tort claim which exceeds the limitation on liability established under subsection (a)(2) of this section under the following conditions:

(i) the tort claim is one for which the State and its units have waived immunity under subsections (a) and (b) of this section;

(ii) a judgment or settlement has been entered granting the claimant damages to the full amount established under subsection (a)(2) of this section; and

(iii) the Board of Public Works, with the advice and counsel of the Attorney General, has approved the payment.

(2) Any payment of part of a settlement or judgment under this subsection does not abrogate the sovereign immunity of the State or any units beyond the waiver provided in subsections (a) and (b) of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.
This draft bill alters the limits on liability of the State and its units under the Maryland Tort Claims Act (MTCA) and of local governments under the Local Government Tort Claims Act (LGTCA) for claims arising from tortious acts or omissions committed by a law enforcement officer.

Maryland Tort Claims Act

In general, the State is immune from tort liability for the acts of its employees and cannot be sued in tort without its consent. Under MTCA, the State statutorily waives its own common law (sovereign) immunity on a limited basis. MTCA applies to tortious acts or omissions, including State constitutional torts, by “State personnel” performed in the course of their official duties, so long as the acts or omissions are made without malice or gross negligence. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State’s color of authority or sovereign immunity and may be held personally liable.

MTCA limits State liability to $400,000 to a single claimant for injuries arising from a single incident or occurrence. Under the draft bill, this liability limit does not apply to economic damages if liability of the State or its units arises from tortious acts or omissions committed by a law enforcement officer. Furthermore, the liability limit on noneconomic damages for such a claim must increase by $15,000 on October 1 of each year beginning on October 1, 2021. The annual limit on noneconomic damages established under the draft bill applies to causes of action arising between October 1 of that year and September 30 of the following year, inclusive.

Local Government Tort Claims Act

The draft bill makes similar changes to LGTCA, which is the local government counterpart to MTCA.

Under LGTCA, a local government is liable for the tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees. LGTCA limits the liability of a local government to $400,000 per individual claim and $800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts).
Under the draft bill, these monetary limits do not apply to economic damages if the liability of a local government arises from tortious acts or omissions committed by a law enforcement officer. Also, the liability limit on noneconomic damages for such claims must increase by $15,000 for individual claims and by $30,000 for total claims that arise from the same occurrence on October 1 of each year beginning on October 1, 2021. The annual limits on noneconomic damages established under the draft bill apply to causes of action arising between October 1 of that year and September 30 of the following year, inclusive.
A BILL ENTITLED

AN ACT concerning

Public Safety – Law Enforcement Officers – Required Drug and Alcohol Testing
(Maryland Police Accountability Act of 2021)

FOR the purpose of expanding the procedures for conducting an investigation or interrogation under certain circumstances that may lead to disciplinary action, demotion, or dismissal of a law enforcement officer; establishing an exception to an existing authorization for a law enforcement agency to require a certain law enforcement officer to submit to certain testing under certain circumstances; requiring a law enforcement officer to submit to certain drug and alcohol testing under certain circumstances; requiring a law enforcement agency to direct a certain law enforcement officer to submit to certain drug and alcohol testing under certain circumstances; requiring a law enforcement agency to direct that certain drug and alcohol testing be performed by qualified medical personnel and that certain test results be promptly sent to a certain individual and unit of the law enforcement agency; authorizing a law enforcement agency to commence an action that may lead to punitive measures against a law enforcement officer if the agency orders the law enforcement officer to submit to certain testing and the law enforcement officer refuses to do so; requiring a law enforcement agency to send copies of certain test results to certain individuals within a certain number of days after receiving the results; defining certain terms; making a conforming change; and generally relating to required drug and alcohol testing of law enforcement officers.

BY repealing and reenacting, with amendments,

Article – Public Safety
Section 3–104(a) and (l)
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY adding to

Article – Public Safety
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

3–104.

(a) The 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 shall be conducted in accordance with this section, OR, IF APPLICABLE, § 3–104.1 OF THIS SUBTITLE.

(l) (1) [The] EXCEPT AS PROVIDED IN § 3–104.1 OF THIS SUBTITLE, THE law enforcement agency may order the law enforcement officer under investigation to submit to blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, polygraph examinations, or interrogations that specifically relate to the subject matter of the investigation.

(2) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure as a result of the refusal.

(3) If the law enforcement agency orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the law enforcement officer.

3–104.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DRUG AND ALCOHOL TESTING” MEANS:
(I) A TEST OF A LAW ENFORCEMENT OFFICER’S BREATH OR OF 1 SPECIMEN OF A LAW ENFORCEMENT OFFICER’S BLOOD TO DETERMINE ALCOHOL CONCENTRATION; AND

(II) A TEST OR TESTS OF 1 SPECIMEN OF A LAW ENFORCEMENT OFFICER’S BLOOD TO DETERMINE THE DRUG OR CONTROLLED DANGEROUS SUBSTANCE CONTENT OF THE LAW ENFORCEMENT OFFICER’S BLOOD.

(3) “SPECIMEN OF BLOOD” MEANS 1 SAMPLE OF BLOOD THAT IS TAKEN, IN A SINGLE PROCEDURE, IN 2 OR MORE PORTIONS IN 2 OR MORE SEPARATE VIALS.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A LAW ENFORCEMENT OFFICER SHALL SUBMIT TO DRUG AND ALCOHOL TESTING, AS DIRECTED UNDER SUBSECTION (C) OF THIS SECTION IF THE LAW ENFORCEMENT OFFICER, WHILE IN THE COURSE OF THE LAW ENFORCEMENT OFFICER’S OFFICIAL DUTIES:

(1) ENGAGES IN CONDUCT THAT RESULTS IN:

1. THE DEATH OF ANOTHER; OR

2. SERIOUS BODILY INJURY TO ANOTHER; OR

(II) DISCHARGES A FIREARM.

(2) UNLESS THE DISCHARGE OF A FIREARM BY A LAW ENFORCEMENT OFFICER RESULTS IN DEATH OR SERIOUS BODILY INJURY, THIS SUBSECTION DOES NOT APPLY TO THE DISCHARGE OF A FIREARM BY A LAW ENFORCEMENT OFFICER:

(1) AS PART OF A TRAINING EXERCISE OR DEMONSTRATION; OR

(II) IF THE AMMUNITION DISCHARGED IS NOT DESIGNED TO CAUSE DEATH OR SERIOUS BODILY INJURY.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AS SOON AS IS PRACTICABLE, A LAW ENFORCEMENT AGENCY SHALL DIRECT A LAW ENFORCEMENT OFFICER EMPLOYED BY THE LAW ENFORCEMENT AGENCY TO SUBMIT TO DRUG AND
ALCOHOL TESTING IF THE LAW ENFORCEMENT OFFICER, IN THE COURSE OF THE LAW ENFORCEMENT OFFICER’S OFFICIAL DUTIES, ENGAGES IN CONDUCT DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION.

(2) THE LAW ENFORCEMENT AGENCY SHALL DIRECT THAT:

(1) DRUG AND ALCOHOL TESTING PERFORMED UNDER THIS SECTION BE PERFORMED BY QUALIFIED MEDICAL PERSONNEL; AND

(2) PROMPTLY AFTER BECOMING AVAILABLE, COPIES OF THE RESULTS OF THE DRUG AND ALCOHOL TESTING BE SENT TO:

(1) THE HEAD OF THE LAW ENFORCEMENT AGENCY OR DESIGNEE; AND

(II) THE INTERNAL AFFAIRS DIVISION OF THE LAW ENFORCEMENT AGENCY.

(E) IF THE LAW ENFORCEMENT AGENCY ORDERS A LAW ENFORCEMENT OFFICER TO SUBMIT TO DRUG AND ALCOHOL TESTING IN ACCORDANCE WITH THIS SECTION AND THE LAW ENFORCEMENT OFFICER REFUSES TO DO SO, THE LAW ENFORCEMENT AGENCY MAY COMMENCE AN ACTION THAT MAY LEAD TO A PUNITIVE MEASURE AS A RESULT OF THE REFUSAL.

(F) WITHIN 5 DAYS AFTER RECEIVING RESULTS FROM DRUG AND ALCOHOL TESTING PERFORMED UNDER THIS SECTION, A LAW ENFORCEMENT AGENCY SHALL SEND COPIES OF THE RESULTS TO:

(1) ANY PERSON WHOSE NAME AND CONTACT INFORMATION IS KNOWN TO THE LAW ENFORCEMENT AGENCY AND WHO WAS INJURED AS A RESULT OF THE ACT RESULTING IN DRUG AND ALCOHOL TESTING UNDER THIS SECTION;

(2) THE LEGAL REPRESENTATIVE OF ANY PERSON WHO WAS KILLED AS A RESULT OF THE ACT RESULTING IN DRUG AND ALCOHOL TESTING UNDER THIS SECTION; AND

(3) THE LAW ENFORCEMENT OFFICER SUBJECT TO DRUG AND ALCOHOL TESTING UNDER THIS SECTION.
SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.
Duty to Require Drug and Alcohol Testing and to Be Tested

This draft bill requires a law enforcement agency to direct, as soon as is practicable, a law enforcement officer employed by the agency to submit to drug and alcohol testing if the officer, in the course of the officer’s official duties, (1) engages in conduct that results in the death of or serious bodily injury to another or (2) discharges a firearm. However, unless the firearm discharge results in death or serious bodily injury, the requirement does not apply to the discharge of a firearm by a law enforcement officer (1) as part of a training exercise or demonstration or (2) if the ammunition discharged is not designed to cause death or serious bodily injury.

A law enforcement officer who engages in such conduct must submit to drug and alcohol testing as directed. Otherwise, if the law enforcement officer refuses to do so, the law enforcement agency may commence an action that may lead to a punitive measure.

Requirements for Conducting the Testing and the Distribution of Results

The draft bill establishes requirements related to conducting the testing and the distribution of testing results. Specifically, a law enforcement agency must direct that the drug and alcohol testing be performed by qualified medical personnel and that copies of the results be sent to the head of the law enforcement agency (or designee) and the internal affairs division of the law enforcement agency promptly after becoming available. Also, within five days after receiving testing results, a law enforcement agency must send copies of the results to (1) any person whose name and contact information is known to the law enforcement agency and who was injured as a result of the act resulting in drug and alcohol testing; (2) the legal representative of any person who was killed as a result of the act resulting in drug and alcohol testing; and (3) the law enforcement officer subject to drug and alcohol testing.

Definitions

For purposes of the draft bill, “drug and alcohol testing” means (1) a test of a law enforcement officer’s breath or of one specimen of an officer’s blood to determine alcohol concentration and (2) a test or tests of one specimen of an officer’s blood to determine the drug or controlled dangerous substance content of the officer’s blood. “Specimen of blood” means one sample of blood that is taken, in a single procedure, in two or more portions in two or more separate vials.
JPR 13

By: Senator Smith

A BILL ENTITLED

AN ACT concerning

Maryland Police Training and Standards Commission – Certification Renewal and Recertification – Psychological Evaluations
(Maryland Police Accountability Act of 2021)

FOR the purpose of prohibiting the Maryland Police Training and Standards Commission from recertifying or renewing the certification of a police officer unless the police officer submits to a psychological evaluation; and generally relating to psychological evaluations.

BY adding to

Article – Public Safety
Section 3–209.2
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Public Safety

3–209.2.

THE COMMISSION MAY NOT RECERTIFY OR RENEW THE CERTIFICATION OF A POLICE OFFICER UNLESS THE POLICE OFFICER SUBMITS TO A PSYCHOLOGICAL EVALUATION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.
Police Officer Certification, Generally

Under current law, the Maryland Police Training and Standards Commission is responsible for certifying all police officers in the State. Each police officer certified by the commission must meet specified requirements, including that the police officer submit to a psychological evaluation.

A certification lapses automatically three years after the most recent certification, renewal, or recertification; a certification may also lapse if a police officer fails to meet the commission’s training standards. Before a certification lapses, a police officer’s certification must be automatically renewed by the commission if the officer is still employed with the same law enforcement agency, continues to meet selection and training standards, and has not had the certification suspended, revoked, or recalled. Should a certification lapse and under certain other circumstances, a police officer may apply for recertification and must then meet the requirements for initial certification, including undergoing another psychological evaluation.

Renewal and Recertification under the Draft Bill

This draft bill prohibits the commission from renewing the certification of a police officer or issuing a recertification for a police officer unless that officer has submitted to a psychological evaluation. Accordingly, to retain commission certification, every police officer in Maryland must periodically undergo psychological evaluation – generally at least every three years.