

Department of Legislative Services  
 Maryland General Assembly  
 2021 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 670

(The Speaker)(By Request - Workgroup to Address  
 Police Reform and Accountability)

Judiciary

Judicial Proceedings

Maryland Police Accountability Act of 2021 - Police Discipline and Law  
 Enforcement Programs and Procedures

This bill makes various changes that generally relate to law enforcement. Among other things, the bill (1) repeals the Law Enforcement Officers’ Bill of Rights (LEOBR) and establishes provisions that relate to a statewide accountability and discipline process for police officers; (2) alters requirements for the Maryland Police Training and Standards Commission (MPTSC) regarding training and police certification; (3) establishes two higher education financial assistance programs for police officers, with mandated appropriations; (4) increases civil liability limits applicable to police misconduct lawsuits; and (5) requires reporting on SWAT team activity and use of force complaints. **The bill takes effect July 1, 2022, but specified provisions relating to MPTSC only take effect on that date contingent on the taking effect of Chapter 60 of 2021 (Senate Bill 71).**

Fiscal Summary

**State Effect:** Total costs are unknown, but general fund expenditures increase by *at least* \$12.7 million in FY 2023, including \$10.0 million in mandated appropriations; out-years reflect minimum ongoing costs. Revenues are not materially affected. **This bill establishes mandated appropriations beginning in FY 2023.**

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	12.7	11.4	11.4	11.4	11.5
GF/SF/NonBud/Higher Ed Exp.	-	-	-	-	-
Net Effect	(\$12.7)	(\$11.4)	(\$11.4)	(\$11.4)	(\$11.5)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Local government expenditures increase significantly. Revenues are not likely affected. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful.

## Analysis

### Bill Summary:

#### *Accountability during Traffic Stops*

Absent exigent circumstances, at the commencement of a traffic stop or other stop, a police officer must (1) display proper identification to the stopped individual and (2) provide specified identifying information regarding the officer and the reason for the traffic stop or other stop. A police officer's failure to comply with the requirements (1) may be grounds for administrative disciplinary action against the officer and (2) may not serve as the basis for the exclusion of evidence under the exclusionary rule. A police officer may not prohibit or prevent a citizen from recording the police officer's actions if the citizen is otherwise acting lawfully and safely.

#### *Maryland Loan Assistance Repayment Program*

The bill establishes the Maryland Loan Assistance Repayment Program (LARP) for Police Officers in the State. The Office of Student Financial Assistance (OSFA) must distribute funds from the program to assist in the repayment of a "higher education loan" owed by a police officer who (1) receives a graduate, professional, or undergraduate degree from a public college or university in the State; (2) obtains "eligible employment"; and (3) satisfies any other criteria established by the office. OSFA must (1) adopt regulations to implement the program, which must include a limit on the total amount of assistance provided by the office in repaying the loan of an eligible individual, based on the individual's total income and outstanding higher education loan balance and (2) by January 1 each year, report to the General Assembly on the implementation of the program. The Governor must include an annual appropriation of at least \$1.5 million in the State budget for the program.

"Eligible employment" means to work as a police officer in the State for at least two years. "Higher education loan" means a loan that is obtained for tuition for undergraduate study leading to a degree in criminal law, criminology, or criminal justice.

The bill expresses legislative intent that the Maryland Higher Education Commission (MHEC) adopt similar regulations for determining award calculations as the award calculation regulations for an existing program (specifically, the Janet L. Hoffman LARP).

#### *Maryland Police Officers Scholarship Program*

The bill also establishes the Maryland Police Officers Scholarship Program to provide tuition assistance for students (1) attending a degree program that would further the student's career in law enforcement at an "eligible institution" with the intent to be a police

officer after graduation or (2) who are currently police officers attending a degree program that would further the police officer's career in law enforcement at an eligible institution. OSFA must (1) publicize the availability of the scholarship; (2) annually select eligible students and offer a scholarship to each student selected to be used at an eligible institution of the student's choice; and (3) to the extent practicable, award scholarships under the program in a manner that reflects ethnic, gender, racial, and geographic diversity.

A recipient of a scholarship must (1) be a Maryland resident or have graduated from a Maryland high school; (2) be accepted for admission or currently enrolled at an eligible institution as a full-time or part-time undergraduate or graduate student, as specified; (3) sign a letter of intent to perform the service obligation on completion of the recipient's required studies; and (4) satisfy any additional criteria MHEC may establish. A current police officer that meets the eligibility criteria is also eligible for a scholarship. A recipient of a scholarship must repay MHEC the funds received if the recipient does not (1) satisfy the degree requirements of the course of study or program or fulfill other specified requirements or (2) perform the service obligation to work as a police officer for at least five years during the eight-year period after graduation.

The annual scholarship award must be 50% of the equivalent annual tuition and mandatory fees of a resident undergraduate student at the eligible institution. The Governor must annually include in the budget bill an appropriation of at least \$8.5 million to MHEC to award scholarships, and MHEC must use (1) \$6.0 million for scholarships to students intending to become police officers after graduation and (2) \$2.5 million for scholarships to existing police officers to attend an eligible institution and remain a police officer after graduation.

"Eligible institution" means a public senior (four-year) higher education institution in the State.

### *Civil Liability*

The bill increases the limits on civil liability for claims subject to the Maryland Tort Claims Act (MTCA) and the Local Government Tort Claims Act (LGTCA) that arise from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer. Accordingly, the limit is generally \$890,000 for both economic and noneconomic damages for all claims arising out of the same incident or occurrence, regardless of the number of claimants or beneficiaries who share in the award. For MTCA, the limit is increased from \$400,000 to a single claimant for injuries arising from a single incident or occurrence, and for LGTCA, the limit is increased from \$400,000 per an individual claim and \$800,000 per total claims that arise from the same occurrence.

However, in a wrongful death action in which there are two or more claimants or beneficiaries, an award for noneconomic damages may not exceed 150% of the limitation (specifically \$1,335,000), regardless of the number of claimants or beneficiaries who share in the award. These provisions apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim arising from a tortious act or omission committed by a law enforcement officer on or before June 30, 2022.

*Repeal of the Law Enforcement Officers' Bill of Rights and Establishment of New Accountability and Discipline Process for Police Officers*

The bill repeals LEOBR in its entirety and establishes new provisions relating to police accountability and discipline, discussed below. A law enforcement agency may not negate or alter any of the requirements relating to specified police officer accountability and discipline through collective bargaining. Provisions relating to the accountability and discipline process and administrative charging committees apply prospectively and may not be applied or interpreted to have any effect or application to (1) any *bona fide* collective bargaining agreement entered into by June 30, 2022, for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original contract or (2) a disciplinary matter against a law enforcement officer based on alleged misconduct occurring before July 1, 2022.

*Police Accountability Boards:* Each county must have a police accountability board to:

- hold quarterly meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the county government to improve matters of policing;
- appoint civilian members to charging committees and trial boards;
- receive complaints of police misconduct filed by members of the public;
- on a quarterly basis, review outcomes of disciplinary matters considered by charging committees; and
- by December 31 each year, submit a report to the governing body of the county that identifies any trends in the disciplinary process of police officers in the county and makes recommendations on changes to policy that would improve police accountability in the county.

The local governing body must (1) establish the membership of and the budget and staff for a police accountability board; (2) appoint a chair for a police accountability board, as specified; and (3) establish the procedures for record keeping by a police accountability board. An active police officer may not be a member, and to the extent practicable, the membership must reflect the racial, gender, and cultural diversity of the county.

*Administrative Charging Committees:* Each county must have one administrative charging committee to serve countywide law enforcement agencies and local law enforcement agencies in the county, and there must be at least one statewide administrative charging committee to serve statewide and bi-county law enforcement agencies. An administrative charging committee must (1) review the findings of a law enforcement agency's investigation; (2) make a determination as to whether or not to administratively charge the police officer who is the subject of the investigation; (3) if the police officer is charged, recommend discipline in accordance with the law enforcement agency's disciplinary matrix, as specified; (4) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct; (5) authorize a police officer called to appear before an administrative charging committee to be accompanied by a representative; (6) issue a written opinion that describes in detail its findings, determinations, and recommendations; and (7) forward the written opinion to the chief of the law enforcement agency, the police officer, and the complainant. The bill authorizes an administrative charging committee to request specified information and make specified determinations.

The bill establishes requirements regarding the composition of a county and statewide administrative charging committee. In addition, the bill requires an individual to receive training on matters relating to police procedures from MPTSC before serving as a member of an administrative charging committee.

*Investigation of Citizen Complaints:* An individual may file a complaint of police misconduct with a police accountability board or the law enforcement agency that employs the police officer who is the subject of the complaint. A complaint of police misconduct filed with a police accountability board or the law enforcement agency must include specified information but need not be notarized. If filed with a police accountability board, the complaint must be forwarded to the appropriate law enforcement agency within three days of receipt, and each such complaint by a member of the public must be immediately reviewed by the investigating unit of the law enforcement agency.

On completion of an investigation, the law enforcement agency must forward the investigatory files for the complaint to the appropriate administrative charging committee. The administrative charging committee must review and make a determination or ask for further review within 30 days after completion of the investigating unit's review. The process for review by the investigating unit through disposition by the administrative charging committee must be completed within one year and one day after the filing of a complaint by a citizen.

*Disciplinary Matrix:* MPTSC must develop and adopt, by regulation, a model uniform disciplinary matrix for use by each law enforcement agency in the State, and each law enforcement agency must adopt the matrix.

Within 15 days after an administrative charging committee issues an administrative charge against a police officer, the chief of the law enforcement agency must offer discipline to the police officer who has been administratively charged in accordance with the disciplinary matrix. The chief may offer the same discipline that was recommended by the administrative charging committee or a higher degree of discipline within the applicable range of the disciplinary matrix but may not deviate below the discipline recommended by the administrative charging committee. If the police officer accepts the chief's offer of discipline, the offered discipline must be imposed. However, if the police officer does not accept the chief's offer of discipline, the matter must be referred to a trial board. At least 30 days before a trial board proceeding begins, the police officer must be provided a copy of the investigatory record and notified of the charges against the police officer and the recommended disciplinary action.

*Trial Board Process:* Each law enforcement agency must establish a trial board process to adjudicate matters for which a police officer is subject to discipline; however, a small law enforcement agency may use the trial board process of another law enforcement agency by mutual agreement. The bill requires an individual, before serving as a member of a trial board, to receive training on matters relating to police procedures from MPTSC.

A trial board must be composed of (1) an actively serving or retired administrative law judge or a retired judge of the District Court or a circuit court, appointed by the chief executive officer of the county; (2) a civilian who is not a member of an administrative charging committee, appointed by the county's police accountability board; and (3) a police officer of equal rank to the police officer who is accused of misconduct, appointed by the head of the law enforcement agency.

With specified exceptions, proceedings of a trial board must be open to the public. A trial board may administer oaths and issue subpoenas as necessary to complete its work. A complainant has the right to be notified of a trial board hearing and, with specified exceptions, the right to attend a trial board hearing. A police officer may be disciplined only for cause; with specified exceptions, a law enforcement agency has the burden of proof by a preponderance of the evidence.

Within 30 days after the date of issuance of a decision of a trial board, the decision may be appealed by the employee, as specified. An appeal taken from a trial board decision must be on the record, and a trial board decision that is not appealed is final.

*Suspensions and Terminations:* Pending an investigatory, administrative charging committee, and trial board process, the chief may impose an emergency suspension with pay or, for at most 30 days, without pay if the chief determines that such a suspension is in the best interest of the public. If an administrative charging committee determines not to

administratively charge a police officer in connection with the matter on which a suspension without pay is based, the police officer is entitled to receive back pay.

A chief or a chief's designee may suspend a police officer without pay and suspend the police officer's police powers on an emergency basis if the police officer is charged with specified crimes. A police officer who was suspended without pay is entitled to receive back pay if the criminal charge or charges against the police officer result in a finding of not guilty, an acquittal, a dismissal, or a *nolle prosequi*.

The chief must terminate the employment of a police officer who is convicted of a felony and may terminate the employment of a police officer who (1) receives a probation before judgment for a felony or (2) is convicted of a misdemeanor committed in the performance of duties as a police officer, misdemeanor second-degree assault, or a misdemeanor involving dishonesty, fraud, theft, or misrepresentation.

In connection with a disciplinary matter, a police officer may be required 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. If a police officer is required to submit to a test, examination, or interrogation and the police 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. However, if a police officer is required to submit to a test, examination, interrogation, or polygraph examination, the results are not admissible or discoverable in a criminal proceeding against the police officer.

*Victims' Rights Advocates:* A law enforcement agency must designate an employee as a victims' rights advocate to act as the contact for the public within the agency on matters related to police misconduct. A victims' rights advocate must (1) explain to the complainant specified information regarding the disciplinary process; (2) provide a complainant with an opportunity to review a police officer's statement, if any, before completion of an investigation by a law enforcement agency's investigative unit; (3) notify a complainant of the status of the case at every stage of the process; and (4) provide a case summary to a complainant within 30 days after final disposition of the case.

*Database to Track Complaints:* Each law enforcement agency must create a database that enables a complainant to enter the complainant's case number to follow the status of the case, as specified.

*Police Officer Rights:* Both a police officer who is the subject of a complaint of police misconduct and a complainant may have the assistance of a representative in connection with disciplinary proceedings.

A police officer may not be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against or threatened in regard to the police officer's employment because the police officer (1) disclosed information that evidences mismanagement, a waste of government resources, a danger to public health or safety, or a violation of law or policy committed by another police officer or (2) lawfully exercised constitutional rights. A police officer may not be denied the right to bring suit arising out of the police officer's official duties and has the same rights to engage in political activity as a State employee, except when on duty. A law enforcement agency may not prohibit secondary employment by a police officer but may adopt reasonable regulations that relate to secondary employment by a police officer.

*Expungement and Destruction of Records:* A record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, may not be expunged or destroyed by a law enforcement agency.

#### *Other Accountability Provisions*

The bill enhances accountability through several additional provisions. As discussed below, certain provisions relating to MPTSC that take effect on July 1, 2022 – the same date as all other provisions in the bill – are also contingent on the taking effect of Chapter 60 of 2021 ([Senate Bill 71](#), Maryland Police Accountability Act of 2021 – Body-Worn Cameras, Employee Programs, and Use of Force).

*Maryland Police Training and Standards Commission – Provisions That Are Not Contingent:* An individual who applies for a position as a police officer must disclose to the hiring law enforcement agency all prior instances of employment as a police officer at other law enforcement agencies and authorize the hiring law enforcement agency to obtain the police officer's full personnel and disciplinary record from each law enforcement agency that previously employed the police officer. The hiring law enforcement agency must certify to MPTSC that the law enforcement agency has reviewed the applicant's disciplinary record. Prior marijuana use may not be the basis for disqualifying an applicant for a position as a police officer.

*Maryland Police Training and Standards Commission – Contingent Provisions:* The bill alters the composition of MPTSC and requires it to:

- require specified training in the proper level and use of force, as set forth in the Maryland Use of Force Statute established under Senate Bill 71;
- develop and administer a training program on matters relating to police training and standards for citizens who are appointed to serve on the commission;

- develop and administer a training program on matters relating to police procedures for individuals who intend to qualify and participate as a member of a trial board or administrative charging committee (rather than a hearing board under LEOBR);
- hold law enforcement agencies accountable for violations of the “Use of Force Statute” established by Senate Bill 71 and work with the Comptroller and the Governor’s Office of Crime Prevention, Youth, and Victim Services (GOCPYVS) to ensure that State grant funding is withheld from a law enforcement agency that violates those provisions; and
- develop a test and training for implicit bias (subject to the availability of implicit bias testing standards that are generally accepted by experts in the field of police psychology), require all law enforcement agencies to use the test in the hiring process, and require all new and existing police officers to complete implicit bias testing and training, as specified.

Subject to specified hearing provisions, MPTSC may suspend or revoke the certification of a police officer who violates the Use of Force Statute established by Senate Bill 71. MPTSC must revoke the certification of specified police officers who have been convicted of specified crimes or previously fired or resigned while being investigated for serious misconduct or use of excessive force. In addition, MPTSC must create a statewide database to track police officer decertifications due to improper use of force.

The requirements for certification of a police officer by MPTSC are expanded to require each individual to submit to (1) a specified mental health screening (instead of a psychological evaluation) and (2) a specified physical agility assessment. As a condition of certification, a police officer must submit to a mental health assessment every two years and an annual physical agility assessment to establish continuing fitness to carry out the officer’s assigned duties as a police officer. Prior marijuana use is not a disqualifier for certification as a police officer.

*SWAT Team Reports:* The bill restores the data collection and reporting program related to law enforcement “SWAT team” activities that was established by Chapters 542 and 543 of 2009 and that terminated June 30, 2014. Beginning July 1, 2022, the information must be reported biannually to GOCPYVS. GOCPYVS must analyze and summarize the reports submitted by law enforcement agencies, and by September 1 each year, GOCPYVS must publish the report on its website and submit it to the Governor, the General Assembly, and each law enforcement agency. GOCPYVS must report noncompliance to MPTSC. MPTSC must request compliance, and GOCPYVS and MPTSC must jointly report further noncompliance, as specified.

*Use of Force Reports:* By March 1 each year, each law enforcement agency must submit to MPTSC the number of use of force complaints made against its police officers during

the previous calendar year, as specified, and by July 15 each year, MPTSC must post on its website and submit to the General Assembly a compendium of the information submitted by law enforcement agencies. GOCPYVS may not make any grant funds available to a law enforcement agency that has not submitted the required report to MPTSC by July 1.

*Additional Public Transparency:* Each law enforcement agency must post in a prominent public location an explanation of the procedures for filing a complaint of police officer misconduct and a request to obtain records relating to an administrative or criminal investigation of misconduct by a police officer under the Public Information Act.

*Report Required by the Emergency Number Systems Board*

By December 31, 2022, the Emergency Number Systems Board must study and report to the House Judiciary Committee and the Senate Judicial Proceedings Committee regarding whether certain types of calls for 9-1-1 service should be diverted to a person or entity other than law enforcement agencies.

**Current Law:**

*Loan Assistance Repayment Program*

*General Provisions:* LARP provides loan repayment assistance in exchange for certain service commitments to help ensure that underserved areas of the State have sufficient numbers of primary care physicians, physician assistants, dentists, lawyers, and other professionals serving those areas or low-income families. The program is subdivided into the Janet L. Hoffman LARP, the Maryland Dent-Care LARP, and the Maryland LARP for Physicians and Physician Assistants. Individuals must have received a graduate, professional, or undergraduate degree from a college or university in the State or a school of law or have received a resident teacher certificate from the Maryland State Department of Education after completing an approved alternative teaching preparation program. They must also be employed full time in State or local government or in a nonprofit organization that assists low-income, underserved residents or underserved areas in the State.

*Awards under the Janet L. Hoffman LARP:* For the Janet L. Hoffman LARP, awards are determined by an applicant's overall reported educational debt at the time of application and they lock into an award level that contains set award amounts. Award funds are distributed annually over a three-year period as long as the recipient remains eligible and continues to submit the required annual employment, lender, and tax documentation by the deadline.

### *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. Under MTCA, the State essentially “waives sovereign or governmental immunity and substitutes the liability of the State for the liability of the state employee committing the tort.” *Lee v. Cline*, 384 Md. 245, 262 (2004).

MTCA covers a multitude of personnel, including some local officials and nonprofit organizations. 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.

### *Local Government Tort Claims Act*

LGTCGA defines “local government” to include counties, municipal corporations, Baltimore City, and various agencies and authorities of local governments such as community colleges, county public libraries, special taxing districts, nonprofit community service corporations, sanitary districts, housing authorities, and commercial district management authorities. It further establishes that the local government is liable for the tortious acts or omissions of its employees acting within the scope of employment. Thus, LGTCGA prevents local governments from asserting a common law claim of governmental immunity from liability for such acts or omissions of its employees.

Pursuant to Chapter 131 of 2015, for causes of action arising on or after October 1, 2015, LGTCGA 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).

### *Maryland Police Training and Standards Commission*

MPTSC, an independent commission within the Department of Public Safety and Correctional Services (DPSCS), operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

Among other requirements, MPTSC requires, for entrance-level police training and, as determined by MPTSC, for in-service level training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include (1) training in lifesaving techniques, including cardiopulmonary resuscitation; (2) training in the proper level and use of force; (3) training regarding sensitivity to cultural and gender diversity; and (4) training regarding individuals with physical, intellectual, developmental, and psychiatric disabilities. In addition, MPTSC requires for entrance-level police training and at least every two years for in-service level police training conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special training, attention to, and study of the application of antidiscrimination and use of force de-escalation training.

### *SWAT Team Reports*

Chapters 542 and 543 of 2009 required a law enforcement agency that maintains a SWAT team to report specified information related to SWAT team activities on a biannual basis to the (then named) Governor's Office of Crime Control and Prevention (GOCCP, now GOCPYVS) and the appropriate county or municipality. MPTSC, known at the time as the Police Training Commission, in consultation with GOCCP, developed a standardized format for the reports. GOCCP analyzed and summarized the biannual reports and submitted a report of the analyses and summaries to the Governor, the General Assembly, and each law enforcement agency by September 1 of each year. The provisions of Chapters 542 and 543 terminated June 30, 2014.

Chapter 803 of 2017 requires MPTSC to consult and cooperate with commanders of "SWAT teams" to develop standards for training and deployment of SWAT teams and of law enforcement officers who are not members of a SWAT team who conduct no-knock warrant service in the State based on best practices in the State and nationwide. "SWAT team" means an agency-designated unit of law enforcement officers who are selected, trained, and equipped to work as a coordinated team to resolve critical incidents that are so hazardous, complex, or unusual that they may exceed the capabilities of first responders or investigative units.

### *Use of Force*

Common law allowed police officers to use any force necessary to effectuate a felony arrest; however, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the U.S. Supreme Court held that when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." In *Graham v. Connor*, 490 U.S. 386 (1989), the Supreme Court expanded its definition to include the objective reasonableness standard. The court held that the Fourth Amendment

“reasonableness” inquiry is “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” In *Randall v. Peaco*, 175 Md. App. 320 (2007), the Court of Special Appeals applied principles of the *Graham v. Connor* case and stated that the test for determining the objective reasonableness of an officer’s conduct for purposes of deciding a claim of excessive force brought under the State constitution is the test the Supreme Court announced in *Graham v. Connor*.

### *Law Enforcement Officers’ Bill of Rights*

LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of specified State and local agencies but does not extend to any correctional officers in the State. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. For additional information on LEOBR, see the **Appendix – Law Enforcement Officers’ Bill of Rights – Current Law/Background**.

**Background:** In May 2020, Speaker of the House Adrienne A. Jones and House Judiciary Committee Chairman Luke Clippinger created an interim Workgroup to Address Police Reform and Accountability in Maryland. The workgroup was charged with (1) reviewing policies and procedures relating to the investigation of police misconduct, including LEOBR; (2) determining the viability of uniform statewide use of force policies and arrest procedures; (3) reviewing practices regarding the use of body cameras and disclosure of body camera footage; and (4) identifying national best practices for independent prosecution of law enforcement-related crimes.

The workgroup held eight meetings between June and October 2020 and received testimony from MPTSC, national experts on criminology and policing, public interest advocates, members of the public, law enforcement representatives, the Office of the Public Defender, and State’s Attorneys. This bill addresses a subset of the recommendations made by the workgroup. The workgroup’s December 2020 final report can be found [here](#).

**State Revenues:** Any repayment of awarded scholarships necessitated due to recipients not satisfying degree requirements or not fulfilling the service obligation is not anticipated to be material and would likely occur beyond the time period covered by this fiscal and policy note.

**State Expenditures:** A reliable estimate of the overall effect of the bill on State expenditures cannot be made at this time, as information regarding the fiscal effect of some of the bill’s provisions is not available. However, the Department of Legislative Services (DLS) has been able to quantify the fiscal effect of several of the bill’s provisions, given certain assumptions and limitations. With respect to the provisions that DLS has been able to quantify, under the assumptions discussed below, general fund expenditures increase by *at least* \$12.7 million in fiscal 2023, which accounts for the bill’s July 1, 2022 effective date. This amount represents costs only for certain State agencies – MHEC, the Department of State Police (DSP), and DPSCS – to implement only certain provisions of the bill. Costs that have not been able to be quantified are discussed more broadly below.

*Maryland Higher Education Commission*

General fund expenditures for MHEC to administer the two higher education financial assistance programs increase by \$213,013 in fiscal 2023, which accounts for the bill’s July 1, 2022 effective date. This estimate reflects the cost of hiring one full-time administrative specialist to administer both the Maryland LARP for Police Officers and the Maryland Police Officers Scholarship Program. It includes a salary, fringe benefits, one-time start-up costs, one-time programming costs to program the Maryland College Aid Processing System (MDCAPS) for both programs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$67,196
Programming for MDCAPS	140,072
One-time Start-up and Other Operating Expenses	<u>5,745</u>
<b>FY 2023 MHEC Administrative Expenditures</b>	<b>\$213,013</b>

Future year administrative expenditures reflect annual salary increases, employee turnover, and ongoing operating expenses.

*Mandated Appropriation – Maryland Loan Assistance Repayment Program for Police Officers*

The bill mandates that the Governor include an annual appropriation of at least \$1.5 million for the Maryland LARP for Police Officers; thus, general fund expenditures increase by at least \$1.5 million annually beginning in fiscal 2023. Awards are to be calculated similar to those for the Janet L. Hoffman LARP.

*Mandated Appropriation – Maryland Police Officers Scholarship Program*

The bill mandates that the Governor include an annual appropriation of at least \$8.5 million for MHEC to disburse scholarships under the new Maryland Police Officer Scholarship

Program; thus, general fund expenditures increase by at least \$8.5 million annually beginning in fiscal 2023. Of that amount, MHEC must use at least \$6.0 million for scholarships to students *intending* to become police officers after graduation and \$2.5 million for scholarships for *existing* police officers to attend a specified eligible institution and remain a police officer after graduation.

*Department of State Police*

General fund expenditures for DSP increase by *at least* \$1.5 million in fiscal 2023, which accounts for the bill’s July 1, 2022 effective date. This estimate reflects the cost of hiring a full-time administrative specialist to manage the database to track complaints against law enforcement officers. It also reflects costs related to the required mental health screenings and initial programming and maintenance costs for the database. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$74,445
Database Programming and Maintenance	1,200,000
Contractual Services	240,402
One-time Start-up and Other Operating Expenses	<u>5,745</u>
<b>FY 2023 Minimum DSP Expenditures</b>	<b>\$1,520,592</b>

The information and assumptions used in calculating contractual services and database costs are stated below.

- Contractual services for the required mental health screenings are estimated to cost \$240,402 annually (\$309 per screening for approximately 1,556 law enforcement officers every two years or 778 officers annually).
- Programming costs, licensing, and storage for a database that enables a complainant to enter a case number to follow the status of a disciplinary case against a law enforcement officer are estimated at \$1.2 million in fiscal 2023; although it is unclear whether the system will be fully functional by July 1, 2022. Annual maintenance costs of \$150,000 are anticipated annually thereafter.

Future year expenditures also reflect annual salary increases, employee turnover, and ongoing operating expenses. To the extent that DSP needs to hire additional staff to serve as a victims’ rights advocate, expenditures increase further.

It is assumed that DSP can implement several of the bill’s other provisions (*e.g.*, SWAT team reporting, traffic stops, etc.) with existing budgeted resources.

*Department of Public Safety and Correctional Services*

General fund expenditures for DPSCS increase by *at least* \$1.0 million in fiscal 2023, which accounts for the bill’s July 1, 2022 effective date. This estimate reflects the cost of hiring two administrators, two records specialists, two research and training specialists, one administrative aide, and two law enforcement agency liaisons to modify police training curricula, track compliance, track police officer decertifications, develop a uniform disciplinary matrix, handle required reporting, and annually audit the increased training and reporting required under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including consultant costs and overtime relating to the required physical agility and mental health assessments.

Positions	9.0
Salaries and Fringe Benefits	\$699,447
Contractual Services	260,000
One-time Start-up Costs	45,810
Other Operating Expenses	<u>5,895</u>
<b>FY 2023 Minimum DPSCS Expenditures</b>	<b>\$1,011,152</b>

The information and assumptions used in calculating contractual services costs are stated below.

- MPTSC does not currently have subject matter experts regarding implicit bias training; therefore, the commission must consult and contract with subject matter experts to develop the required test and training, estimated at \$200,000 initially and then \$100,000 annually thereafter.
- Additional physical agility and mental health assessments are estimated to cost \$60,000 annually in consultant costs and overtime.

This estimate does not include any costs for the development of a database to track use of force complaints. Accordingly, costs are higher.

Future year expenditures also reflect annual salary increases, employee turnover, and ongoing operating expenses.

*Governor’s Office of Crime Prevention, Youth, and Victim Services*

GOCPYVS advises that handling the bill’s SWAT team information collection and reporting requirements necessitates hiring a full-time data analyst; however, DLS disagrees and advises that the requirement can likely be handled with existing resources given the

agency's extensive past involvement in SWAT team reporting and the modest number of SWAT team activations that occur.

It is assumed that the bill's provisions regarding withholding grant funding from law enforcement agencies for specified violations does not affect the overall finances of GOCPYVS.

#### *State Treasurer's Office and State Insurance Trust Fund*

Special fund expenditures increase, perhaps significantly, if the bill results in higher payments from the State Insurance Trust Fund (SITF) for claims filed under MTCA or increased litigation costs for MTCA cases. General fund expenditures increase for State agencies subject to higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill. Additional personnel expenditures may be incurred by affected agencies to address additional or more complex claims and litigation under the bill.

Claims under MTCA are paid out of SITF, which is administered by the State Treasurer's Office (STO). Agencies pay premiums to SITF comprising an assessment for each employee covered and SITF payments for torts committed by the agency's employees. The portion of the assessment attributable to losses is allocated over five years. An agency's loss history, consisting of settlements and judgments incurred since the last budget cycle, comprises part of the agency's annual premium.

STO's Insurance Division received 3,646 new claims during fiscal 2020 and projects that it will receive 3,875 new claims in fiscal 2021. To date, there are approximately 150 to 200 cases in litigation under MTCA each year. According to STO, payments above the threshold of \$50,000 totaled \$2.1 million in fiscal 2021. One-third of these cases involve actions of law enforcement officers; the bill increases overall payments associated with these types of claims.

STO estimates that it will receive more claims under the bill each year. Additional personnel expenditures may be incurred to handle the increased volume and complexity of cases expected under the bill, including claims adjusters in STO and assistant Attorneys General. Assistant Attorneys General assigned to State agencies and a supervising tort assistant Attorney General in STO litigate MTCA cases. Agencies pay the salaries of their assistant Attorneys General. The salary of the supervising tort assistant Attorney General and all other litigation costs (*e.g.*, depositions, experts, etc.) are paid out of SITF. *For illustrative purposes only*, the salary of one adjuster is approximately \$71,300 in fiscal 2023 and \$75,800 in fiscal 2027; the salary of one assistant Attorney General for such cases is approximately \$154,400 in fiscal 2023 and \$162,500 in fiscal 2027.

Furthermore, additional litigation costs may be incurred to the extent that litigation costs are proportionate to the value of the claim. STO advises that, on average, in a case where MTCA's full \$400,000 liability is required, litigation costs (aside from costs associated with the time value of State personnel) amount to approximately 25% of the value of the claim, or \$100,000 per case. For example, the use of a police force expert in litigation costs approximately \$80,000 to \$120,000 per case.

#### *Other Effects on State Agencies with Law Enforcement Units*

In addition to the costs identified above for specified State law enforcement agencies, other State agencies with law enforcement units are also affected. For example, the Department of General Services, the Natural Resources Police within the Department of Natural Resources, the Maryland Department of Transportation, the University System of Maryland, and Morgan State University anticipate costs for overtime, evaluations, training, and reporting. As a result, State expenditures (multiple fund types) increase significantly beginning in fiscal 2023.

A number of requirements within the bill result in significant operational impacts for law enforcement agencies, including modifications to police officer certification requirements, among others. Further, repealing LEOBR has a significant operational impact on State law enforcement agencies. Since 1974, law enforcement officers have been disciplined under LEOBR procedures. While law enforcement agencies will no longer incur costs relating to implementing the specific requirements of LEOBR, they will incur costs to develop and implement the new accountability and discipline process (including creation of a database for citizens to be able to track complaints of police misconduct, hiring victims' rights advocates, and establishing administrative charging committees) required by the bill. In addition, it is unclear which agency provides staff for the statewide administrative charging committee, but additional costs are incurred as a result.

#### *Other Provisions*

It is also assumed that the Emergency Number Systems Board can complete the required study and report with existing resources.

**Local Fiscal Effect:** Overall, the bill is anticipated to increase local government expenditures. Several provisions may result in significant operational as well as fiscal impacts for local law enforcement agencies. Among others, these include the establishment of a new accountability and discipline process and changes to police officer certification requirements and training. Some of these effects are discussed in more detail below.

While local law enforcement agencies will no longer incur costs relating to implementing the specific requirements of LEOBR, they will incur costs to develop and implement the

new accountability and disciplinary process. For example, among other requirements, under the bill, each county is required to have an administrative charging committee and a police accountability board.

Although several local jurisdictions currently provide training for use of force and require physical agility assessments, to the extent that local jurisdictions must purchase new equipment, modify training and assessments, establish police accountability boards and administrative charging committees, and develop databases for citizens to be able to track complaints of police misconduct, local expenditures increase, potentially significantly.

The bill may also result in a significant increase in expenditures for local governments to (1) pay claims that exceed the current limits on liability under LGTCA; (2) pay claims if higher liability caps increase the overall value of claims below the current limits; (3) pay claims that are filed as a result of the increased liability caps; and (4) pay increased insurance premiums for coverage of LGTCA claims.

Some local governments covered under LGTCA obtain insurance coverage through the Local Government Insurance Trust (LGIT), a self-insurer that is wholly owned by its member local governments. The bill increases indemnity, legal defense, and (for those who are not self-insured) insurance costs for counties and their insurers. LGIT assesses premiums based on the projected claims and losses of its members. If claims increase in volume or amount as a result of the bill, insurance premiums for its members also increase.

According to LGIT, increases in the liability caps likely encourage attorneys to file claims in marginal cases where, although a large judgment is unlikely, the local government may elect to settle in order to avoid the financial costs and other burdens associated with litigation. For instance, after the LGTCA tort caps increased in 2015, LGIT advises that from fiscal 2015 through 2020, it experienced a 40% increase in claims paid and reserves (total incurred); law enforcement claims experienced a 35% increase during that same time period. LGIT expects similar increases under the bill. The bill also creates exposure to liability above the tort caps for law enforcement claims. Due to a lack of similar experience and the unpredictability of judgments that may arise, LGIT is unable to project or estimate the effect of this component of the bill.

The bill's provisions regarding the establishment of policies relating to traffic stops, as well as the bill's provision regarding the possible withholding of grant funds from GOCPYVS, are not anticipated to materially affect local finances.

**Small Business Effect:** The bill may have a meaningful impact on small business law firms that secure higher judgment awards for their clients as a result of the bill.

## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Maryland Commission on Civil Rights; Baltimore City; Anne Arundel, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico counties; Maryland Association of Counties; cities of Bowie and Frostburg; Maryland Municipal League; Office of the Attorney General; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; Department of Budget and Management; Department of General Services; Department of Natural Resources; Treasurer's Office; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Governor's Office of Crime Prevention, Youth, and Victim Services; Local Government Insurance Trust; Department of Legislative Services

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## **Appendix**

# **Law Enforcement Officers' Bill of Rights – Current Law/Background**

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The Law Enforcement Officers' Bill of Rights (LEOBR), Title 3, Subtitle 1 of the Public Safety Article, was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of specified State and local agencies.

### **Investigation of a Complaint**

*Statute of Limitations:* Except for charges that relate to criminal activity or excessive force, the statute of limitations for a law enforcement agency to bring administrative charges against a law enforcement officer is one year after the act that gives rise to the charges comes to the attention of the appropriate law enforcement agency official.

*Procedures:* A complaint against a law enforcement officer alleging brutality in the execution of the officer's duties may not be investigated unless the complaint is signed and sworn to, under penalty of perjury.

If an individual files a complaint alleging brutality within 366 days after the alleged brutality occurred, a law enforcement agency must investigate the matter. There is no time limitation on a law enforcement agency to launch an investigation on its own initiative. The law enforcement officer under investigation must be informed of the name, rank, and command of the law enforcement officer in charge of the investigation, the interrogating officer, and each individual present during an interrogation. Before an interrogation, the law enforcement officer under investigation must be informed in writing of the nature of the investigation. If the officer is under arrest or is likely to be placed under arrest as a result of the interrogation, the officer must be informed completely of all of the officer's rights before the interrogation begins.

Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation must be conducted at a reasonable hour, preferably when the officer is on duty. Unless otherwise authorized by the officer under investigation, the interrogation is required to take place (1) at the office of the command of the investigating officer or at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the investigating officer, or (2) at another reasonable and appropriate place.

The officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action. On request, the officer has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who must be present and available for consultation at all times during the interrogation. The interrogation must be suspended for a period of up to five business days until representation is obtained. Within that five-business day period, the chief, for good cause shown, may extend the period for obtaining representation. The officer may waive this right to representation.

A complete written, taped, or transcribed record must be kept of the entire interrogation, including all recess periods. Upon completion of the investigation, and on request, a copy of the record of the interrogation must be made available at least 10 days before a hearing.

*Testing:* The law enforcement agency may order the officer 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. The results are not admissible or discoverable in a criminal proceeding against the law enforcement officer. The results of the polygraph examination may be used as evidence in an administrative hearing if the agency and the officer agree to the admission. If the officer refuses to submit to a test, polygraph examination, or interrogation, the agency may commence an action that may lead to a punitive measure as a result of the refusal.

*Investigation File:* Upon completion of an investigation and at least 10 days before a hearing, the officer must be (1) notified of the name of each witness and of each charge and specification against the officer and (2) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to execute a specified confidentiality agreement. The law enforcement officer must pay a reasonable charge for the cost of reproducing the material.

The law enforcement agency may exclude from the exculpatory information provided to a law enforcement officer (1) the identity of confidential sources; (2) nonexculpatory information; and (3) recommendations as to charges, disposition, or punishment. The agency may not insert adverse material into a file of the officer, except the file of the internal investigation or the intelligence division, unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material. The law enforcement officer may waive this right.

## **Procedures Following Recommendation for Discipline**

*Hearing Board Formation:* If the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay,

reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board to contest the agency's action. A law enforcement officer who has been convicted of a felony is not entitled to a hearing.

The law enforcement agency must give notice to the officer of the right to a hearing by a hearing board, which includes the time and place of the hearing and the issues involved. The hearing must be open to the public unless the chief finds a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness.

A hearing board must consist of at least three voting members who are appointed by the chief and chosen from law enforcement officers within that law enforcement agency or another law enforcement agency and have had no part in the investigation or interrogation. At least one member of the hearing board must be of the same rank as the law enforcement officer against whom the complaint is filed.

A chief may appoint, as a nonvoting member of the hearing board, one member of the public who has received training administered by the Maryland Police Training and Standards Commission (MPTSC) on LEOBR and matters relating to police procedures. If authorized by local law, the hearing board may include up to two nonvoting or voting members of the public who have received training by MPTSC on LEOBR and matters relating to police procedures. At the Johns Hopkins University, if authorized by local law, a hearing board *must* include two voting members of the public who have received training administered by MPTSC on LEOBR and matters relating to police procedures.

*Alternative Hearing Board:* A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board. Subject to certain requirements, a law enforcement officer may elect the alternative hearing method of forming a hearing board.

*Subpoenas:* In connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.

*Hearing Board Procedures:* The hearing board must give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved. Each party may be represented by counsel, has the right to cross-examine witnesses who testify, and may submit rebuttal evidence. The standard of proof in a hearing before a board is preponderance of the evidence. An official record, including testimony and exhibits, must be kept of the hearing.

*Disposition:* After a disciplinary hearing and a finding of guilt, the hearing board may recommend the discipline it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of pay, reassignment, or other similar actions that is considered punitive. The decision, order, or action taken as a result of a hearing must be in writing and accompanied by findings of fact, including a concise statement on each issue in the case.

The decision of the hearing board as to finding of fact and any discipline is final if (1) a chief is an eyewitness to the incident or (2) a law enforcement agency or the agency's superior governmental authority has agreed with an exclusive collective bargaining representative that the decision is final. The decision of the hearing board may then be appealed.

Within 30 days after receipt of the recommendations of the hearing board, the chief must review the findings, conclusions, and recommendations of the hearing board and issue a final order. If the agency or the agency's superior governmental authority has *not* agreed with an exclusive collective bargaining representative that the hearing board decision is final, the discipline issued by the chief under the final order may, under certain circumstances, diverge from the discipline recommended by the hearing board. The final order may be appealed to the circuit court.

*Expungement:* On written request, a law enforcement officer may have expunged from any file the record of a formal complaint if at least three years have passed since the final disposition by the law enforcement agency or hearing board and (1) the law enforcement agency that investigated the complaint exonerated the law enforcement officer of all charges in the complaint or determined that the charges were unsustainable or unfounded or (2) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty. Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the officer is eligible for expungement of the formal complaint.

*Summary Punishment:* Summary punishment may be imposed for minor violations of law enforcement agency rules and regulations if the facts that constitute the minor violation are not in dispute, the law enforcement officer waives the hearing provided under LEOBR, and the law enforcement officer accepts the punishment imposed by the highest ranking law enforcement officer, or individual acting in that capacity, of the unit to which the law enforcement officer is attached. Summary punishment may not exceed suspension of three days without pay or a fine of \$150.

*Suspension of Police Powers:* The chief may impose emergency suspension with pay if it appears that the action is in the best interest of the public and the law enforcement agency. If the law enforcement officer is suspended with pay, the chief may suspend the police

powers of the law enforcement officer and reassign the law enforcement officer to restricted duties pending a determination by a court, with respect to a criminal violation, or a final determination by a hearing board, with respect to a law enforcement agency violation. If a law enforcement officer is charged with a *felony*, the chief may impose an emergency suspension of police powers without pay. A law enforcement officer who is suspended is entitled to a prompt hearing.

*Appeal:* A law enforcement officer who is denied a right granted by LEOBR may apply to the circuit court of the county where the law enforcement officer is regularly employed for an order that directs the law enforcement agency to show cause as to why the right should not be granted. The court must grant appropriate relief if the court finds that a law enforcement agency obtained evidence against a law enforcement officer in violation of a right granted by LEOBR. A party aggrieved by a decision of a court may appeal to the Court of Special Appeals.