



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: January 21, 2021

RE: **SB 178 Public Information Act – Personnel Records – Investigations of Law
Enforcement Officers (Anton’s Law)**

POSITION: SUPPORT WITH AMENDMENTS

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) SUPPORT SB 178 WITH AMENDMENTS. As introduced, SB 178 would establish that a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a personnel record and therefore not subject to the mandatory denial of inspection under the Public Information Act.

MCPA and MSA supports efforts to enhance law enforcement transparency and accountability but cannot support the approach outlined in SB 178. This bill would increase the risk to officers' personal safety and that of their families, damage law enforcement's efforts to further establish relationships within some of our most vulnerable communities, and risk compromising the integrity of due process for both officers and the communities they serve. The broad release of investigative and disciplinary files (by anyone, at any time) risks many detrimental effects, and there is no way to prevent re-disclosure or publication of this information.

Instead, MCPA and MSA suggest providing access to personnel and investigative records relating to complaints involving the discharge of a firearm, use of force resulting in serious bodily injury, and sustained investigatory findings of complaints involving an officer's integrity. This legislation, introduced last year as SB 1029, will give Chiefs and Sheriffs the legal authority to appropriately respond to incidents and complaints while being more transparent in meeting the interests of the community.

Under current law, all public employees' personnel files and investigative records are not open for public view under the Maryland Public Information Act. The approach outlined in last year's bill is making an exception to this rule for law enforcement in very specific circumstances. This

approach will allow the release of an investigative file in situations involving the following complaints:

1. the alleged misconduct involves the discharge of a firearm at a person by a law enforcement officer;
2. the alleged misconduct involves the use of force by a law enforcement officer resulting in death or serious bodily injury; or
3. a sustained investigatory finding was made by a law enforcement agency that a law enforcement officer
 - a. committed a sexual assault involving member of the public;
 - b. engaged in dishonesty, committed perjury, made false statements, filed false reports, or destroyed, falsified, or concealed evidence directly relating to the reporting, investigation, or prosecution of a crime; or
 - c. engaged in prohibited discrimination directly relating to the reporting, investigation, or prosecution of a crime.

It is important to emphasize that in both complaints involving the discharge of a firearm and use of force resulting in death or serious bodily injury, information pertaining to both sustained and non or not-sustained complaints will be released. Other complaints relating to an officer's integrity as specified above will only be released if they are sustained. This is extremely important as Chiefs and Sheriffs strive to protect the reputation and honor of the men and women who protect our communities every day.

The process outlined provides for the release of information at the completion of an internal investigation. This is the point in time in which it is determined that an allegation did not occur (unfounded), it did occur but there was no wrongdoing (exonerated), evidence does not indicate there was any wrongdoing (non or not-sustained), or the evidence indicates that an allegation did occur (sustained). Releasing information with any other finding except sustained could damage an officer's career and reputation. Further the secondary dissemination could put the officer and his or her family at risk. It would be very easy for information to be distorted and inaccurate conclusions drawn with ramifications lasting for years.

MCPA and MSA believe such an approach represents a reasonable and common-sense approach for providing access to information regarding law enforcement complaints improving transparency and accountability. For these reasons, MCPA and MSA SUPPORT SB 178 WITH AMENDMENTS.