



**Testimony for the Senate Judicial Proceedings Committee
February 3, 2021**

SB 63 – Marlow Heights Police Department - Establishment

UNFAVORABLE

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PUBLIC POLICY INTERN

The ACLU of Maryland urges an unfavorable report on SB 63, which would establish the Marlow Heights Police Department. Under this bill, Marlow Heights Police Officers will be subject to the Law Enforcement Officers Bill of Rights (LEOBR) and eligible for certification by the Maryland Police Training Commission.

This bill cements the commission of the special police force of the Marlow Heights Police Department as its own department, separate and autonomous from the Prince George's County Police Department. However, this bill provides a private company, Gelman Management Co., to fund the Marlow Heights Police Department. Additionally, and most concerning, the bill allows Gelman Management Co. to adopt standards, qualifications, and prerequisites if delegated by the Maryland Police Training and Standards Commission (MPTSC).

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This allows the private company to adopt rules and governance of the Marlow Heights Police Department, and enforce disciplinary actions based on the disobedience of regulations by both the MPTSC and the Gelman Management Company. The Gelman Management Co. may also apply for, and accept any gift or grant for the use and benefit of the department from the Federal government, State unit, foundation, or any person.

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The Marlow Heights community has not articulated a legitimate public safety need for an expansion of their current special force commission. The Prince George County Police, an already extensive and wide-reaching department with multiple districts and municipalities, services the Marlow Heights community through their District IV sector. Establishing a department specifically for the Marlow Heights community is unnecessary, overbearing, and a misuse of resources that could be invested into the community to fund public schools and community revitalization.

While the bill provides that Gelman Management Co. will be liable for funding the Marlow Heights Police Department, to provide a private company the autonomy to fund, oversee, and enforce rules and regulations of a police department is a dangerous prospect. Police are how the state uses force to coerce compliance with a legal order. For-profit companies have no place in providing and funding public safety services, let alone a function of the state such as a police department. This bill provides little to no oversight of the company to ensure they are acting in the best interest of the Marlow Heights community members and advancing measures that promote police accountability. Allowing a for-profit entity like Gelman Management Company to set standards, qualifications, and prerequisites for a police department does not promote the transparency that should be an essential goal of a police department.

The ACLU of Maryland opposes the creation of a private police force endowed with the state's power of arrest and use of force, including deadly force, whose officers will be shielded from liability by the qualified immunity given to government officials and through the Law Enforcement Bill of Rights. Under federal law, police officers, like other state and local government officials, enjoy immunity from liability for illegal acts unless they violate a clearly established right.¹ The doctrine of *qualified immunity* protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."² The protection of qualified immunity applies regardless of whether the government official's error is "a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact."³

Police accountability should be placed in the hands of community members, qualified individuals, and entities who are committed to transparency and meaningful measures that ensure the safety of citizens from law enforcement officers. Police officers of the Marlow Heights Police Department would be entitled to the protections provided by the Law Enforcement Bill of Rights which can shield officers from discipline by their employer. Discipline is necessary for both law enforcement officers and the community to understand there are consequences for misbehavior as a public official, especially against members of the community. Shielding law enforcement officials from discipline and accountability for their actions only breeds mistrust and negative relations between police and those they are called to serve.

The Law Enforcement Bill of Rights needs to be reformed, however, in the meantime, the bill allows the Gelman Management Co. to discipline officers as it sees fit in addition to the protections provided by LEOBR. However, allowing a for-profit company to set these standards and measures regarding the disciplinary actions of law enforcement officers is a step backward from the push towards increased transparency surrounding police accountability. Additionally, this bill makes no provisions or allowances for community accountability and oversight of Marlow Heights Police Department law enforcement officials through measures such as a Civilian Review Board. We already have a crisis of police accountability throughout Maryland, creating a private force accountable to no one but the Gelman Management Company and MPTSC, and even more, shielded from legal liability, is the last thing we should be considering.

The ACLU of Maryland is devoted to meaningful police reforms this legislative session and this bill goes directly against our goals. For these reasons, the ACLU of Maryland opposes SB 63.

¹ Pearson v. Callahan, 555 U.S. 223, 231, 129 S. Ct. 808, 815, 172 L. Ed. 2d 565 (2009)

² Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

³ Groh v. Ramirez, 540 U.S. 551, 567, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (KENNEDY, J., dissenting)(quoting Butz v. Economou, 438 U.S. 478, 507, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978), for the proposition that qualified immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law.")

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