

**BRIAN E. FROSH**  
*Attorney General*



**ELIZABETH F. HARRIS**  
*Chief Deputy Attorney General*

**CAROLYN QUATTROCKI**  
*Deputy Attorney General*

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

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TO: The Honorable Luke Clippinger  
Chair, Judiciary Committee

FROM: The Office of the Attorney General

RE: House Bill 670: Police Reform and Accountability Act of 2021  
House Bill 671: Public Information Act – Personnel and Investigatory Records –  
Complaints Against Police Officers (SUPPORT W/AMENDMENT)

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The Office of the Attorney General submits this general statement in support of efforts to advance criminal justice reform. Despite variations in specifics, the proposals in House Bill 670 and House Bill 671 reflect some important guiding principles: the need to end excessive force, increase transparency and accountability for misconduct, re-evaluate the standards for middle-of-the-night no-knock warrants, and ensure that all police agencies are equipped with body-worn cameras that they are required to use. Policies implementing these principles would help prevent horrific outcomes while supporting the majority of police officers who perform difficult jobs responsibly.

Central to achieving meaningful police reform is ending the use of excessive force.

First, the State should codify a standard that restricts police use of force to that which is objectively reasonable and appears to be necessary under the circumstances in response to the threat or resistance by a subject. Deadly force, similarly, should only be used where objectively reasonable and necessary to protect the officer or other persons from the imminent threat of death or serious bodily injury.

Additional common-sense measures include:

- Prohibiting the use of chokeholds, except in cases where deadly force is authorized
- Requiring officers to rely on de-escalation techniques and to intervene to stop another officer from using excessive force where feasible;
- Requiring officers to report misconduct by other officers;
- Requiring agencies to report all use of force incidents for internal and external review and tracking;

- Requiring officers to be trained on less lethal uses of force, including scenario-based training;
- Requiring officers to render basic first aid to a person injured as a result of police action and promptly requesting medical assistance;

House Bill 670 includes these measures as part of a comprehensive Maryland Use of Force Statute. Each one represents a critical component of ending the use of excessive force and improving community trust. Particularly when employed together, these actions protect the safety of both civilians and officers. Perhaps for these reasons, these measures enjoy broad stakeholder support from law enforcement agencies and reform advocates: they are among the list of best practices for police use of force issued by the Maryland Police Training and Standards Commission (MPTSC), and many have been incorporated into the policies of some of the largest police departments in the United States, including the Baltimore City and Baltimore County Police Departments.

All Maryland law enforcement officers should be obligated to comply with these best practices for reducing the use of excessive force. We have reservations, however, about whether criminal liability is the appropriate sanction in every case, particularly as applied to reckless violations or some of the more administrative requirements such as signing a training completion document regarding the statute's requirements. Similarly, it is unclear whether mandatory decertification should apply to every violation. Instead, we believe these duties should be a part of every law enforcement agency's administrative policies, and officers failing to comply with these policies should face discipline or be terminated consistent with their agency's administrative procedures. Training will be a critical to ensuring compliance with the new requirements and we agree that it should include training on implicit bias.

No-knock warrants should be used only where they are necessary to protect officer safety.

Breonna Taylor was killed in the middle of the night after police secured a no-knock warrant to enter her home. A woman should not be killed in her own home because the police were authorized to force down her door in the middle of the night to execute a warrant related to a drug investigation of an ex-boyfriend who did not even live there. House Bill 670 recognizes that no-knock warrants are an important tool to protect the safety of law enforcement officers and takes a balanced approach to reducing the tragic consequences that result from their overuse.

We agree that no-knock warrants should be authorized only when necessary to secure the safety of police, not to avoid the destruction of evidence. The time at which warrants like these are served—a factor which clearly contributed to Breonna Taylor's death—should also be examined. Middle-of-the-night warrant execution should be limited to situations where police and public safety truly require it. Although House Bill 670 is a good start to addressing this issue, we believe the language could be strengthened by requiring judicial authorization for

warrant service outside of daytime hours and recommend adoption of the federal rule, which would require any warrant to search a residence be executed:

BETWEEN THE HOURS OF 6:00 A.M. AND 10:00 P.M. UNLESS THE APPLICATION FOR THE SEARCH WARRANT ESTABLISHES GOOD CAUSE TO EXECUTE THE WARRANT OUTSIDE OF THAT TIME FRAME.

Finally, not mentioned in House Bill 670 but also worth considering is the level of scrutiny needed for no-knock warrants—perhaps requiring high-level approvals within the Police Department and review by the State’s Attorneys.

We must provide greater transparency and accountability for misconduct.

We support the creation of a police misconduct database that includes sustained (charged) and certain unsustained (not charged) complaints, such as credible, yet unsubstantiated, complaints of sexual misconduct or that reflect upon officer integrity. Last year, the U.S. House of Representatives passed the “George Floyd Justice in Policing Act of 2020” that, among other things, created the first ever national database on police misconduct incidents to prevent the movement of dangerous officers from department to department. Unfortunately, the bill stalled in the U.S. Senate. House Bill 670 requires the MPTSC to create a statewide database to track officer decertifications due to improper use of force. While this is an important stopgap measure to keep track of bad cops within Maryland and between our various law enforcement agencies, it will not necessarily stop bad cops from applying across state lines. For that larger problem, we need Congress to act.

We must curtail the growing militarization of police.

In this country, we are supposed to have a clear separation between military and civilian law enforcement. In addition to limiting the use of no-knock warrants, agencies should not be obtaining surplus military equipment to equip our police as if they are the military. Studies show that the purchase of this type of equipment results in an increase in SWAT deployment, increase in community distrust, and increase in police violence with no corresponding decrease in violent crime. We understand the need for smaller police departments to obtain more innocuous equipment from the federal government, but agree with House Bill 671’s prohibition on acquiring surplus armored or weaponized vehicles. We would also add the following to those prohibitions: armored or weaponized aircrafts and drones, destructive devices, firearm silencers, and grenade launchers, which agencies would be prohibited from receiving from federal surplus programs under Senate Bill 599. To assist the State in monitoring when and where SWAT teams are deployed, we also support reinstating agency reporting requirements regarding their use.

Return control of the Baltimore Police Department to Baltimore City.

Control of the Baltimore Police Department (BPD) should be returned to Baltimore City for two key reasons. First, the State’s history of “taking over” functions for Baltimore City in this and other areas generally has not led to better performing agencies. Second, and perhaps more importantly, Baltimore City has the right to self-governance: the laws governing BPD ought to be decided by Baltimore City, as is the case for every other local law enforcement agency, and not by the State as a whole.

Body-worn cameras are an important component of promoting police accountability and community trust.

Lastly, it goes without saying that we must equip every law enforcement agency with body- worn cameras, which are critical to ensuring heightened transparency and accountability around policing. We therefore support House Bill 671’s mandate that each agency require the use of body-worn cameras by January 2025.

For all these reasons, the Office of the Attorney General supports House Bill 670 and House Bill 671 with amendments.

cc: Committee Members