

**Workgroup to Address Police Reform and Accountability in
Maryland
Delegate Vanessa E. Atterbeary, Chair**

AGENDA

Tuesday, June 23, 2020

1:00 p.m.

Zoom

- I. Chair's Opening Remarks**
- II. Organizational and Administrative Matters**
- III. Presentation by the Department of Legislative Services on Statutory Changes Relating to Police Reform 2016-2020**
 - Mr. Kenneth B. Weaver, Policy Analyst
- IV. Presentation by the Maryland Police Training and Standards Commission**
 - Mr. Albert L. Liebno, Jr., Acting Executive Director
 - Sheriff Troy D. Berry, Vice Chair
- V. Chair's Closing Remarks and Adjournment**

Significant Maryland Policing Reform Enactments 2016 to 2020

2016

HB 1016 (Ch. 519) – Workgroup on Public Safety and Policing – Recommendations

This bill implemented recommendations of the Public Safety and Policing Workgroup, which met during the 2015 interim and submitted its final report in January 2016¹. Among other things, the bill (1) reconstituted and renamed the Police Training Commission (PTC) as an independent Maryland Police Training and Standards Commission (MPTSC) within the Department of Public Safety and Correctional Services (DPSCS); (2) made changes to the Law Enforcement Officers’ Bill of Rights (LEOBR); (3) established various requirements for law enforcement agencies; (4) established a Community Program Fund within the Governor’s Office of Crime Control and Prevention (GOCCP)² to fund local “community programs”; and (5) created a State income tax subtraction modification for certain law enforcement officers.

Maryland Police Training and Standards Commission: The bill reconstituted PTC as MPTSC, an independent commission within DPSCS. The bill established provisions relating to membership, terms, staffing, and the election of a chair for MPTSC.

Under the bill, MPTSC retains the same powers and duties as existed for PTC and, in addition, must:

- require entrance-level and periodic in-service training on antidiscrimination and use of force de-escalation;
- adopt and recommend a set of best practices and standards for use of force;
- implement strategies to increase diversity within law enforcement agencies; and
- develop standards for the mandatory psychological evaluation of a law enforcement officer who was actively involved in an incident when another person was seriously injured or killed as a result of an accident or a shooting or has returned from combat deployment.

¹ <http://mgaleg.maryland.gov/Pubs/Committee/2016-PSP-Workgroup-Report.pdf>.

² Renamed the Governor’s Office of Crime Prevention, Youth, and Victim Services in 2020.

The bill also required MPTSC to:

- develop a system for annual reporting to MPTSC by each law enforcement agency on the number of serious officer-involved incidents, the number of officers disciplined, and the type of discipline that was administered; and summarize, post to a website maintained by MPTSC, and submit that information to the General Assembly;
- in consultation with the Maryland Department of Health (MDH), establish a confidential hotline that is available for law enforcement personnel to contact to speak to a trained peer law enforcement officer or a mental health professional who can assist with initial counseling advice and confidential referral to appropriate programs;
- establish a Police Complaint Mediation Program in which a nonviolent complaint made against a police officer is referred out of the standard complaint process and to voluntary mediation to be conducted by an independent mediation service;
- develop best practices for the establishment and implementation of a community policing program in each jurisdiction (each local law enforcement agency, as specified, must adopt such a program, post specified information online, and annually file a detailed description of the agency's community policing program with MPTSC, and MPTSC must review each program and offer comments to the jurisdiction); and
- develop a public complaint process in each jurisdiction that is uniform throughout the State, as specified (which must be adopted by each law enforcement agency).

In addition, the bill expanded the requirements for certification as a police officer to include the submission to a psychological evaluation by a psychologist approved by MPTSC.

Law Enforcement Officers' Bill of Rights: The bill made a number of changes to the complaint process under LEOBR to:

- remove the requirement for notarization of a complaint against a law enforcement officer alleging excessive force and instead require that a complaint be signed by the complainant under the penalty of perjury;
- allow a complaint to come from an individual with firsthand knowledge obtained because the individual has a video recording of the incident that, to the best of the individual's knowledge, is unaltered; and
- extend, from 90 days to 366 days, the complaint filing deadline triggering the requirement that disciplinary action be undertaken by a law enforcement agency.

For a law enforcement officer under investigation, the time period for retaining an attorney for the internal investigation and disciplinary process is reduced from 10 days to 5 business days.

Within the 5-business day period, the chief, for good cause shown, may extend the period for obtaining representation.

For an administrative hearing board, the bill authorized the chief to appoint, as a nonvoting member, one member of the public who has received training by MPTSC on LEOBR and matters relating to police procedures. If authorized by local law or collectively bargained, 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.

Unless the chief finds that a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness, the hearing must be open to the public.

MPTSC must develop and administer a training program on LEOBR and matters relating to police procedures for citizens who intend to qualify to participate as a member of a hearing board.

A law enforcement officer may not be discharged; disciplined; demoted; denied promotion, transfer, or reassignment; or otherwise discriminated against in regard to the law enforcement officer's employment or be threatened with that treatment because the officer has disclosed information that evidences (1) gross mismanagement; (2) a gross waste of government resources; (3) a substantial and specific danger to public health or safety; or (4) a violation of law committed by another law enforcement officer. A law enforcement officer may not undertake an independent investigation based on knowledge of such disclosures.

Use of Force Reports: Each law enforcement agency must require a law enforcement officer who was involved in a use-of-force incident in the line of duty to file an incident report regarding the use of force by the end of the shift unless the officer is disabled.

Official Policy Posting: All official law enforcement policies, including public complaint procedures and collective bargaining agreements, must be available online for each law enforcement agency, as specified. A chief may prohibit the posting of administrative or operational policies that if disclosed would jeopardize operations or create a risk to public or officer safety.

Early Intervention Policy: Each law enforcement agency must establish a confidential and nonpunitive early intervention policy for counseling officers who receive three or more citizen complaints within a 12-month period. Such a policy may not prevent the investigation of or imposition of discipline for a particular complaint.

Serious Officer-involved Incidents: Each law enforcement agency must annually report, as specified, to MPTSC on the number of serious officer-involved incidents, the number of officers disciplined, and the type of discipline that was administered to each officer who was disciplined.

Community Program Fund: The bill established a Community Program Fund as a special, nonlapsing fund to assist local law enforcement and other local government agencies in establishing violence intervention programs. The fund consists of (1) money appropriated in the State budget to the fund; (2) investment earnings of the fund; and (3) money from any other source accepted for the benefit of the fund. For fiscal 2018 and each fiscal year thereafter, the Governor must include in the annual budget bill an appropriation to the fund of \$500,000. The fund may be used only to fund grants, as specified, and may not be used for administrative expenses.

Income Tax Subtraction Modification: The bill exempted, beginning in tax year 2016, up to \$5,000 of the income earned by a law enforcement officer if (1) the officer resides in the political subdivision in which the officer is employed and (2) the crime rate in the political subdivision exceeds the State's crime rate.

SB 161 (Ch. 658)/HB 336 (Ch. 619) Criminal Procedure – Seizure and Forfeiture

These bills made changes to statutes pertaining to seizure and forfeiture of property in connection with violations of the State's controlled dangerous substances laws. Specifically, the bills (1) altered the type of property that is subject to forfeiture; (2) established procedural requirements for the forfeiture of property under State law; (3) prohibited State and local entities from transferring or referring seized property to the federal government for forfeiture under federal law unless specified requirements are met; (4) required the transfer of specified funds to MDH for specified programs; and (5) established reporting requirements for seizing authorities, the Maryland Statistical Analysis Center (MSAC), and GOCCP³.

SB 233 (Ch. 542) Public Safety – Motorcycle Profiling – Training

This bill required MPTSC to (1) include a statement condemning "motorcycle profiling" in existing written policies regarding other profiling and (2) require entrance-level and in-service training related to motorcycle profiling in conjunction with existing training regarding other profiling.

HB 1371 (Ch. 651) Criminal Law – Strangulation – Lethality Screening Protocol and Training

This bill required MPTSC, by January 1, 2017, to (1) develop a lethality screening protocol and training for law enforcement officers to employ when investigating complaints of domestic violence and assault by strangulation, after conducting a review of the experience and best practices of other states and (2) report the result of the review and the protocol and training developed in accordance with the bill to the General Assembly.

³ Renamed the Governor's Office of Crime Prevention, Youth, and Victim Services in 2020.

2017

SB 349 (Ch. 158)/HB 255 (Ch. 159) Criminal Procedure – Sexual Assault Victims’ Rights – Disposal of Rape Kit Evidence and Notification

These bills required a health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault to provide the victim with written information describing the laws and policies governing the testing, preservation, and disposal of a sexual assault evidence collection kit. The bills specify when a sexual assault evidence collection kit must be transferred to a law enforcement agency, when a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault may be destroyed or disposed of by a law enforcement agency, and when such evidence must be retained. The bills also required law enforcement agencies to notify victims before destroying sexual assault evidence under certain circumstances.

SB 941 (Ch. 803)/HB 739 (Ch. 802) Public Safety – SWAT Teams – Standards

These bills required 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.

HB 1037 (Ch. 598) Baltimore City – Civilian Review Board

This bill altered the time limit for filing a complaint for excessive force with the Baltimore City Civilian Review Board from within 90 days to within one year of the alleged act giving rise to the complaint. In addition, the bill repealed the requirement that a complaint be witnessed by a notary public and instead required that the complaint be signed and sworn to, under the penalty of perjury, by the complainant.

2018

SB 1099 (Ch. 753) Baltimore City Police Department – Commission to Restore Trust in Policing and Audit Review

This bill established the Commission to Restore Trust in Policing staffed by the Department of Legislative Services (DLS). The commission must (1) review, investigate, and make recommendations relating to the Baltimore Police Department (BPD) Gun Trace Task Force;

(2) submit a preliminary report by December 31, 2018; and (3) submit a final report by December 31, 2019. The bill also required the Joint Audit Committee to (1) beginning with the 2018 audit, review BPD's audit reports issued by the Baltimore City Comptroller and submit findings and recommendations to the General Assembly with respect to issues in audit reports and (2) review the audit process and procedures and provide comment and recommendations to the President of the Senate and the Speaker of the House, the Executive Director of DLS, and the Legislative Auditor.

HB 190 (Ch. 671) Public Safety – Maryland Police Training and Standards Commission – Psychological Consultation and Evaluation

This bill altered the standards required to be developed by the MPTSC relating to psychological assessments of law enforcement officers by requiring MPTSC to develop standards for the mandatory psychological *consultation with*, instead of *evaluation of*, a law enforcement officer who was actively involved in an incident when another person was seriously injured or killed as a result of an accident or a shooting or has returned from combat deployment. In addition, the bill repealed the requirement that a psychologist approved by the commission conduct the psychological evaluation required for certification of a person as a police officer.

HB 1292 (Ch. 500) Criminal Law – Law Enforcement – Prohibition on Sexual Activity

This bill prohibited a law enforcement officer from engaging in sexual contact, vaginal intercourse, or a sexual act with a person in the custody of the law enforcement officer. A violator is guilty of a misdemeanor and on conviction, subject to up to three years' imprisonment and/or a \$3,000 fine.

2019

SB 81 (Ch. 75) Baltimore City – Police Department – Reports on Funds

This bill required BPD to prepare specified reports, in fiscal 2019 and 2020, regarding the expenditure of grants received from GOCCP⁴. By December 31 each year, BPD must submit the required report to the Baltimore City Delegation to the General Assembly. The report must include the intended use of each grant from GOCCP to BPD and the specific expenditures made by BPD with any monetary grants received from GOCCP. The stated purpose of the bill is to ensure that grants from GOCCP to BPD for community policing efforts are used for that purpose.

⁴ Renamed the Governor's Office of Crime Prevention, Youth, and Victim Services in 2020.

SB 210 (Ch. 321) Law Enforcement – Federal Military Surplus Program – Equipment Acquisition

This bill required the Department of State Police (DSP), by February 1 each year, to report to the Governor and the General Assembly on the acquisition of equipment by law enforcement agencies through “surplus programs” within the preceding calendar year. DSP must include in a prominent location on its public website a link to the Defense Logistics Agency’s report listing excess Department of Defense property transfers to law enforcement agencies through the Law Enforcement Support Office. “Surplus program” means a program operated by the federal government for the transfer of surplus military equipment to a law enforcement agency. The bill terminates September 30, 2022.

SB 417 (Ch. 626)/HB 301 (Ch. 625) Vehicle Laws – Race – Based Traffic Stops – Policy and Reporting Requirements

These bills made permanent the data collection and reporting program related to race-based traffic stops by repealing its termination date. In addition, the bills repealed a requirement that MSAC submit an annual report on the data to the Governor, the General Assembly, and each law enforcement agency. Instead, the bills required MSAC to post data from the previous calendar year on its website in a location that is easily accessible and in a manner that is filterable by location and other factors. GOCCP⁵ must provide written notice to the General Assembly when MSAC updates the information.

SB 767 (Ch. 33)/HB 1096 (Ch. 34) Criminal Procedure – Sexual Assault Evidence Collection Kits – Analysis

These bills required a sexual assault evidence collection kit to be submitted to a forensic laboratory for testing unless specified requirements are met. The bills required (1) a law enforcement agency to submit a sexual assault evidence collection kit and all requested associated reference standards to a forensic laboratory within 30 days of receipt and (2) a forensic laboratory to process a sexual assault evidence collection kit and all requested associated reference standards in a timely manner. The bills also required (1) the Attorney General to adopt implementing regulations by December 1, 2019, and (2) the Maryland Sexual Assault Evidence Kit Policy and Funding Committee to establish an independent process to review and make recommendations relating to when a law enforcement agency may decide not to test a sexual assault evidence collection kit.

⁵ Renamed the Governor’s Office of Crime Prevention, Youth, and Victim Services in 2020.

SB 847 (Ch. 459)/HB 625 (Ch. 460) Baltimore Police Department – Commission to Restore Trust in Policing – Alterations

These bills extended the termination date of the Commission to Restore Trust in Policing from January 15, 2020, to January 15, 2021, and extended the due date by which the commission must submit its final report to the Governor and the General Assembly from December 31, 2019, to December 31, 2020. The bills also (1) expressly subjected the proceedings, testimony, and other evidence before the commission to the Public Information Act and the Open Meetings Act; (2) repealed a provision requiring a vote before the commission may deem specified information confidential and privileged; and (3) prohibited commission members and staff from being required to sign a confidentiality agreement to receive documents or files, including personnel files, properly subpoenaed. In addition, the bills requested and encouraged the Governor to appropriate sufficient funds for fiscal 2020 and 2021 to enable the commission to complete its work in a timely and comprehensive manner.

HB 168 (Ch. 32) Public Safety – Reporting of Hate Crimes

This bill altered and expanded the categories of incidents for which each local law enforcement agency and the State Fire Marshal must report to DSP and for which DSP must collect, analyze, and report to the Maryland Commission on Civil Rights. The altered/expanded categories include incidents apparently directed against an individual or group because of color, religious beliefs, gender, disability, national origin, and homelessness.

HB 516 (Ch. 73) Office of Legislative Audits – Audits of Baltimore Police Department

This bill required the Office of Legislative Audits (OLA), beginning July 1, 2020, and at least once every six years thereafter, to conduct an audit of BPD to evaluate the effectiveness and efficiency of the financial management practices of BPD. OLA must provide information regarding the audit process to BPD before the audit is conducted.

2020

SB 140 (Ch. 535) Office of Legislative Audits – Audits of the Baltimore Police Department

This bill makes several changes relating to the existing requirement for OLA to conduct an audit of BPD to evaluate the effectiveness and efficiency of the financial management practices of BPD. Specifically, the bill (1) allows for multiple audits to be conducted; (2) requires that the scope and objectives of the audit or audits be determined by the Legislative Auditor; (3) specifies that the employees or authorized representatives of OLA must have access to and may inspect the records, including those that are confidential by law, of BPD and the Baltimore City government

to perform the required audits; and (4) requires the Baltimore City government to make available to OLA all city employees, records, and information systems deemed necessary by the Legislative Auditor to conduct the required audit or audits.

SB 246 (Ch. 223)/HB 499 (Ch. 222) Criminal Procedure – Cell Site Simulator

These bills authorize a court to issue an order authorizing or directing a law enforcement officer to use a specified “cell site simulator.” The bills (1) establish requirements for a court order and the use of any information obtained relating to the use of a cell site simulator and (2) apply current law provisions relating to an application for an order to obtain location information by law enforcement and the duration of such an order to the use of cell site simulator technology by law enforcement. By February 1 each year, each law enforcement agency must post on its website and report to the Governor and the General Assembly the number of times a cell site simulator was used by the agency during the previous calendar year, as specified.

SB 807 (Ch. 584) Criminal Procedure – Victims of Sexually Assaultive Behavior – Waivers of Rights – Prohibition

This bill prohibits a law enforcement agency from seeking specified waivers from a victim of sexually assaultive behavior. The bill also authorizes an affected victim to bring an action seeking injunctive or declaratory relief against a law enforcement agency that violates the prohibition. Each law enforcement agency in the State must (1) adopt a policy to enforce the prohibition on seeking waivers from victims of sexually assaultive behavior, by January 1, 2021, and (2) provide a copy of the policy to the Maryland Sexual Assault Evidence Kit Policy and Funding Committee by January 15, 2021.

HB 739 (Ch. 309) Law Enforcement Body Camera Task Force

This bill establishes the Law Enforcement Body Camera Task Force. The task force must (1) study options for the economical storage of audio and video recordings made by law enforcement body-worn cameras and (2) make recommendations for storage considering the budgets of State, county, local, and campus law enforcement jurisdictions. The task force must report its findings and recommendations to the General Assembly by December 1, 2020.

HB 1111 (Ch. 426) Public Safety – Special Police Officers – Training and Renewal of Commission

This bill repeals the authorization for the Secretary of State Police to require training and education for special police officers (SPO) as the Secretary considers necessary. Instead, the bill requires, with specified exceptions, an SPO applicant for an initial commission to complete a training course approved by the Secretary in consultation with MPTSC consisting of at least 80 hours of instruction, as specified. Before submitting an application for renewal, an SPO must complete 12 hours of in-service training approved by the Secretary in consultation with MPTSC.

Prepared by the Department of Legislative Services, June 2020.

Workgroup to Address Police Reform and Accountability in Maryland

Sheriff Troy D. Berry, Acting Chair

Maryland Police Training & Standards Commission

Mr. Albert L. Liebno, Acting Executive Director

Maryland Police & Correctional Training Commissions

Police Training & Standards Commission - Membership

The President of the Maryland Chiefs of Police Association.

The President of the Maryland Sheriffs Association.

The Attorney General of the State.

The Secretary of State Police.

The agent in charge of the Baltimore office of the Federal Bureau of Investigation.

1 member representing the Maryland State Lodge of Fraternal Order of Police.

1 member representing the Maryland State's Attorneys' Association.

The Chair of the Maryland Municipal League Police Executive Association.

The President of Maryland Law Enforcement Officers, Inc.

The Police Commissioner of Baltimore City.

The President of the Police Chiefs' Association of Prince George's County.

A representative from the Wor–Wic Program Advisory Committee – Criminal Justice.

2 members of the Senate of Maryland, appointed by the President of the Senate.

2 members of the House of Delegates, appointed by the Speaker of the House.

The following individuals, appointed by the Governor with the advice and consent of the Senate:

- 3 police officers, representing different geographic areas of the State;

- 1 individual with expertise in community policing;

- 1 individual with expertise in policing standards;

- 1 individual with expertise in mental health; and

- 2 citizens of the State without relationships to law enforcement.

Hearing Boards

- When a hearing board is convened, civilian members may receive training from the Maryland Police Training and Standards Commission (PTSC) on the Law Enforcement Officers Bill of Rights (LEOBR) and matters relating to police procedures.
- LEOBR training is available upon request.

Use of Force

- Adopt and recommend a set of best practices and standards for use of force.
- The Commission's best practices and standards are available for review at mdle.net.
- Police agencies were encouraged to revise policies to include language regarding the “sanctity of life.”
- Officers are trained to engage in de-escalation practices before any force is used.

Evaluate and Modernize Recruitment Standards

- There is a network of police recruiters in Maryland.
- The recruiters met with representatives of the Commission.
- Best practices were shared among recruiters including:
 - Long-term relationship building with minority groups.
 - Referring candidates who were considered qualified but delayed in hiring due to the length of academies.
- A presentation was given to chiefs and sheriffs regarding the impact of lengthy hiring practices.

Officer Discipline & Serious Officer Incidents

- The reporting process was implemented beginning in 2017.
- All agency heads were notified of the requirement.
- Agency heads are notified annually via email and in some cases phone calls.
- Language was introduced by the Commission in the 2020 legislative session to establish parameters around reporting.

Confidential Crisis Hotline

Safe Call Now
(206) 459-3020

Police Complaint Mediation Program

- Community Member – Police Complaint Mediation (model policy), posted April 2017.
- Community Member – Police Complaint Mediation Program Reference Guide, posted April 2017.
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- Police complaint mediation information is available to the public at mdle.net.

Community Policing Programs

	Region I	Region II	Region III	Region IV
Due Date:	January 31 st	April 30 th	July 31 st	October 31 st
Counties:	Allegany Carroll Frederick Garrett Howard Washington	Montgomery Prince George's	Baltimore City Anne Arundel Baltimore Calvert Cecil Charles Harford St. Mary's	Caroline Dorchester Kent Queen Anne Somerset Talbot Wicomico Worcester

Uniform Citizen Complaint Process

- Every agency shall have a complaint process and it shall be posted on the agency's website if they have one.
- Complaints may be submitted in person, by telephone, via email, or by U.S. mail.
- A complainant shall provide their name, mailing address, phone number, or email if they would like to receive a response.
- Complainants shall receive an initial response within 72 hours.

Psychologist Approved by the Commission

- The Commission members quickly understood they are not experts in matters pertaining to psychology.
- House Bill 190 passed in 2018 modifying the requirement that the Commission approve ~~the~~ psychologist.
- In 2019, amendments were made to COMAR 12.04.01.01 and 12.04.01.04 resulting in the establishment of psychological standards being established and approved by the Commission.

Use of Force Reports

- Public Safety Article §3-514 requires an officer to complete a line of duty, use of force, incident report by the end of the shift on which the use of force occurred unless the officer was disabled.
- Reports are considered the property of the agency and there were no additional reporting requirements.

Maryland Police Policies

- There is a “Maryland Police Policies” tab on mdle.net.
- Each agency is listed by county.
- A link to the agency’s policies is provided under the agency’s name.



Department of Public Safety and Correctional Services

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

COMMISSION MEMBERS

Colonel William M. Pallozzi, Chair
Secretary, Department of State Police

Kevin F. Davis, Commissioner
Baltimore Police Department

Chief Gary Gardner, President
Maryland Chiefs of Police Association

Sheriff Douglas Mullendore, President
Maryland Sheriffs' Association
Represented by Sheriff Timothy Cameron

Brian E. Frosh, Attorney General
Represented by Stuart M. Nathan
Principal Counsel

Gordon B. Johnson, SAC
Federal Bureau of Investigation

Vince Canales, President
State Fraternal Order of Police

Wes Adams, State's Attorney
Anne Arundel County
Maryland State's Attorneys' Association

Chief David Rice, Chairman
Maryland Municipal League
Police Executive Association

Carol Price, President
Maryland Law Enforcement Officers
Represented by Gwendolyn Smith

Chief David Mitchell, President
Police Chief's Association of P.G. County
Represented by Chief Michael Wynnyk

Sheriff Joseph Gamble
Wor-Wic Program Advisory Committee -
Criminal Justice

State Senator Michael J. Hough

State Senator Victor R. Ramirez

State Delegate Curt Anderson

State Delegate Michael A. Jackson

Sheriff Troy Berry, Vice-Chair
Charles County Sheriff's Office
Regional Representative

Chief Barbara Duncan
Salisbury Police Department
Regional Representative

Sergeant Allison Ehart
Howard County Police Department
Regional Representative

Captain William M. Crabbs
Community Policing Expertise

Miguel Dennis
Policing Standards Expertise

Dr. Michael B. Finegan
Mental Health Expertise

Matthew G. Alonzoana
Citizen of the State

Marcus E. Pollock
Citizen of the State

ACTING EXECUTIVE DIRECTOR
Albert L. Liebno, Jr.

Police Training and Standards Commission

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(410) 875-3400 • FAX (410) 875-3500 • V/TTY (800) 735-2258

January 19, 2018

Dear Agency Head:

Public Safety Article §3-207 (A) (17), enacted in 2016, requires “for entry-level police training and at least every 2 years for in-service 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.”

The Commission’s existing regulations found at COMAR 12.04.01.09 (c) (1) (j) already require entrance level “training in the proper level of use of force.” In addition, law enforcement agencies are required to conduct annual in-service training on legal aspects in the use of firearms, including rules for the use of deadly force and alternatives by COMAR 12.04.02.10C.

Complying with Public Safety §3-207(A)(17)

Use of force training is based on the “objective reasonableness” standard announced in *Graham v. Connor*, 490 U.S. 386 (1989).

In emphasizing this principle, use of force training should teach officers to consider all known factors before using force and choosing a reasonable option based on the totality of the circumstances. Police training programs should incorporate transitional and objective decision-making in determining the need for force and type of force used. Policing sometimes requires that officers exercise control of violent or resisting persons in order to protect themselves and the community. Clearly not every potentially violent confrontation can be defused without using force, but officers may have the ability to impact the direction and outcome of many situations based on their decision-making and tactics employed.

The theory of de-escalation training suggests that, whenever feasible, officers should gather as much information as possible, assess the risks, assemble resources and attempt to slow momentum and coordinate a response. When practical, officers should use their physical presence, verbal warnings and persuasion in efforts to diffuse tense situations. Officers should consider these alternatives to using force when reasonable and safe under the circumstances. They should recognize that whenever safe and practical they may withdraw to a position that is tactically more secure or allows them greater distance in order to safely consider the application of a greater level of force. Most important, officers must avoid jeopardizing their own safety and that of others in determining the need for and level of force applied.

In addition, statute refers to anti-discrimination training in context with use of force training with the goal of insuring that officers avoid making use of force decisions based solely on the personal immutable characteristics of a subject. Any such decision would likely not be reasonable under *Graham v. Connor* and so would be prohibited by existing law and training, including Public Safety Art. §3-107(16)(iii) which already requires training “regarding sensitively to cultural and gender diversity.”

Therefore, anti-discrimination or anti-bias training – fair and impartial policing – should be a part of use of force training to comply with 3-207(A)(17). Training of this nature is widely recognized in addressing implicit bias which could contribute to the conscious or unconscious decisions surrounding the application and use of force by law enforcement officers.

Best Practices and Standards in the Use of Force

In accordance with §3-207 (A) (19) the Maryland Police Training and Standards Commission (MPTSC) adopted a set of best practices and standards for the use of force by law enforcement officers. Please visit www.MDLE.net for a guiding document outlining “Best Practices and Standards for the Use of Force by Law Enforcement Officers.”

Sincerely,

A handwritten signature in black ink that reads "Albert L. Liebno, Jr." The signature is written in a cursive style with a large, stylized initial 'A'.

Albert Liebno
Acting Executive Director
Police Training and Standards Commission

Enclosure: best practices and standards document



Department of Public Safety and Correctional Services

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Boyd K. Rutherford, Lt. Governor

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Regional Representative

Captain William M. Crabbs
Community Policing Expertise

Miguel Dennis
Policing Standards Expertise

Dr. Michael B. Finegan
Mental Health Expertise

Matthew G. Alonzoana
Citizen of the State

Marcus E. Pollock
Citizen of the State

ACTING EXECUTIVE DIRECTOR
Albert L. Liebno, Jr.

Police Training and Standards Commission

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In accordance with §3-207 (A) (19), the Police Training and Standards Commission (PTSC) herein adopts and recommends a set of best practices and standards for the use of force by law enforcement officers.

Officers are encouraged to defuse rather than intensify confrontations with and between citizens. When time, circumstances, and safety permit, officers should take steps to gain compliance and control a situation without using physical force.

Examples include: The use of advisements, warnings and persuasion; attempts to slow down or stabilize the situation so that more time, options and resources are available; a show of authority or simply “waiting out” a situation. Officers should consider whether a subject’s lack of compliance is a deliberate attempt to resist or is caused by an inability to comply.

Protocols and Standards for Use of Force

1) Include a “sanctity of life” statement in department policy. I.e., recognition of, and respect for the dignity of all persons and the value of human life shall guide all training, leadership, and procedures, as well as guide officers in the use of force.

2) Include a “duty to intervene” statement to department policy. I.e., any officer who observes another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall intercede, where feasible, to prevent the use of such excessive force, so long as it does not pose a safety risk. Officers shall promptly report these observations to a supervisor.

3) Use of Force/Degree of Force policy should state that officers may use the force that is objectively reasonable and appears to be necessary under the circumstances in response to the threat or resistance by a subject.

4) Include de-escalation in written policy. When time, circumstances and safety permit, officers should take steps to gain compliance and de-escalate conflict without using physical force. Examples include: The use of advisements, warnings, and persuasion; attempts to slow down or stabilize the situation so that more time, options and resources are available; Officers should consider whether a subject’s lack of compliance is a deliberate attempt to resist or is caused by an inability to comply.

5) Require officers to render basic first aid to subjects injured as a result of police action and promptly request medical assistance.

6) Require supervisors to respond to the scene of any incident during which an officer used physical force and where actual injury occurs. Supervisors should gather and review all known video recordings of a use of force incident.

7) Document use of force incidents.

8) Provide for supervisory review of use of force reports, including review by commanders.

- 9) Develop an early warning system to monitor excessive incidents involving use of force by department members.
- 10) Provide officers with access to and training options that are less likely to cause death or serious injury, and techniques to reduce the need to use force. Include the use of scenario based training.
- 11) Officers need training on De-escalation, including the use of scenario based training.

Use of Force Training Concepts and Best Practices

- 1) De-escalation training. Purpose is for officers to cultivate skills to defuse but still maintain control to bring situation to a safe conclusion. Focus on communication skills, crisis intervention techniques, minimizing force, and tactical repositioning. Officers should try to slow an incident down and think their way through a high risk situation. Officers should attempt to recognize warning signs of individuals experiencing a mental health crisis. Officers should use all available resources and training to attempt to resolve incidents and minimize the need to use force.
- 2) Sanctity of Life. Respect the value of every human life. Deadly force should only be used in extreme circumstances and when reasonably necessary.
- 3) Ethical protector. Officers should act with compassion toward others and be courageous in the face danger.
- 4) Use of Force Policy. Officers may only use that amount of force that is reasonable and appears to be necessary to achieve a lawful objective. Officers must act within the scope of their duties as law enforcement officers. The goal of any use of force is to gain control of a resistant or assaultive subject.
- 5) Force definition and reporting. Force is defined as any physical coercion used to affect, persuade, or influence a subject to comply with a lawful order. All force must be immediately reported to a supervisor with the exception of un-resisted escorts or un-resisted handcuffing.
- 6) Deadly Force. An officer may use deadly force to stop an imminent threat of death or serious bodily injury to the officer or another person. Serious injury is permanent impairment or disfigurement. Deadly force is any force that is likely to cause death or serious injury.
- 7) Less Lethal Force Training. Officers will be trained and equipped with less lethal weapons that may assist them in controlling resistant or assaultive behavior. “Less lethal weapons” are those weapons that are expected to create less risk of causing serious injury or death.
- 8) Shooting at Vehicles. Officers are discouraged from shooting at vehicles. An officer may only shoot at the operator of a vehicle if he/she is using that vehicle as a deadly weapon toward the officer or another person and deadly force is the only reasonable means available to stop that threat. Training should emphasis the dangers associated with shooting at a moving vehicle.
- 9) Implicit bias training. Training officers to recognize and understand the often automatic association people make between groups of people and stereotypes. Under certain conditions, those automatic associations can influence behavior making people respond in biased ways even when they are not explicitly prejudiced.
- 10) Duty to intervene. Officers who have an opportunity to intervene in another officer’s excessive use force must do so or risk potential liability, including a civil rights violation based upon their failure to intervene. Agencies may likewise be liable where there is a custom or failure in training, supervision or discipline that leads to the constitutional violation.
- 11) Policy and legal review updates including constitutional standards. Training will consist of reviewing policy and constitutional law surrounding the application and use of force, limitations and legal implications. It is crucial the law enforcement agencies develop clear and concise policies relative to use of force by its officers. It is equally important that officers be familiar through refresher courses and hands-on practical training.