

# **Police Reform and Accountability Act of 2021**

Landmark police accountability legislation became a reality in our state on October 1, 2021. With our support, the Maryland General Assembly passed several comprehensive measures to transform the way policing is done throughout the state and make transparent the process of holding officers accountable for misconduct.

The Maryland Police Accountability Act of 2021 is a complex, multifaceted approach that includes a new Use of Force policy with significant consequences for excessive force, restrictions on no-knock warrants, independent investigations of police misconduct, disclosure of the results of misconduct investigations, and replacement of the obstructive Law Enforcement Officer's Bill of Rights (LEOBOR) with new procedures for administrative discipline. Below is a description of the major components of this important legislation.

## Standards for Use of Force

The new Maryland Use of Force Statute sets strict standards for when officers can use force — and imposes new criminal penalties for serious violations. The law:

- Requires each law enforcement officer to sign an affirmative written sanctity of life pledge to respect every human life and act with compassion toward others.
- Prohibits a police officer from using force against a person unless, under the totality of the circumstances, the force is necessary and proportional to (1) prevent an imminent threat of physical injury to a person or (2) effectuate a legitimate law enforcement objective.
- Requires a police officer to cease the use of force as soon as (1) the person on whom the force is used is under the police officer's control or no longer poses an imminent threat of physical injury or death to the police officer or to another

person or (2) the police officer determines that force will no longer accomplish a legitimate law enforcement objective.

- Specifies duties for a police officer, a police supervisor, and a law enforcement agency relating to the use of force.
- A police officer who intentionally violates the Act's use of force requirements, resulting in serious physical injury or death to a person is guilty of a misdemeanor, punishable by imprisonment for up to 10 years.

### Situations with potential for harm

To address situations that create a higher likelihood of dangerous conflict, new laws:

- Place significant limits on the use of "no-knock" search warrants, including:
  - Repealing as an authorized basis for a no-knock search warrant that the property subject to seizure may be destroyed, disposed of, or secreted,
  - Setting forth several items that must be included in an application for a no-knock search warrant
  - Requiring sign-off by a police supervisor and the State's Attorney, and
  - Limiting the hours during which a warrant may be served
- Restore reporting by each department of information on its SWAT activities
- Provide funding for "mobile crisis teams" established by a local behavioral health authority through the Behavioral Health Crisis Response Grant Program to minimize law enforcement interaction for individuals in crisis and authorizes 9-1-1 to dispatch these teams.

### Improving the quality of police forces

Provisions that seek to improve policing include:

- Disclosure and review of police applicants' prior disciplinary actions,
- Mandatory mental health screening every two years and annual agility assessments,

- College scholarships of 50% for new and current officers in exchange for working in law enforcement,
- Implicit bias testing and training for new officers and for current officers on an annual basis
- New training on “when a police officer may or may not draw a firearm or point a firearm at a person and enforcement options that are less likely to cause death or serious physical injury, including scenario-based training, de-escalation tactics and techniques, and reasonable alternatives to decrease physical injury”
- Requiring the use of body-worn cameras Body Worn Cameras (BWC) by the State Police and law enforcement agencies of Anne Arundel, Howard and Harford by July 1, 2023, and all other law enforcement agencies by July 1, 2025
  - All BWCs must be able to automatically record and save at least 60 seconds of video footage immediately prior to the officer activating the record button on the device
- Requiring each law enforcement agency to establish a confidential and non-punitive early intervention policy for counseling officers who receive three or more citizen complaints within a 12-month period to require the establishment of a confidential and non-punitive early intervention system to identify police officers who are at risk of engaging in the use of excessive force and to provide the officers with training, behavioral interventions, reassignments, or other appropriate responses to reduce the risk of the use of excessive force
- Providing access to an employee assistance program for all police officers that a law enforcement agency employs, including access to confidential mental health services, and
- Limits on the acquisition of offensive military surplus equipment

### Handling Incidents of Potential Misconduct

The most extensive provisions of law involve a complete overhaul of procedures for investigating and disciplining officers for misconduct. The provisions are not subject to modification under collective bargaining and includes:

- Investigation by the Attorney General’s Office of all alleged or potential police-involved deaths of a civilian and any other crimes related to police misconduct that are discovered during an investigation.
- Repeal of the LEOBOR and replacement with new civilian-based procedures for administrative discipline that involve:
  - Oversight in each county by a “Police Accountability Board” (which cannot include any active police) that also receives complaints of police misconduct filed by members of the public
  - Civilian “Administrative Charging Committees” in each county and statewide to
    - Review investigations of potential police misconduct and determine whether the officer is to be
      - Administratively charged or
      - That the allegations against the police officer are unfounded or the police officer is exonerated
    - Record, in writing, any failure of supervision that caused or contributed to a police officer’s misconduct, and
  - Recommend discipline for a charged officer based on a model uniform disciplinary matrix developed by the Maryland Police Training and Standards Commission (MPTSC)
  - The chief of the law enforcement agency to offer discipline to the police officer who has been administratively charged as recommended by the Charging Committee or a higher degree of discipline within the applicable range of the disciplinary matrix
  - If the officer does not accept the discipline offered, the matter will be referred to a trial board composed of:
    - 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,
    - A civilian who is not a member of an administrative charging committee, appointed by the county’s police accountability board, and

- A police officer of equal rank to the accused police officer, appointed by the head of the law enforcement agency.
- In place of LEOBOR provisions that made questioning accused officers difficult, the new law provides that an officer must 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

To protect officers' constitutional right against self-incrimination, the results of a test, examination, or interrogation are not admissible or discoverable in a criminal proceeding against the officer.

- Remaining rights of police officers: Despite the repeal of LEOBOR, some rights were retained.
  - A police officer who is the subject of a complaint of police misconduct and a complainant has a right to 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 regarding the police officer's employment because the police officer:
    - 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
    - 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.
  - A police officer 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.

## Transparency

Transparency in the disciplinary process is enhanced by:

- Appointment of a victims' rights advocate to:
  - Act as the contact for the public within the police agency on matters related to police misconduct
  - Explain to a complainant the complaint, investigation, administrative charging committee, and trial board processes and any decisions made
  - 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
- Creation of a database that enables a complainant to enter the complainant's case number to follow the status of the case as it proceeds
- Having the report of an Administrative Charging Committee sent to the complainant
- Making a Trial Board hearing open to the public, except to protect victims, children, medical records, confidential matters, or a person's life or safety.
- Prohibiting the 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 from being expunged or destroyed
- Modifying the Maryland Public Information Act (MPIA) to allow public disclosure of 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. These records are no longer considered "personnel records" which cannot be disclosed, thereby making them disclosable.
  - The custodian of the records must redact the portions of a record that reflects medical information of the person in interest, personal contact information of the person in

- interest or a witness, or information relating to the family of the person in interest.
- A custodian may deny access to records to the extent that it would:
    - Interfere with a valid and proper law enforcement proceeding [This means that records are not generally available until an investigation or proceeding is completed]
    - Deprive another person of a right to a fair trial or an impartial adjudication
    - Constitute an unwarranted invasion of personal privacy
    - Disclose the identity of a confidential source
    - Disclose an investigative technique or procedure
    - Prejudice an investigation, or
    - Endanger the life or physical safety of an individual
  - A custodian may redact the portions of a record to the extent that the record reflects witness information. A custodian must notify the person in interest when the record is inspected, but may not disclose the identity of the requestor to the person in interest.
  - Still considered a personnel record (and not subject to disclosure) are “technical infractions,” a minor rule violation by an individual solely related to the enforcement of administrative rules that (1) does not involve an interaction between a member of the public and the individual; (2) does not relate to the individual’s investigative, enforcement, training, supervision, or reporting responsibilities; and (3) is not otherwise a matter of public concern

### Control of the Police Department of Baltimore City

The law also moves the authority and responsibility for the Baltimore Police Department (BPD) from the State of Maryland to Baltimore City (contingent on the passage of an amendment to the Charter of Baltimore City that provides the transfer of control of BPD to Baltimore City and its ratification by the voters of Baltimore City at either the 2022 or the 2024 general election). This removes

an anomaly in Maryland law and places full accountability with the City Government.

#### Higher payouts in lawsuits

The new law raised the limit on awards that plaintiffs can win in lawsuits over police misconduct filed in Maryland state courts from \$400,000 to \$890,000. This more than doubles the amount of money that can be awarded. It does not affect lawsuits against police in federal court, where there are no limits on potential judgments.