SENATE BILL 1066

E4 0lr3777 SB 1037/19 – JPR CF HB 1090

By: Senator Carter

Introduced and read first time: February 28, 2020

Assigned to: Rules

A BILL ENTITLED

4	A 7 T		•
1	AN	\mathbf{ACT}	concerning
_	,		COLLECTION

2 Law Enforcement – Complaints and Investigations and Use of Force 3 (Anton's Law)

4 FOR the purpose of establishing that the use of force and the use of deadly force by a police 5 officer is justified under certain circumstances; requiring a trier of fact to consider 6 certain factors when assessing whether a police officer's use of force was reasonable; 7 providing that a police officer who uses deadly force with an honest but unreasonable 8 belief in its necessity is guilty of voluntary manslaughter; establishing that records 9 relating to complaints against law enforcement officers are not personnel records for 10 certain purposes; authorizing a custodian of records to deny inspection of records 11 relating to complaints against law enforcement officers under certain circumstances; 12 repealing a requirement that investigations and interrogations of a law enforcement 13 officer be conducted by certain persons; requiring that a person submitting a complaint against a law enforcement officer be provided with certain records; making 14 15 conforming changes; defining certain terms; and generally relating to the conduct of 16 law enforcement officers.

17 BY adding to

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23

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Article – Criminal Procedure

19 Section 2–109

20 Annotated Code of Maryland

21 (2018 Replacement Volume and 2019 Supplement)

22 BY repealing and reenacting, with amendments,

Article – General Provisions

24 Section 4–101, 4–311, and 4–351

25 Annotated Code of Maryland

26 (2019 Replacement Volume)

27 BY repealing and reenacting, with amendments,

Article – Public Safety

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



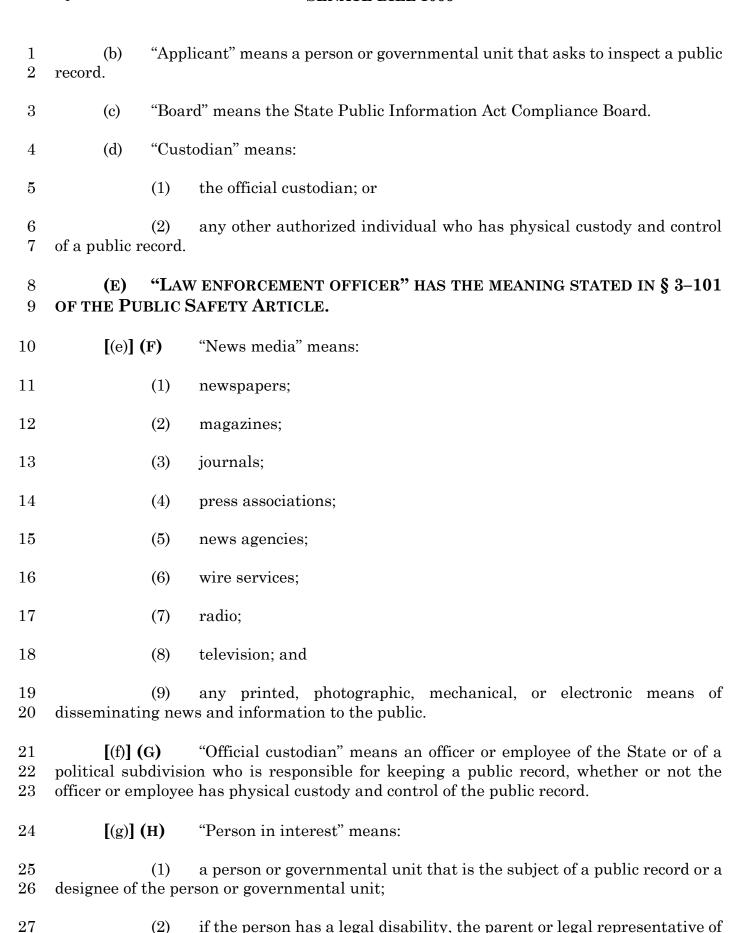
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1 2 3	Section 3–104 and 3–207(f) Annotated Code of Maryland (2018 Replacement Volume and 2019 Supplement)
4 5 6 7 8	BY repealing and reenacting, without amendments, Article – Public Safety Section 3–202 Annotated Code of Maryland (2018 Replacement Volume and 2019 Supplement)
9 10	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
11	Article – Criminal Procedure
12	2–109.
13 14	(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.
15 16	(2) (I) "DEADLY FORCE" MEANS ANY USE OF FORCE THAT CREATES A SUBSTANTIAL RISK OF CAUSING DEATH OR SERIOUS BODILY INJURY.
17 18	(II) "DEADLY FORCE" INCLUDES ANY DISCHARGE OF A FIREARM.
19 20	(3) "DEADLY WEAPON" MEANS AN OBJECT, USED OR INTENDED TO BE USED, THAT IS LIKELY TO CAUSE SERIOUS BODILY INJURY OR DEATH.
21 22	(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A POLICE OFFICER IS JUSTIFIED IN USING FORCE AGAINST A PERSON IF:
23 24	(1) (I) 1. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON COMMITTED A CRIME; AND
25 26	2. THE FORCE IS USED TO PREVENT THE PERSON'S ESCAPE FROM LAWFUL CUSTODY; OR
27 28	(II) THE FORCE IS USED TO PREVENT THE COMMISSION OF A CRIME; AND

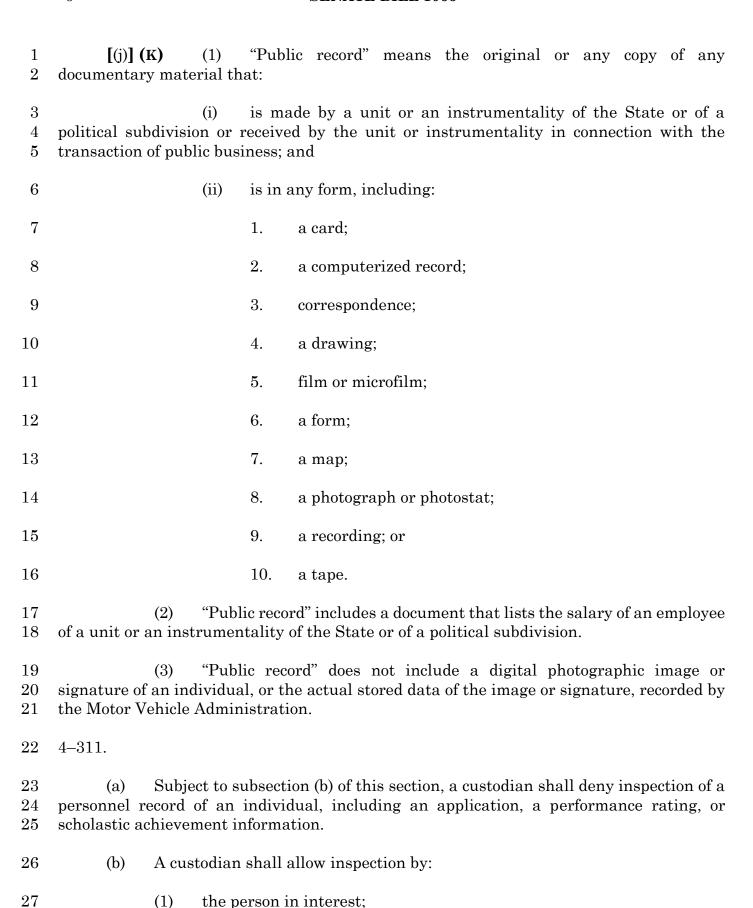
(2) THE POLICE OFFICER USES NO MORE FORCE THAN WHAT IS

REASONABLY NECESSARY TO EFFECTUATE AN ARREST.

- 1 (C) (1) A POLICE OFFICER IS JUSTIFIED IN USING DEADLY FORCE IF:
- 2 (I) THE POLICE OFFICER REASONABLY BELIEVES THAT
- 3 DEADLY FORCE IS NECESSARY TO PROTECT THE POLICE OFFICER OR ANOTHER
- 4 PERSON FROM THE THREAT OF SERIOUS BODILY INJURY OR DEATH; AND
- 5 (II) THE POLICE OFFICER'S ACTIONS ARE REASONABLE GIVEN
- 6 THE TOTALITY OF THE CIRCUMSTANCES.
- 7 (2) A POLICE OFFICER IS NOT JUSTIFIED IN USING DEADLY FORCE
- 8 BASED SOLELY ON A BELIEF THAT A PERSON POSES A RISK OF SERIOUS BODILY
- 9 INJURY OR DEATH TO THEMSELVES.
- 10 (D) A TRIER OF FACT SHALL CONSIDER THE FOLLOWING FACTORS AS PART
- 11 OF THE TOTALITY OF THE CIRCUMSTANCES WHEN ASSESSING WHETHER THE POLICE
- 12 OFFICER'S BELIEFS AND ACTIONS WERE REASONABLE:
- 13 (1) WHETHER THE INJURED OR DECEASED PERSON:
- 14 (I) POSSESSED OR APPEARED TO POSSESS A DEADLY WEAPON
- 15 OR AN OBJECT THAT COULD BE USED AS A DEADLY WEAPON; AND
- 16 (II) REFUSED TO COMPLY WITH A POLICE OFFICER'S ORDER TO
- 17 FORFEIT AN OBJECT BELIEVED TO BE A DEADLY WEAPON, OR ANY OTHER ORDER
- 18 REASONABLY RELATED TO PUBLIC SAFETY PRIOR TO THE POLICE OFFICER USING
- 19 **DEADLY FORCE**;
- 20 (2) WHETHER THE POLICE OFFICER ENGAGED IN REASONABLE
- 21 DE-ESCALATION MEASURES, INCLUDING TAKING COVER, WAITING FOR BACKUP,
- 22 TRYING TO CALM THE DECEASED OR INJURED PERSON, OR USING LESS LETHAL
- 23 TYPES OF FORCE BEFORE USING DEADLY FORCE; AND
- 24 (3) WHETHER THE POLICE OFFICER'S CONDUCT INCREASED THE RISK
- 25 OF A CONFRONTATION RESULTING IN DEADLY FORCE BEING USED.
- 26 (E) If A POLICE OFFICER ACTED WITH AN HONEST BUT UNREASONABLE
- 27 BELIEF IN THE NEED TO USE DEADLY FORCE, THE POLICE OFFICER SHALL BE FOUND
- 28 NOT GUILTY OF MURDER BUT GUILTY OF VOLUNTARY MANSLAUGHTER.
- 29 Article General Provisions
- 30 4–101.
- 31 (a) In this title the following words have the meanings indicated.



1	the person; or		
2 3 4	(3) as to requests for correction of certificates of death under § 5–310(d)(2) of the Health – General Article, the spouse, adult child, parent, adult sibling, grandparent, or guardian of the person of the deceased at the time of the deceased's death.		
5 6	[(h)] (I) individual.	(1)	"Personal information" means information that identifies an
7 8			
9		(i)	name;
10		(ii)	address;
11		(iii)	driver's license number or any other identification number;
12		(iv)	medical or disability information;
13		(v)	photograph or computer-generated image;
14		(vi)	Social Security number; and
15		(vii)	telephone number.
16	(3)	"Pers	onal information" does not include an individual's:
17		(i)	driver's status;
18		(ii)	driving offenses;
19		(iii)	five-digit zip code; or
20		(iv)	information on vehicular accidents.
21	[(i)] (J)	"Polit	tical subdivision" means:
22	(1)	a cou	nty;
23	(2)	a mu	nicipal corporation;
24	(3)	an ur	nincorporated town;
25	(4)	a sch	ool district; or
26	(5)	a spe	cial district.



1 (2)an elected or appointed official who supervises the work of the 2 individual; or 3 an employee organization described in Title 6 of the Education Article of the portion of the personnel record that contains the individual's: 4 5 (i) home address: 6 (ii) home telephone number; and 7 (iii) personal cell phone number. 8 (C) A RECORD RELATED TO A FORMAL COMPLAINT OF JOB-RELATED 9 MISCONDUCT MADE AGAINST A LAW ENFORCEMENT OFFICER, INCLUDING AN INVESTIGATION RECORD, A HEARING RECORD, OR A DISCIPLINARY DECISION, IS 10 NOT A PERSONNEL RECORD FOR THE PURPOSES OF THIS SUBTITLE. 11 12 4-351. 13 (a) Subject to subsection (b) of this section, a custodian may deny inspection of: 14 records of investigations conducted by the Attorney General, a State's (1)15 Attorney, a municipal or county attorney, a police department, or a sheriff; 16 an investigatory file compiled for any other law enforcement, judicial, (2)correctional, or prosecution purpose; [or] 17 18 records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police 19 20 department, a State or local correctional facility, or a sheriff; OR 21RECORDS OF AN INVESTIGATION, A HEARING, OR A DECISION **(4)** RELATED TO A COMPLAINT OF JOB-RELATED MISCONDUCT MADE AGAINST A LAW 22 23ENFORCEMENT OFFICER. 24 A custodian may deny inspection by a person in interest only to the extent 25that the inspection would: 26 (1) interfere with a valid and proper law enforcement proceeding; 27 deprive another person of a right to a fair trial or an impartial (2) 28adjudication; 29 constitute an unwarranted invasion of personal privacy; (3) disclose the identity of a confidential source; 30 (4)

[(d)] (C) (1)

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1	(5) disclose an investigative technique or procedure;
2	(6) prejudice an investigation; or
3	(7) endanger the life or physical safety of an individual.
4	Article - Public Safety
5	3–104.
6 7 8	(a) The investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal shall be conducted in accordance with this section.
9 10	(b) [For purposes of this section, the investigating officer or interrogating officer shall be:
11	(1) a sworn law enforcement officer; or
12 13	(2) if requested by the Governor, the Attorney General or Attorney General's designee.
14 15 16	(c)] (1) A complaint against a law enforcement officer that alleges brutality in the execution of the law enforcement officer's duties may not be investigated unless the complaint is signed and sworn to, under penalty of perjury, by:
17	(i) the aggrieved individual;
18	(ii) a member of the aggrieved individual's immediate family;
19 20	(iii) an individual with firsthand knowledge obtained because the individual:
21	1. was present at and observed the alleged incident; or
22 23	2. has a video recording of the incident that, to the best of the individual's knowledge, is unaltered; or
24 25	(iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.
26 27 28	(2) Unless a complaint is filed within 366 days after the alleged brutality, an investigation that may lead to disciplinary action under this subtitle for brutality may not be initiated and an action may not be taken.

The law enforcement officer under investigation shall be

1	informed of the na	ame[, rank, and command] of:
2 3	investigation;	(i) the [law enforcement officer] PERSON in charge of the
4 5	INTERROGATE T	(ii) [the interrogating officer] ANY PERSON WHO WILL HE OFFICER; and
6		(iii) each individual present during an interrogation.
7 8	(2) investigation shall	Before an interrogation, the law enforcement officer under l be informed in writing of the nature of the investigation.
9 10 11 12		If the law enforcement officer under interrogation is under arrest, or is under arrest as a result of the interrogation, the law enforcement officer d completely of all of the law enforcement officer's rights before the ins.
13 14 15		Unless the seriousness of the investigation is of a degree that an ogation is required, the interrogation shall be conducted at a reasonable when the law enforcement officer is on duty.
16	[(g)] (F)	(1) The interrogation shall take place:
17 18 19		(i) [at the office of the command of the investigating officer or] at ocal precinct or police unit in which the incident allegedly occurred, as [investigating officer] PERSON CONDUCTING THE INVESTIGATION; or
20		(ii) at another reasonable and appropriate place.
21 22	(2) described in parag	The law enforcement officer under investigation may waive the right graph (1)(i) of this subsection.
23 24 25	~	(1) All questions directed to the law enforcement officer under a libe asked by and through one [interrogating officer] PERSON during any errogation consistent with paragraph (2) of this subsection.
26	(2)	Each session of interrogation shall:
27		(i) be for a reasonable period; and
28 29	necessary.	(ii) allow for personal necessities and rest periods as reasonably
30	[(i)] (H)	The law enforcement officer under interrogation may not be threatened

with transfer, dismissal, or disciplinary action.

31

- the law 1 **(i)] (I)** (1) (i) On request, enforcement officer under 2 interrogation has the right to be represented by counsel or another responsible 3 representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation. 4 5 (ii) The law enforcement officer may waive the right described in 6 subparagraph (i) of this paragraph. 7 The interrogation shall be suspended for a period not exceeding 5 business days until representation is obtained. 8 9 (ii) Within that 5 business day period, the [chief] PERSON IN 10 CHARGE OF THE INVESTIGATION for good cause shown may extend the period for 11 obtaining representation. 12 During the interrogation, the law enforcement officer's counsel or (3) 13 representative may: 14 request a recess at any time to consult with the law enforcement (i) officer: 15 16 object to any question posed; and (ii) 17 (iii) state on the record outside the presence of the law enforcement officer the reason for the objection. 18 19 [(k)] (J) A complete record shall be kept of the entire interrogation, (1) 20 including all recess periods, of the law enforcement officer. 21 The record may be written, taped, or transcribed. (2)22 On completion of the investigation, and on request of the law 23 enforcement officer under investigation or the law enforcement officer's counsel or 24representative, a copy of the record of the interrogation shall be made available at least 10 25 days before a hearing. 26 The [law enforcement agency] PERSON IN CHARGE OF THE [(1)] **(K)** (1) 27 INVESTIGATION may order the law enforcement officer under investigation to submit to 28 blood alcohol tests, blood, breath, or urine tests for controlled dangerous substances, 29 polygraph examinations, or interrogations that specifically relate to the subject matter of 30 the investigation.
- 31 (2) If the [law enforcement agency] PERSON IN CHARGE OF THE 32 INVESTIGATION orders the law enforcement officer to submit to a test, examination, or 33 interrogation described in paragraph (1) of this subsection and the law enforcement officer

- 1 refuses to do so, the [law enforcement agency] PERSON IN CHARGE OF THE 2 INVESTIGATION may commence an action that may lead to a punitive measure as a result 3 of the refusal.
- 4 (3) If the [law enforcement agency] PERSON IN CHARGE OF THE 5 INVESTIGATION orders the law enforcement officer to submit to a test, examination, or 6 interrogation described in paragraph (1) of this subsection, the results of the test, examination, or interrogation are not admissible or discoverable in a criminal proceeding 8 against the law enforcement officer.
- [(m)] (L) (1) If the [law enforcement agency] PERSON IN CHARGE OF THE INVESTIGATION orders the law enforcement officer to submit to a polygraph examination, the results of the polygraph examination may not be used as evidence in an administrative hearing unless the [law enforcement agency] PERSON IN CHARGE OF THE INVESTIGATION and the law enforcement officer agree to the admission of the results.
- 14 (2) The law enforcement officer's counsel or representative need not be 15 present during the actual administration of a polygraph examination by a certified 16 polygraph examiner if:
- 17 (i) the questions to be asked are reviewed with the law enforcement 18 officer or the counsel or representative before the administration of the examination;
- 19 (ii) the counsel or representative is allowed to observe the 20 administration of the examination; and
- 21 (iii) a copy of the final report of the examination by the certified 22 polygraph examiner is made available to the law enforcement officer or the counsel or 23 representative within a reasonable time, not exceeding 10 days, after completion of the 24 examination.
- [(n)] (M) (1) On completion of an investigation and at least 10 days before a hearing, the law enforcement officer under investigation shall be:
- 27 (i) notified of the name of each witness and of each charge and 28 specification against the law enforcement officer; and
- 29 (ii) provided with a copy of the investigatory file and any exculpatory 30 information, if the law enforcement officer and the law enforcement officer's representative 31 agree to:
- 1. execute a confidentiality agreement with the [law enforcement agency] PERSON IN CHARGE OF THE INVESTIGATION not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the law enforcement officer; and

$\frac{1}{2}$	2. pay a reasonable charge for the cost of reproducing the material.
3 4 5	(2) The [law enforcement agency] PERSON IN CHARGE OF THE INVESTIGATION may exclude from the exculpatory information provided to a law enforcement officer under this subsection:
6	(i) the identity of confidential sources;
7	(ii) nonexculpatory information; and
8	(iii) recommendations as to charges, disposition, or punishment.
9 10 11 12 13	[(o)] (N) (1) The [law enforcement agency] PERSON IN CHARGE OF THE INVESTIGATION may not insert adverse material into a file of the law enforcement officer, except the file of the internal investigation or the intelligence division, unless the law enforcement officer has an opportunity to review, sign, receive a copy of, and comment in writing on the adverse material.
14 15	(2) The law enforcement officer may waive the right described in paragraph (1) of this subsection.
16	3–202.
17 18	There is a Maryland Police Training and Standards Commission, which is an independent commission that functions in the Department.
19	3–207.
20 21	(f) (1) The Commission shall develop a uniform citizen complaint process to be followed by each law enforcement agency.
22	(2) The uniform complaint process shall:
23	(i) be simple;
24	(ii) require that a complainant be:
25 26	1. informed of the final disposition of the complainant's complaint and any discipline imposed as a result; and
27 28 29	2. PROVIDED WITH A COPY OF THE INVESTIGATORY FILE RELATING TO THE COMPLAINT AND COPIES OF ANY PRIOR COMPLAINTS FILED AGAINST THE POLICE OFFICER IN QUESTION; AND
30	(iii) be posted on the websites of the Commission and each law

- 1 enforcement agency.
- 2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 3 October 1, 2020.