

HOUSE BILL 1090

E4

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By: **Delegates Acevero, Ivey, Anderson, D. Barnes, Barron, Bartlett, Boyce, Bridges, Carr, Charkoudian, Charles, Crutchfield, Cullison, D.M. Davis, Fennell, W. Fisher, Harrison, Haynes, Henson, Hill, M. Jackson, Korman, Lehman, R. Lewis, Lierman, Lopez, Love, McIntosh, Moon, Mosby, Palakovich Carr, Patterson, Pena-Melnyk, Proctor, Qi, Reznik, Rogers, Smith, Solomon, Stewart, Terrasa, Turner, Valderrama, Washington, Wells, Wilkins, and Williams**

Introduced and read first time: February 6, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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
14 complaint against a law enforcement officer be provided with certain records; making
15 conforming changes; defining certain terms; and generally relating to the conduct of
16 law enforcement officers.

17 BY adding to
18 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,
23 Article – General Provisions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 4–101, 4–311, and 4–351
Annotated Code of Maryland
(2019 Replacement Volume)

BY repealing and reenacting, with amendments,
Article – Public Safety
Section 3–104 and 3–207(f)
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, without amendments,
Article – Public Safety
Section 3–202
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Procedure

2–109.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
INDICATED.

(2) (I) “DEADLY FORCE” MEANS ANY USE OF FORCE THAT
CREATES A SUBSTANTIAL RISK OF CAUSING DEATH OR SERIOUS BODILY INJURY.

(II) “DEADLY FORCE” INCLUDES ANY DISCHARGE OF A
FIREARM.

(3) “DEADLY WEAPON” MEANS AN OBJECT, USED OR INTENDED TO BE
USED, THAT IS LIKELY TO CAUSE SERIOUS BODILY INJURY OR DEATH.

(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A POLICE
OFFICER IS JUSTIFIED IN USING FORCE AGAINST A PERSON IF:

(1) (I) 1. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE
PERSON COMMITTED A CRIME; AND

2. THE FORCE IS USED TO PREVENT THE PERSON’S
ESCAPE FROM LAWFUL CUSTODY; OR

(II) THE FORCE IS USED TO PREVENT THE COMMISSION OF A

1 CRIME; AND

2 (2) THE POLICE OFFICER USES NO MORE FORCE THAN WHAT IS
3 REASONABLY NECESSARY TO EFFECTUATE AN ARREST.

4 (C) (1) A POLICE OFFICER IS JUSTIFIED IN USING DEADLY FORCE IF:

5 (I) THE POLICE OFFICER REASONABLY BELIEVES THAT
6 DEADLY FORCE IS NECESSARY TO PROTECT THE POLICE OFFICER OR ANOTHER
7 PERSON FROM THE THREAT OF SERIOUS BODILY INJURY OR DEATH; AND

8 (II) THE POLICE OFFICER'S ACTIONS ARE REASONABLE GIVEN
9 THE TOTALITY OF THE CIRCUMSTANCES.

10 (2) A POLICE OFFICER IS NOT JUSTIFIED IN USING DEADLY FORCE
11 BASED SOLELY ON A BELIEF THAT A PERSON POSES A RISK OF SERIOUS BODILY
12 INJURY OR DEATH TO THEMSELVES.

13 (D) A TRIER OF FACT SHALL CONSIDER THE FOLLOWING FACTORS AS PART
14 OF THE TOTALITY OF THE CIRCUMSTANCES WHEN ASSESSING WHETHER THE POLICE
15 OFFICER'S BELIEFS AND ACTIONS WERE REASONABLE:

16 (1) WHETHER THE INJURED OR DECEASED PERSON:

17 (I) POSSESSED OR APPEARED TO POSSESS A DEADLY WEAPON
18 OR AN OBJECT THAT COULD BE USED AS A DEADLY WEAPON; AND

19 (II) REFUSED TO COMPLY WITH A POLICE OFFICER'S ORDER TO
20 FORFEIT AN OBJECT BELIEVED TO BE A DEADLY WEAPON, OR ANY OTHER ORDER
21 REASONABLY RELATED TO PUBLIC SAFETY PRIOR TO THE POLICE OFFICER USING
22 DEADLY FORCE;

23 (2) WHETHER THE POLICE OFFICER ENGAGED IN REASONABLE
24 DE-ESCALATION MEASURES, INCLUDING TAKING COVER, WAITING FOR BACKUP,
25 TRYING TO CALM THE DECEASED OR INJURED PERSON, OR USING LESS LETHAL
26 TYPES OF FORCE BEFORE USING DEADLY FORCE; AND

27 (3) WHETHER THE POLICE OFFICER'S CONDUCT INCREASED THE RISK
28 OF A CONFRONTATION RESULTING IN DEADLY FORCE BEING USED.

29 (E) IF A POLICE OFFICER ACTED WITH AN HONEST BUT UNREASONABLE
30 BELIEF IN THE NEED TO USE DEADLY FORCE, THE POLICE OFFICER SHALL BE FOUND
31 NOT GUILTY OF MURDER BUT GUILTY OF VOLUNTARY MANSLAUGHTER.

Article – General Provisions

4–101.

(a) In this title the following words have the meanings indicated.

(b) “Applicant” means a person or governmental unit that asks to inspect a public record.

(c) “Board” means the State Public Information Act Compliance Board.

(d) “Custodian” means:

(1) the official custodian; or

(2) any other authorized individual who has physical custody and control of a public record.

(E) “LAW ENFORCEMENT OFFICER” HAS THE MEANING STATED IN § 3–101 OF THE PUBLIC SAFETY ARTICLE.

[(e)] (F) “News media” means:

(1) newspapers;

(2) magazines;

(3) journals;

(4) press associations;

(5) news agencies;

(6) wire services;

(7) radio;

(8) television; and

(9) any printed, photographic, mechanical, or electronic means of disseminating news and information to the public.

[(f)] (G) “Official custodian” means an officer or employee of the State or of a political subdivision who is responsible for keeping a public record, whether or not the officer or employee has physical custody and control of the public record.

1 **[(g)] (H)** “Person in interest” means:

2 (1) a person or governmental unit that is the subject of a public record or a
3 designee of the person or governmental unit;

4 (2) if the person has a legal disability, the parent or legal representative of
5 the person; or

6 (3) as to requests for correction of certificates of death under § 5–310(d)(2)
7 of the Health – General Article, the spouse, adult child, parent, adult sibling, grandparent,
8 or guardian of the person of the deceased at the time of the deceased’s death.

9 **[(h)] (I)** (1) “Personal information” means information that identifies an
10 individual.

11 (2) Except as provided in § 4–355 of this title, “personal information”
12 includes an individual’s:

13 (i) name;

14 (ii) address;

15 (iii) driver’s license number or any other identification number;

16 (iv) medical or disability information;

17 (v) photograph or computer-generated image;

18 (vi) Social Security number; and

19 (vii) telephone number.

20 (3) “Personal information” does not include an individual’s:

21 (i) driver’s status;

22 (ii) driving offenses;

23 (iii) five-digit zip code; or

24 (iv) information on vehicular accidents.

25 **[(i)] (J)** “Political subdivision” means:

26 (1) a county;

27 (2) a municipal corporation;

(3) an unincorporated town;

(4) a school district; or

(5) a special district.

[j)] (K) (1) “Public record” means the original or any copy of any documentary material that:

(i) is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat;
9. a recording; or
10. a tape.

(2) “Public record” includes a document that lists the salary of an employee of a unit or an instrumentality of the State or of a political subdivision.

(3) “Public record” does not include a digital photographic image or signature of an individual, or the actual stored data of the image or signature, recorded by the Motor Vehicle Administration.

4–311.

(a) Subject to subsection (b) of this section, a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or

1 scholastic achievement information.

2 (b) A custodian shall allow inspection by:

3 (1) the person in interest;

4 (2) an elected or appointed official who supervises the work of the
5 individual; or

6 (3) an employee organization described in Title 6 of the Education Article
7 of the portion of the personnel record that contains the individual's:

8 (i) home address;

9 (ii) home telephone number; and

10 (iii) personal cell phone number.

11 **(C) A RECORD RELATED TO A FORMAL COMPLAINT OF JOB-RELATED**
12 **MISCONDUCT MADE AGAINST A LAW ENFORCEMENT OFFICER, INCLUDING AN**
13 **INVESTIGATION RECORD, A HEARING RECORD, OR A DISCIPLINARY DECISION, IS**
14 **NOT A PERSONNEL RECORD FOR THE PURPOSES OF THIS SUBTITLE.**

15 4-351.

16 (a) Subject to subsection (b) of this section, a custodian may deny inspection of:

17 (1) records of investigations conducted by the Attorney General, a State's
18 Attorney, a municipal or county attorney, a police department, or a sheriff;

19 (2) an investigatory file compiled for any other law enforcement, judicial,
20 correctional, or prosecution purpose; [or]

21 (3) records that contain intelligence information or security procedures of
22 the Attorney General, a State's Attorney, a municipal or county attorney, a police
23 department, a State or local correctional facility, or a sheriff; **OR**

24 **(4) RECORDS OF AN INVESTIGATION, A HEARING, OR A DECISION**
25 **RELATED TO A COMPLAINT OF JOB-RELATED MISCONDUCT MADE AGAINST A LAW**
26 **ENFORCEMENT OFFICER.**

27 (b) A custodian may deny inspection by a person in interest only to the extent
28 that the inspection would:

29 (1) interfere with a valid and proper law enforcement proceeding;

(2) deprive another person of a right to a fair trial or an impartial adjudication;

(3) constitute an unwarranted invasion of personal privacy;

(4) disclose the identity of a confidential source;

(5) disclose an investigative technique or procedure;

(6) prejudice an investigation; or

(7) endanger the life or physical safety of an individual.

Article – Public Safety

3–104.

(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.

(b) [For purposes of this section, the investigating officer or interrogating officer shall be:

(1) a sworn law enforcement officer; or

(2) if requested by the Governor, the Attorney General or Attorney General's designee.

(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:

(i) the aggrieved individual;

(ii) a member of the aggrieved individual's immediate family;

(iii) an individual with firsthand knowledge obtained because the individual:

1. was present at and observed the alleged incident; or

2. has a video recording of the incident that, to the best of the individual's knowledge, is unaltered; or

(iv) the parent or guardian of the minor child, if the alleged incident involves a minor child.

(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.

[(d)] (C) (1) The law enforcement officer under investigation shall be informed of the name[, rank, and command] of:

(i) the [law enforcement officer] **PERSON** in charge of the investigation;

(ii) [the interrogating officer] **ANY PERSON WHO WILL INTERROGATE THE OFFICER**; and

(iii) each individual present during an interrogation.

(2) Before an interrogation, the law enforcement officer under investigation shall be informed in writing of the nature of the investigation.

[(e)] (D) If the law enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the law enforcement officer shall be informed completely of all of the law enforcement officer's rights before the interrogation begins.

[(f)] (E) Unless the seriousness of the investigation is of a degree that an immediate interrogation is required, the interrogation shall be conducted at a reasonable hour, preferably when the law enforcement officer is on duty.

[(g)] (F) (1) The interrogation shall take place:

(i) [at the office of the command of the investigating officer or] at the office of the local precinct or police unit in which the incident allegedly occurred, as designated by the [investigating officer] **PERSON CONDUCTING THE INVESTIGATION**; or

(ii) at another reasonable and appropriate place.

(2) The law enforcement officer under investigation may waive the right described in paragraph (1)(i) of this subsection.

[(h)] (G) (1) All questions directed to the law enforcement officer under interrogation shall be asked by and through one [interrogating officer] **PERSON** during any one session of interrogation consistent with paragraph (2) of this subsection.

(2) Each session of interrogation shall:

(i) be for a reasonable period; and

(ii) allow for personal necessities and rest periods as reasonably necessary.

[(i)] (H) The law enforcement officer under interrogation may not be threatened with transfer, dismissal, or disciplinary action.

[(j)] (I) (1) (i) On request, the law enforcement officer under interrogation has the right to be represented by counsel or another responsible representative of the law enforcement officer's choice who shall be present and available for consultation at all times during the interrogation.

(ii) The law enforcement officer may waive the right described in subparagraph (i) of this paragraph.

(2) (i) The interrogation shall be suspended for a period not exceeding 5 business days until representation is obtained.

(ii) Within that 5 business day period, the **[chief] PERSON IN CHARGE OF THE INVESTIGATION** for good cause shown may extend the period for obtaining representation.

(3) During the interrogation, the law enforcement officer's counsel or representative may:

(i) request a recess at any time to consult with the law enforcement officer;

(ii) object to any question posed; and

(iii) state on the record outside the presence of the law enforcement officer the reason for the objection.

[(k)] (J) (1) A complete record shall be kept of the entire interrogation, including all recess periods, of the law enforcement officer.

(2) The record may be written, taped, or transcribed.

(3) On completion of the investigation, and on request of the law enforcement officer under investigation or the law enforcement officer's counsel or representative, a copy of the record of the interrogation shall be made available at least 10 days before a hearing.

[(l)] (K) (1) The **[law enforcement agency] PERSON IN CHARGE OF THE INVESTIGATION** may order the law enforcement officer under investigation to 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.

(2) If the [law enforcement agency] **PERSON IN CHARGE OF THE INVESTIGATION** orders the law enforcement officer to submit to a test, examination, or interrogation described in paragraph (1) of this subsection and the law enforcement officer refuses to do so, the [law enforcement agency] **PERSON IN CHARGE OF THE INVESTIGATION** may commence an action that may lead to a punitive measure as a result of the refusal.

(3) If the [law enforcement agency] **PERSON IN CHARGE OF THE INVESTIGATION** orders the law enforcement officer to submit to a test, examination, or 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 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.

(2) The law enforcement officer's counsel or representative need not be present during the actual administration of a polygraph examination by a certified polygraph examiner if:

(i) the questions to be asked are reviewed with the law enforcement officer or the counsel or representative before the administration of the examination;

(ii) the counsel or representative is allowed to observe the administration of the examination; and

(iii) a copy of the final report of the examination by the certified polygraph examiner is made available to the law enforcement officer or the counsel or representative within a reasonable time, not exceeding 10 days, after completion of the 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:

(i) notified of the name of each witness and of each charge and specification against the law enforcement officer; and

(ii) provided with a copy of the investigatory file and any exculpatory information, if the law enforcement officer and the law enforcement officer's representative agree to:

1 1. execute a confidentiality agreement with the [law
2 enforcement agency] **PERSON IN CHARGE OF THE INVESTIGATION** not to disclose any
3 material contained in the investigatory file and exculpatory information for any purpose
4 other than to defend the law enforcement officer; and

5 2. pay a reasonable charge for the cost of reproducing the
6 material.

7 (2) The [law enforcement agency] **PERSON IN CHARGE OF THE**
8 **INVESTIGATION** may exclude from the exculpatory information provided to a law
9 enforcement officer under this subsection:

10 (i) the identity of confidential sources;

11 (ii) nonexculpatory information; and

12 (iii) recommendations as to charges, disposition, or punishment.

13 [(o)] (N) (1) The [law enforcement agency] **PERSON IN CHARGE OF THE**
14 **INVESTIGATION** may not insert adverse material into a file of the law enforcement officer,
15 except the file of the internal investigation or the intelligence division, unless the law
16 enforcement officer has an opportunity to review, sign, receive a copy of, and comment in
17 writing on the adverse material.

18 (2) The law enforcement officer may waive the right described in
19 paragraph (1) of this subsection.

20 3–202.

21 There is a Maryland Police Training and Standards Commission, which is an
22 independent commission that functions in the Department.

23 3–207.

24 (f) (1) The Commission shall develop a uniform citizen complaint process to
25 be followed by each law enforcement agency.

26 (2) The uniform complaint process shall:

27 (i) be simple;

28 (ii) require that a complainant be:

29 1. informed of the final disposition of the complainant's
30 complaint and any discipline imposed as a result; and

1 **2. PROVIDED WITH A COPY OF THE INVESTIGATORY FILE**
2 **RELATING TO THE COMPLAINT AND COPIES OF ANY PRIOR COMPLAINTS FILED**
3 **AGAINST THE POLICE OFFICER IN QUESTION; AND**

4 (iii) be posted on the websites of the Commission and each law
5 enforcement agency.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2020.