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## For better police accountability, repeal law enforcement's bill of rights

Walter Olson

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The protests of recent weeks have brought to the top of the public agenda the need to quickly remove police officers who commit serious misconduct. When the Maryland General Assembly next convenes, its first priority should be to repeal the 1974 law that has long worked to insulate police misbehavior from consequences in our state, the so-called Law Enforcement Officers' Bill of Rights (LEOBR).

LEOBR has figured as a factor in a succession of police controversies, including the death of Freddie Gray in police custody five years ago, the crimes committed by members of Baltimore's Gun Trace Task Force and outcries over individual police uses of force around the state. In case after case, the law has made it harder for departments to investigate officer actions, harder to make charges stick, and harder for the public to learn what is happening. LEOBR by design reinforces the blue wall of silence under which good cops are pressured to keep mum about the less good.

Five years ago, following the Freddie Gray uproar, there was a brief wave of interest in reform. But police unions launched a lobbying blitz, and critics settled for relatively modest changes that took effect in 2016.

In perhaps the most notable of those changes, the infamous waiting period before a department can interview the officers involved in an incident was reduced from 10 days to half that. That's still only five *business* days, so expect a week to go by in practice for what is absurdly couched as a "cooling-off" period, dubbed by cynics as the "get your stories straight period." When interviews finally do happen, of course, a union representative will by law be there to raise objections.

Here are some of the other problems with the law:

- Investigations leading to discipline must be conducted by fellow officers, not some more independent actor. The one exception requires the governor to intervene personally, after which the Attorney General appoints an investigator.
- Back in 2000, when proposals arose for a civilian review board in Frederick, claims of inconsistency with LEOBR torpedoed the idea, even though advocates had tried to tailor the specifics to comply with the law. LEOBR would likewise complicate, or rule out, efforts to conduct an independent investigation by bringing in outside figures, such as a retired judge or other dignitary, as is common practice in private organizations when things go wrong.

- The law bans interview techniques that are common for the police themselves to use when interviewing civilian witnesses, such as the use of multiple interviewers. Job consequences must not be threatened. Investigations of many kinds of offenses may not be started once a year has past, no matter how damning the facts that may come to light later.
- Needless to say, most of these privileges are enjoyed neither by ordinary citizens who get questioned by police, nor by ordinary employees whom their employers suspect of misconduct. If someone tries to tell you LEOBR is just there to guarantee cops the same rights everyone else gets, they're talking through their hat.
- LEOBR's red tape harms the accuracy of investigations, too. The U.S. Department of Justice has repeatedly taken the view that cases in which an officer's gun has been fired call for prompt interrogation, often on the spot and with officers interviewed separately. Preventing the coordinating of stories is just one reason. Memories are freshest in the immediate aftermath. Immediate interviews can alert investigators to physical evidence and witnesses that might be less available if sought a week later.
- Under LEOBR, the chief of the department cannot order suspension or dismissal until after a hearing board does its work, reversing the arrangement often found elsewhere. That board must be comprised of police (see the pattern yet?) and must include a "peer officer" of the same rank as the accused (hello, peer pressure). There's one exception in which the chief gets to bypass this process: when the officer has, literally, been convicted of a felony.
- The law keeps a lid on information in which the public is legitimately interested. If the internal investigation doesn't result in a finding of guilt, the rest of us (including, say, the family of someone who dies in custody) may never get to learn its details. Even authenticated complaints can be expunged after three years, frustrating attempts to identify patterns.

Since Maryland adopted its first-in-the-nation law in 1974, it has spread to 15 other states, causing problems along the way. Among states with their own versions of the law are Minnesota, where a video recorded George Floyd's asphyxiation while in police custody, and Kentucky, where officers' fatal shooting of Breonna Taylor in her Louisville apartment has sparked widespread outrage.

Now momentum is back. Senate Judicial Proceedings Chairman William C. Smith Jr. (D-Montgomery) has signaled that he wants to reconsider key elements of the law.

In a more startling development, first-term Del. Gabriel Acevero, a Montgomery County Democrat, says he was fired from his day job with MCGEO, the union that represents many Montgomery County public employees, for refusing to back off his legislative work on LEOBR reform and other police issues. MCGEO represents some law enforcement employees and has been an ally of the powerful Fraternal Order of Police (FOP).

Don't let the focus slip this time. LEOBR is designed to result in impunity, and it should go.

*Walter Olson is a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies.*

