



Senate Bill 686

Law Enforcement Officers' Bill of Rights – Prosecutorial Disclosures – Punitive Action

MACo Position: **OPPOSE**

To: Judicial Proceedings Committee

Date: February 19, 2014

From: Natasha Mehu

The Maryland Association of Counties **OPPOSES** Senate Bill 686. At the cost of narrowing the ability for Chiefs of Police and Sheriffs to effectively manage their employees, this bill proposes a solution to a problem that does not exist, as there is no evidence that an officer has ever been disciplined solely for appearing on a prosecution list.

SB 686 would prohibit a law enforcement officer from being demoted, dismissed, transferred, reassigned, losing pay, or facing similar action that is considered punitive based solely on the fact that a prosecutorial agency discloses information about the officer to the defense as required by the Maryland Rules. This important disclosure requirement falls under the landmark 1963 U.S. Supreme Court Case, *Brady v. Maryland*, in which it was held that a prosecutor withholding certain exculpatory evidence from a defendant's lawyer was a violation of a defendant's right to due process under the Fourteenth Amendment of the U.S. Constitution.

Pertaining to law enforcement officers, this disclosure requirement includes circumstances in which an officer's personnel file contains information regarding guilty findings of integrity of the arresting or investigating officer. The defense may use this information to discredit the officer's testimony. Integrity is an important character trait when dealing with a law enforcement officer who is under investigation. Chiefs and Sheriffs must have trust in their law enforcement officers, as must the citizens for which they serve. If there is an issue regarding the officer's integrity, appropriate action must take place. Accordingly, Chiefs and Sheriffs must have the ability to transfer or reassign an officer if testimony integrity issues arise. They are free to do so under §3-102 of the Law Enforcement Officers' Bill of Rights (LEOBR), as long as that action is not punitive in nature and the chief determines that action to be in the best interest of the internal management of the law enforcement agency.

Finally, there are already a number of LEOBR procedural protections in place. For instance under §3-103 of the LEOBR, a law enforcement officer may not be "discharged, disciplined,

demoted or 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 law enforcement officer: (1) exercised or demanded the rights granted by this subtitle; or (2) has lawfully exercised constitutional rights." This establishes that an officer may not be retaliated against with punitive action for the procedural rights set up under the LEOBR. This bill attempts to give the officer a substantive right related to criminal investigations which runs counter to the procedural nature of the LEOBR.

For these reasons, and in support of the law enforcement agencies, MACo urges an **UNFAVORABLE** report on SB 686.