

TESTIMONY IN SUPPORT OF HB 221
Recommends Passage of HB-754, HB-760, HB-876

Public Safety – Law Enforcement Officers – Whistleblower Protections

By: Delegates Carter, Conaway, Glenn, B. Robinson, and C. Wilson Introduced and read first time:
January 22, 2016 Assigned to: Judiciary

HB-221 prohibits a supervisor, an appointing authority, or the head of a law enforcement agency from threatening or taking a “retaliatory action” against a “law enforcement officer” who discloses specified information or, following such a disclosure, seeks a remedy under the bill’s provisions or any other law or policy governing the law enforcement agency. The bill details the procedures that must be followed for these whistleblower protections. The bill’s provisions apply prospectively only.

TO: The Honorable Joe Vallario, Chair, Delegate Jill Carter and Anderson, Sponsors, and members of the House Judiciary Proceedings Committee

Respectfully Submitted by **Matthew F. Fogg,**

Chief Deputy U.S. Marshal, Ret. and member of the following organizations > Law Enforcement Against Prohibition (LEAP.org), National Coalition of Law Enforcement Officers for Justice, Reform & Accountability' (NCLEOJ), Prince Georges Coalition for Police Accountability, People For Change Coalition, Black Lives Matter Movement, DC Ferguson and the Hands Up Coalition, Blacks In Government Heritage Chapter President & National 2nd Vice President (BIGNET.org), National President - Federally Employed Women Legal & Education Fund, League of Women Voters – Prince Georges County

FOGG Brief BIO

Life resident of Washington, DC and Prince Georges County, Maryland. 2016 Primary Candidate for U.S. Congress in the 4th District of Maryland. Retired from U.S. Marshals Service (USMS) with 32 years of government service and several meritorious awards. First Responder at Ground Zero – NY World Trade Centers on 9/11. Won 1998 landmark Title VII U.S. District Court for the District of Columbia - Racial Discrimination & Retaliation jury verdict against employer -- the USMS & U.S. Department of Justice (DOJ). 2016 Class Agent representing hundreds of Black deputy US marshals nationwide [**Matthew Fogg, et. al. v US Department of Justice & USMS EEOC#100-94-7910X**]

Cofounder of the National Coalition of Law Enforcement For Justice (NCLEOJ) - current and former Law Enforcement Officers (LEO’s) from various jurisdictions blowing-the-whistle on racially bias police operations, similarly publicized involving Trayvon Martin, Michael Brown, Eric Gardner, Tony Robinson, Sandra Bland and countless other citizens not highlighted in the media.

Former Board member for Amnesty International USA (AIUSA.org). National Equal Employment Opportunity (EEO) government employee representative. Testified before Congress, State and Municipal forums in support of legislation that implements equitable procedures such as the Federal ‘NOFEAR’ Act, State of Black America, Civilian Review Boards, police reform and other measures to prevent racial disparate impact on employees, individuals and minority communities.

Testimony

As a member of the organizations noted above and coupled with my extensive federal law enforcement career, I support **HB-221** instituting **Whistleblower Protection** provisions for Maryland LEO’s. I also support passage of **HB 754** - Law Enforcement Officers - **Disciplinary Actions** - Written Policy; **HB 760** Law Enforcement Officers' **Bill of Rights – Alterations**; and **HB 876** Public Safety - **District Court Commissioner - Complaints of Police Brutality**

No one will deny, especially other LEO’s that a hidden code of conduct exists throughout most law enforcement organizations in Maryland and America known as the infamous, “**blue wall of silence**”. It virtually means if you see something wrong by a fellow officer, or group of officers, don’t say anything. The reasoning behind this concept is that you might need backup by someone who you are reporting or a cover-up for you own wrongdoing.

I remember specifically when I left the Federal Law Enforcement Training Academy in 1978 and arrived at my Washington DC duty station. My supervisor said, “Fogg I know you trained well and gained a lot of academia but let that go now – because you must learn how we do things hear.”

In 1985, I decided to blow-the-whistle on federal violations within the rank & file and amidst much opposition from my friends, colleagues, and family. My multiple complaints were ultimately validated by a 1998 Federal court jury verdict and finalized in 2008 with a court Judgement nearly two and a half decades after I first reported the wrongdoing.

During that same litigious journey to justice and amongst many ongoing acts of reprisal, my life was placed in grave danger when my colleagues abandoned me on a well publicized 'Americas Most Wanted' joint agency task force operation in Baltimore, Maryland. My remaining colleagues and I arrested two heavily armed fugitives charged with Murder and Prison Escape but the deputy marshals who abandoned me were not disciplined and were later promoted.

Other deputy Marshals (white, brown and black) who blew-the-whistle on internal corruption and/or testified before Congress were also ridiculed, harassed and terminated from employment. One of my colleagues from New York City, Inspector William Bill Scott, who also testified with me before the U.S. Congress, later died from injuries he sustained in an automobile accident caused by a mysterious unknown assailant.

Even the honorable Maxine Waters, Chair of the 1997 Congressional Black Caucus presented me and my congressional whistle blowing colleagues with letters that stated: *"Thank you for testifying at the Congressional Black Caucus hearing on "Employment Discrimination in Federal Law Enforcement" which was held on November 5, 1997. Given the level of discrimination and retaliation that you and other agents face, you showed great courage in coming forward to tell your story. It makes a difference for Members of the CBC to hear first hand these heart-wrenching tales of discrimination. The CBC is committed to addressing the concerns that you and others raised at the hearing."*

All the Federal Agents who testified on that day were ultimately forced out of Federal service via internal harassment or punitive actions and my New York colleague died from injuries he sustained in an automobile accident caused by an unknown assailant.

It is paramount that this legislation is not only passed but it is augmented for even greater provision to provide protection for LEO's willing to place life and limb in the line of fire by reporting wrongdoing by fellow officers. Remember, LEO's have the training, skill and means to terrorize and harm virtually anyone on or off the job with virtue impunity.

If LEO's are doing wrong against fellow officers, they will do worst against the people they swore to serve & protect. Good LEO's usually know who the bad apples are amongst them. And yes, in comparison to the numbers of good, honest heroes who wear the badge of justice in Maryland and America, there are only few bad apples. But I'm here to tell you that in this profession you can't have ANY bad apples no more that we can tolerate any other terrorist amongst us. The damage these badge carrying terrorist can do to public trust is catastrophic and the reason these bills are presented today.

I know first hand the fear that prevents law officers from coming forward. Therefore, any legislation that gives officers the incentive to report internal wrongdoing is a giant step for transparency, full disclosure and the only meaningful police reform in conjunction with public trust. Other legislation that provides for oversight and enhanced accountability of LEO's procedures such as HB-754, HB-760 and 876 is good common sense innovation's that protect both the Officers and restores community trust.

It's a forgone conclusion that breaking the law to enforce the law via known racial bias in the rank & file was magnified 10 fold when attributed to daily enforcement operations involving the public. This illegal targeting of black and brown Marylanders has created a state prison population where more than 72% are black while only 29% percent of the states general population is black.

An ACLU report indicates, the FBI's 2012 data on "justifiable homicides" by law enforcement (which does not include all deaths at the hands of police) lists Maryland as having the 6th highest number of homicides by police out of 39 states reporting. The other disparities in the report are listed below.

Many LEO's know specifically, how racial bias operations in law enforcement dragnets detailed in the ACLU report are implemented but, refuse to speak up, mainly in fear of retribution by the systemic police culture of indifference.

In 2014, President Barack Obama signed an Executive Order establishing the President's Task Force on 21st Century Policing. On February 2, 2015 former Brockton Mass. Homicide Detective Ken Williams who is testifying here today, asked a question about Whistleblower COP Protection to Chief Ramsey at a Harvard University Forum discussion.¹ Chief Ramsey responded that a **"critical mass"** of police officers is necessary before COPS will blow-the-whistle on other COPS. Clearly, Chief Ramsey recognized the infamous blue wall of silence and insinuated the fear that LEO's have reporting wrongdoing against other officers. In essence, no LEO wants to experience ostracizing, loneliness, danger, harassment, destruction of career and family by reporting wrongdoing inside the rank & file.

¹ President's Task Force on 21st Century Policing - Harvard University Whistleblower Discussion with Chief Ramsey (video).
<http://www.kwillservices.com/#!presidents-21st-century-policing/c1wdg>

I fully support America's LEO networks that seeks optimum protections when LEO's are jeopardized in the line of duty however, HB-221 calls for whistleblower protections for LEO's who would dare challenge the infamous blue wall of silence. It is a giant step in the right direction to garner public trust. I pray that we can enhance it even more to make certain that officers who speak up -- are well insulated from that critical mass that goes along to get along and will align itself even when public trust is at stake.

ACLU Findings - "Deaths in Police Encounters in Maryland, 2010-2014."
http://aclu-md.org/uploaded_files/0000/0620/md_deaths_police_encounters.pdf

1. At least 109 people died in police encounters in Maryland between 2010-2014. These deaths were dispersed throughout the state in 17 counties and Baltimore City.
2. Sixty-nine percent of those who died in a police encounter (75 people) were Black. Blacks make up 29 percent of Maryland's population.
3. Five Black people died at the hands of police for every White person who died, when the size of the Black and White populations were taken into account. Put another way, the rate at which Blacks died by a police encounter (deaths per population size) was five times that of Whites.
4. Forty-one percent of those who died (45 people) were not armed with a weapon of any kind.
5. The number of unarmed Blacks who died (36 people) exceeded the total number of all Whites who died (30 people), armed or not.
6. Ten unarmed Black people died for every unarmed White person who died, when the size of the Black and White populations were taken into account. Put another way, the rate at which unarmed Blacks died by a police encounter (deaths per population size) was ten times that of Whites.
7. Thirty-eight percent of those who died (41 people) presented in a way that suggested a possible medical or mental health issue, disability, substance use or similar issue.
8. Seventy-nine percent of those who died (86 people) were killed by police gunfire.
9. Twenty-one percent of those who died (23 people) were not shot; in most of these cases police used handcuffs or other restraints, pepper spray, and/or a Taser. Several individuals were killed in the course of a vehicle pursuit.
10. Police officers were criminally charged in less than two percent (2 cases) of the 109 incidents.

Go to the ACLU website to download the briefing paper, "Deaths in Police Encounters in Maryland, 2010-2014."
http://aclu-md.org/uploaded_files/0000/0620/md_deaths_police_encounters.pdf

FOGG Also Recommends Passage of the following BILLS

PASS HB 754 - Law Enforcement Officers - Disciplinary Actions - Written Policy

This bill requires that, under the Law Enforcement Officers' Bill of Rights (LEOBR), by January 1, 2017, each law enforcement agency must adopt a written policy and procedure to govern disciplinary actions that may be taken against a law enforcement officer in that agency. Each written policy must include a listing and description of potential violations and the mandatory and discretionary disciplinary action options for each potential violation. A law enforcement officer must be disciplined in accordance with the written policy and procedure of the law enforcement agency unless the hearing board or law enforcement agency states in detail the reasons for any departure from the written policy and procedure. A law enforcement agency that takes disciplinary action against a law enforcement officer in accordance with the bill's provisions must post a monthly summary of disciplinary actions on the Internet.

PASS HB 760 Law Enforcement Officers' Bill of Rights - Alterations

This bill alters the requirements under the Law Enforcement Officers' Bill of Rights (LEOBR) for making a complaint against a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal. The bill also eliminates restrictions regarding who is authorized to conduct an investigation, interrogation, or hearing against a law enforcement officer and specified limitations on the investigations of complaints of brutality against a law enforcement officer.

The bill repeals provisions (1) requiring that the interrogation be suspended for a period of up to 10 days until representation is obtained and (2) authorizing the chief to extend the period for obtaining representation, within that 10-day period, for good cause shown.

PASS HB 876 Public Safety - District Court Commissioner - Complaints of Police Brutality

This bill authorizes a District Court Commissioner to take a complaint from an arrested person against a law enforcement officer that alleges brutality related to the arrest in the execution of the law enforcement officer's duties. A complaint must be sworn to by the complainant and filed by the commissioner in accordance with the Law Enforcement Officers' Bill of Rights (LEOBR).