

Introduced February 3, 2020
Public Hearing February 18, 2020
Council Action March 2, 2020
Executive Action March 5, 2020
Effective Date May 5, 2020

County Council of Howard County, Maryland

2020 Legislative Session

Legislative Day No. 2

Bill No. 7 -2020

Introduced by: Christiana Rigby
Co-sponsored by: Opel Jones, Deb Jung, and Liz Walsh

AN ACT allowing employees of Howard County to make specified disclosures to specified officials; prohibiting a person from retaliating for or limiting certain disclosures; authorizing certain complaints relating to disclosures; providing for confidentiality of certain disclosures; setting certain penalties; providing for the application of this act to certain other measures; and generally relating to whistleblower protection.

Introduced and read first time February 3, 2020. Ordered posted and hearing scheduled.

By order

Diane Schwartz Jones
Diane Schwartz Jones, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on February 18, 2020.

By order

Diane Schwartz Jones
Diane Schwartz Jones, Administrator

This Bill was read the third time on March 2, 2020 and Passed Passed with amendments _____, Failed _____.

By order

Diane Schwartz Jones
Diane Schwartz Jones, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 3rd day of March, 2020 at 11 a.m./p.m.

By order

Diane Schwartz Jones
Diane Schwartz Jones, Administrator

Approved Vetoed by the County Executive March 5, 2020

Calvin Ball
Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; Text in small capitals indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. Be it enacted by the County Council of Howard County, Maryland, that the Howard County**
2 **Code is hereby amended as follows:**

3 *By adding:*

4 *Title 1. Human Resources*

5 *Subtitle 7. Disclosure protection.*

6

7

Title 1. Human Resources.

8

SUBTITLE 7. DISCLOSURE PROTECTION.

9

10 **1.700. WHISTLEBLOWER PROTECTION.**

11 (A) *AUTHORITY TO REPORT.*

12 UNLESS THE DISCLOSURE IS SPECIFICALLY PROHIBITED BY LAW, AN EMPLOYEE OF HOWARD
13 COUNTY, ACTING IN GOOD FAITH AND ON REASONABLE BELIEF, MAY DISCLOSE TO THE COUNTY
14 AUDITOR:

15 (1) A VIOLATION OF A LAW, RULE, OR REGULATION BY A COUNTY OFFICER, EMPLOYEE, OR
16 CONTRACTOR WHILE CONDUCTING COUNTY BUSINESS OR USING COUNTY PROPERTY;

17 (2) A GROSS WASTE OF COUNTY FUNDS;

18 (3) A GROSS ABUSE OF AUTHORITY BY A COUNTY OFFICIAL OR EMPLOYEE; OR

19 (4) A SPECIFIC AND SUBSTANTIAL DANGER TO PUBLIC HEALTH OR SAFETY DUE TO AN ACT OR
20 OMISSION OF A COUNTY OFFICIAL, EMPLOYEE, OR CONTRACTOR.

21 (B) *PROHIBITED ACTS.*

22 (1) A SUPERVISOR, APPOINTING AUTHORITY, OR HEAD OF AN OFFICE OR DEPARTMENT MAY NOT
23 THREATEN OR IN FACT TAKE OR REFUSE TO TAKE ANY PERSONNEL ACTION AS A REPRISAL AGAINST AN
24 EMPLOYEE TO RESTRAIN, INFLUENCE, OR PREVENT AN EMPLOYEE FROM MAKING A DISCLOSURE UNDER
25 SUBSECTION (A) OF THIS SECTION.

26 (2) (1) FOR PURPOSES OF THIS PARAGRAPH, "RETALIATE" MEANS TO TAKE AN ADVERSE
27 EMPLOYMENT ACTION AGAINST AN EMPLOYEE OF THE COUNTY INCLUDING, BUT NOT LIMITED TO,
28 THREATS OF RETALIATION, DISCHARGE, DISCRIMINATION IN COMPENSATION, OR DISCRIMINATION IN
29 CONDITIONS OF EMPLOYMENT.

1 (II) A SUPERVISOR, APPOINTING AUTHORITY, OR HEAD OF AN OFFICE OR DEPARTMENT
2 MAY NOT RETALIATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE MAKES A DISCLOSURE UNDER
3 SUBSECTION (A) OF THIS SECTION.

4 (C) *COMPLAINTS.*

5 (1) AN EMPLOYEE WHO SEEKS RELIEF FOR A VIOLATION OF SUBSECTION (B) OF THIS SECTION
6 MAY FILE A COMPLAINT WITH THE HUMAN RESOURCES ADMINISTRATOR OR, IF THE SUBJECT OF THE
7 COMPLAINT IS THE ADMINISTRATOR, THE CHIEF ADMINISTRATIVE OFFICER.

8 (2) THE HUMAN RESOURCES ADMINISTRATOR OR THE CHIEF ADMINISTRATIVE OFFICER SHALL
9 INVESTIGATE THE COMPLAINT AND THE CHIEF ADMINISTRATIVE OFFICER SHALL REPORT THE FINDINGS
10 TO THE HOWARD COUNTY COUNCIL, THE COUNTY AUDITOR, AND THE COUNTY EXECUTIVE.

11 (D) *CONFIDENTIALITY.*

12 TO THE EXTENT ALLOWED BY LAW, THE IDENTITY OF A PERSON WHO MAKES A DISCLOSURE
13 UNDER THIS SECTION SHALL BE KEPT CONFIDENTIAL.

14 (E) *PENALTIES.*

15 VIOLATION OF SUBSECTION (B) OF THIS SECTION IS GROUNDS FOR DISMISSAL UNDER THE
16 PERSONNEL RULES OF HOWARD COUNTY.

17 **1.701. OTHER REMEDIES NOT AFFECTED.**

18 NOTHING IN THIS SUBTITLE ABRIDGES OR PRECLUDES:

19 (1) AN ACTION FOR DEFAMATION OR INVASION OF PRIVACY;

20 (2) EMPLOYEE PROTECTIONS OR EMPLOYEE GRIEVANCE PROCEDURES;

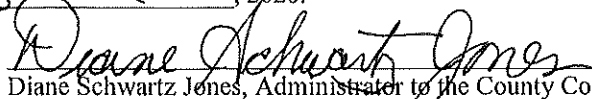
21 (3) ANY OTHER LAWFUL REMEDY; OR

22 (4) A PERSONNEL ACTION THAT WOULD HAVE BEEN TAKEN REGARDLESS OF A DISCLOSURE OF
23 INFORMATION.

24
25 *Section 2. Be it further enacted by the County Council of Howard County, Maryland, that this Act shall*
26 *become effective 61 days after its enactment.*

BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on March 5, 2020.


Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on _____, 2020.

Diane Schwartz Jones, Administrator to the County Council

Sayers, Margery

From: joel hurewitz <joelhurewitz@gmail.com>
Sent: Sunday, February 23, 2020 6:07 PM
To: CouncilMail
Subject: CB7-2020 - Protect Whistleblowers

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council,

I support CB7-2020 to protect Howard County whistleblowers. We have all seen the effect that one person who observes wrongdoing can have on our government, the President, our country, and the course of history because of the whistleblower who initiated the investigation that led to the President's impeachment and trial in the Senate. To illustrate the need for whistleblower protection, I submit an excerpt from the closing statements of Impeachment Manager Adam Schiff from January 24, 2020 at the Trump Impeachment Trial in the United States Senate:

Adam Schiff: (20:39)

Now, you'll hear, "Oh, Chairman Schiff was so unfair. He wouldn't allow us to ask our questions." Well, there were certain questions I didn't allow. Questions like, who's the whistleblower? Because we want to punish that whistle blower. Because yes, some of us in this house and in this house believe we ought to protect whistle blowers. So yes, I did not allow the outing of the whistleblower. So when they say the chairman wouldn't allow certain questions, that's what they mean. That means that we protect people who have the courage to come forward and blow the whistle. That we don't think, though the president might, that they're traitors and spiced. To believe that someone who blows the whistle on misconduct of the serious nature that you now know took place is a traitor or a spy. There is only one way you can come to that conclusion. And that is if you believe you are the state and that anything that contradicts you is treason. That is the only way that you can conceive of someone who exposes wrongdoing is a trader or a spy. But that is exactly how this president views those who expose his wrongdoing because he is the state. Like any good Monarch, he is the state.

Adam Schiff: (31:44)

Now, you'll also hear, as part of the defense, and you heard this from Jay Sekulow, was I think the last thing he said, "The whistleblower," and then he stepped back to the table. The whistleblower. Now, I don't really know what that meant, but I suspect you'll hear more of that. The whistleblower. The whistleblower. It's his, or her fault that we're here. The whistleblower.

Adam Schiff: (32:13)

I would encourage you to read the whistleblower complaint again. When you read that complaint again, you will see just how remarkably accurate it is. It's astonishingly accurate. For all the times the President is out there saying that the complaint was all wrong, "It was all wrong, you read it," now that you have heard the evidence, you read it and you will see how remarkably right the whistleblower got it.

Adam Schiff: (32:44)

Now, when that complaint was filed, it was obviously before we had our depositions, and had our

hearings. All of which obviated the need for the whistleblower. In the beginning we wanted the whistleblower to come and testify, because all we knew about was the complaint. Then, we were able to hear from firsthand witnesses about what happened, and then something else happened. the President and his allies began threatening the whistleblower, and the life of the whistleblower was at risk. What was the point in exposing that whistleblower to the risk of his, or her life when we had the evidence we needed? What was the point, except retribution. Retribution, and the President wants it still.

Adam Schiff: (33:38)

You know why the President is mad at the whistleblower? Because, but for the whistleblower, he wouldn't have been caught, and that is an unforgivable sin. He is the State and but for the whistleblower, the President wouldn't have been caught. For that, he's a spy and he's guilty of treason. Now, what does he add to this? Nothing, but retribution. A pound of flesh. You'll also hear the President's defense, "They hate the President. They hate the President. You should not consider the presence misconduct because they hate the President." Now, what I have said, I leave you to your own judgments about the President. I only hate what he's done to this country. I grieve for what he's done to this country. When they make the argument to you that this is only happening because they hate the President, it is just another of the myriad forms of, please do not consider what the President did. Whether you like the President, or you dislike the President is immaterial. It's all about the constitution, and his misconduct. If it meets the standard of impeachable conduct as we approved, it doesn't matter what you like him. It doesn't matter what you dislike him. What matters is whether he is a danger to the country, because he will do it again. None of us can have confidence, based on his record, that he will not do it again because he is telling us every day that he will.

Thank you again for helping to support good government in Howard County.

Sincerely,
Joel Hurewitz

Sayers, Margery

From: Joanne Antoine <JAntoine@commoncause.org>
Sent: Tuesday, February 18, 2020 4:21 PM
To: CouncilMail
Subject: Testimony - Howard County CB 7-2020
Attachments: Howard County CB7-2020 - Whistleblower Protection Act.pdf

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Hello,

Please find attached Common Cause Maryland's written testimony in support of CB 7-2020 for the Whistleblower Protection Act. Apologies for submitting this so late, but we ask that our comments be added to the bill file for the hearing this evening.

Thank you for holding this hearing and for your careful consideration of this critical legislation.

Joanne Antoine
Executive Director | [Common Cause MD](#)
(o) 443.906.0442 (c) 848.220.4971
121 Cathedral St., Ste 2A, 3-4; Annapolis MD 21401



February 18, 2020

**Testimony on Council Bill 7-2020
Whistleblower Protection Act
Howard County Council****Position: Favorable**

Common Cause Maryland supports CB 7-2020 which would establish rights and protections for Howard County whistleblowers, enabling them to make protected disclosures as well as ensuring they are protected from retaliation and that their identity be kept confidential.

Whistleblowers play an essential role in our democracy. They are critical in government oversight, helping to detect activities that are not in the best interest of the public, and support efforts to root out government waste, fraud, and abuse. Failure to protect whistleblowers can lead to an ineffective, inefficient, and unaccountable government.

Currently, there are no direct provisions in Howard County law that protect whistleblowers. This lack of protection discourages individuals from stepping up and coming forward with information that could help improve efficiency within local government and reveal patterns of mismanagement and unethical behavior. We believe this leaves Howard County government open to numerous risks and may create a culture that lacks accountability.

CB 7-2020 seeks to address this issue by putting clear policies and protections in place for those seeking to come forward with information. It provides vital protections for whistleblowers in order to foster an environment within Howard County government that is free from unlawful discrimination, harassment, and retaliation. Protecting whistleblowers so that they can come forward knowing there is a complaint process in place to hold supervisors, heads of office or departments, and other appointing authorities accountable for violating their rights.

At a time where other government jurisdictions throughout the state are looking to rebuild trust with their constituents following ongoing stories of abuses from elected officials and others in power, Howard County should be doing all that it can to prevent these similar situations and to encourage individuals to come forward with information that will help reveal activities that may hurt the faith and trust Howard County residents have in their government.

We believe that every citizen has a duty to report the abuses of those in authority, especially within local government. CB 7-2020 ensure Howard County government protects these individuals.

We urge a favorable report.

Sayers, Margery

From: Joseph Pavlovsky <jpavlovsky@verizon.net>
Sent: Monday, February 3, 2020 5:54 PM
To: CouncilMail
Subject: CB7 Whistleblower Protection

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Is there consideration for protecting the person or persons being accused of wrongdoing. A false accusation could ruin a person's career if falsely accused. I've witnessed it in private industry. It was not fair to the accused. They lost their job and had to relocate.

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Office of the County Auditor
Auditor's Analysis

Council Bill No. 7-2020

Introduced: February 3, 2020

Auditor: Maya Cameron

Fiscal Impact:

There is no expected fiscal impact of Council Bill 7-2020.

Potential impact may result in an increased volume of disclosures filed with the County Auditor. These would be investigated by existing staff.

Purpose:

The intent of this legislation is to include rights and protections for whistleblowers against retaliation and to authorize the disclosure of information regarding actions taken by a Howard County official, employee, or contractor. Such actions include: violation of laws or regulations; gross waste of funds; abuse of authority; or ethics violations. Unless specifically prohibited by law, these disclosures will be kept confidential to the extent the law allows.

Other Comments:

- The County Auditor website includes a link for reporting Fraud, Waste, and Abuse: <https://cc.howardcountymd.gov/Auditor/Online-Form-to-Report-Fraud-Waste-and-Abuse>
- Whistleblower reprisal is among the list of things to report to the County Auditor according to the frequently asked questions "What Can Be Reported?" section of the County Auditor website: <https://cc.howardcountymd.gov/Auditor/FAQs-Report-Fraud-Waste-and-Abuse>
- The County Auditor, Human Resource Administrator, and County Solicitor are most likely to be the recipients of a whistleblower complaint. In that event, the Code does not currently specify the roles and responsibilities of those departments.
- The Appeals Section of the employee manual (pages 12-16) specifies the County's policy that all employees be permitted to express views concerning the terms and conditions of their employment without fear of reprisal. It also provides both informal and formal procedures in the event an employee seeks to appeal actions taken by the County.
- Human Resources does not foresee procedural changes or a financial impact as a result of the implementation of this legislation.