



## **REPORT TO COUNCIL**

# **EXPEDITED BILL 49-21, POLICE ACCOUNTABILITY BOARD AND ADMINISTRATIVE CHARGING COMMITTEE - ESTABLISHMENT**

## **FEBRUARY 1, 2022**

**Expedited Bill 49-21 was introduced to the Council on December 14, 2021. An initial public hearing was held on January 11, 2022, and a subsequent hearing was held on January 18, 2022. The Public Safety Committee held its first worksession on January 24, 2022 and is expected to hold a subsequent worksession on February 7, 2022.**

**The members of the Policing Advisory Committee's (PAC) Hiring & Discipline Subcommittee received the bill for review on January 10, 2022. The Subcommittee met with community stakeholders over the course of their review. Materials reviewed by the subcommittee include, but are not limited to: the Office of Legislative Oversight (OLO) report on the bill; preliminary and final reports from Effective Law Enforcement for All (ELE4A) and the Reimagining Public Safety Task Force; news media coverage of public hearing testimony on the bill. Written testimony on the bill was also provided for the Subcommittee's review by Council staff and community stakeholders.**

### ***The purpose of the bill is to:***

Implement in Montgomery County the requirements of the Maryland Police Accountability Act (HB 670, MPAA) by establishing the parameters and guidelines for the Montgomery County Police Accountability Board (PAB) and the Administrative Charging Committee (ACC) within the framework of the MPAA.

### **ISSUE(S) THAT THE BILL ADDRESSES**

---

- With respect to the PAB, the bill establishes: (1) the criteria for appointment of PAB members, the number of PAB members at 5, the PAB selection process, their term of office and reasons for termination; (2) the PAB duties to oversee the analysis and results of civilian complaints filed with the PAB or a law enforcement agency that operates in the County, and advise the constituent law enforcement agencies and elected officials for improving policing; and prepare an annual report, and (3) related issues.
- With respect to the ACC, the bill establishes: (1) the criteria, number and method of appointment of the ACC; (2) the ACC's duties to determine whether to charge the accused police officer with administrative discipline, based on the law enforcement agency's investigation as well as upon other information collected by the ACC (including by subpoena

issued by ACC), in accordance with the state-prescribed disciplinary matrix that must be adopted by each law enforcement agency; and (3) related issues.

## **PAC DATA REQUESTS**

---

- The PAC has received the written testimony of those testifying about the bill.

## **COMMUNITY CONCERNS**

---

- A review of the public testimony reflects consistent concerns about the following: (1) the lack of community input in the development of the bill prior to its introduction; (2) the PAB criteria were generally viewed as perpetuating the status quo for police discipline (i.e., the former LEOBR limitations) and excluding a broad range of community voices, including people with lived or professional experience, people of color, people with mental health or substance abuse issues, members of the LGBT+ community, and people living in poverty; (3) the lack of authorized funding for the PAB and ACC that would enable those boards to select their own independent staff; (4) lack of an independent counsel (the County Attorney is perceived to have a conflict of interest if it represented the PAB and the ACC on one hand, and continued to represent the MCPD and the Sheriff's Office on the other); (5) the lack of specific authority for the PAB members to attend law enforcement training; (6) the lack of funding and authority for these board members to attend independent training relevant to carrying out their duties (in addition to the State training required by the MPAA).
- The community noted the tragedy of six police-involved killings in Montgomery County in 2021, and the history of the racially discriminatory policing in fourteen cases of homicide by lynching in the county between 1885 and 1933.

## **PAC ANALYSIS AND RECOMMENDATIONS**

---

The PAC referred this bill to the Hiring and Disciplinary Subcommittee on January 10, 2022. The Subcommittee reports the following:

### PAB and ACC Board Membership:

- The bill sets the PAB at 5 members. That number is inadequate for the PAB to properly represent the diverse range of community interests in the County. Given the PAC's experience with a membership of 13, we recommend the PAB consist of 9 voting members.
- Almost all the public witnesses and written testimony on Bill 49-21E highlighted the very specialized, restrictive criteria for appointment to the PAB and ACC. The highly specialized expertise in law enforcement management or personnel disciplinary procedures is entirely contrary to the intent of the MPAA, which is to establish police oversight that fully reflects the broad racial, gender, gender-identity, sexual orientation, cultural diversity and other diversity of County residents. Of greatest concern is the inclusion of membership requirements that exclude persons who are most impacted by policing: black and brown persons of color; people who have suffered at the hands of a racially discriminatory criminal justice system; those

suffering from mental illness and substance abuse, members of the LGBTQ+ community; and those living in poverty.

- In addition to the ban on current employees of a law enforcement agency provided in the state law, many witnesses urged that prior service with a law enforcement agency should be a bar to service on the PAB and the ACC -- but the Subcommittee is not unanimous on this point. ***The subcommittee is in agreement, with one subcommittee member's dissent noted, that candidates with prior law enforcement experience could be considered for membership but not be voting members of the PAB.*** The community should participate in the process of selecting PAB members. Many county advisory boards have a process for interviewing applicants and submitting their recommendations to the County Executive. We recommend that before presenting selected candidates to the Council for confirmation, the Executive shall publish the list of nominated candidates and provide a period for public comment prior to Council action on those nominations. In addition, we recommend that the following language be included for both PAB and ACC membership qualifications: The members of the Board [Committee] should reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County and should be required to include members with a range of professional or lived experiences in areas including, but not limited to, mental health disabilities, substance use disorders, and living below the poverty level of the county. We also recommend that no person be excluded from appointment on the basis of their immigration status or criminal history.

#### The Powers and Obligations of the Police Accountability Board

- Given the probable workload required of the PAB necessary to be an effective oversight body, we recommend that the PAB be directed to meet at least monthly, thus creating an appropriate expectation of the extent of the service. The MPAA provides that the PAB meet quarterly with the heads of law enforcement agencies.
- In order to make meaningful the PAB responsibility to meet with heads of law enforcement agencies and work with law enforcement and county government to “improve matters of policing,” we recommend that the PAB be specifically authorized to:
  - Obtain management studies and analyses of all of the law enforcement agencies in the county and to obtain complete information on the incidence of crime and its investigation in the county;
  - Access all evidence regarding officer conduct and discipline gathered or considered by the law enforcement agency and the ACC;
  - Request and obtain additional information from the law enforcement agencies
  - Issue subpoenas for testimony or documents and records, interview witnesses under oath, or employ any other investigative powers necessary to independently review outcomes of disciplinary matters considered by the ACC; and
  - Attend all law enforcement agency trainings, and obtain independent review and evaluation of such training.
- The PAB should be authorized to establish its own procedure to obtaining and managing complaints from the public regarding police misconduct, and to forward to appropriate authorities complaints that are not directed at police officers in Montgomery County law enforcement agencies.
  - While the statute authorizes PABs to receive complaints of police misconduct from the public, the PAC believe that the bill should explicitly authorize the PAB to review

complaints of police misconduct that arise from the Internal Affairs Division, other police officers or other sources.

- To carry out its responsibilities, the PAB should also be funded by the County to attend relevant local, regional, and national training and conferences; and be authorized to seek community feedback on policing and educate and inform the community about policing matters.

#### The Powers and Obligations of the Administrative Charging Committee

- To reasonably ensure that the ACC has adequate time to determine whether the accused police officer should be disciplined with the MPAA's required one year and one day time limit for completion of the law enforcement agency's (LEA) investigation and the ACC's disciplinary decision, we recommend that the bill include timelines for the law enforcement agency to provide the results of their investigation to the ACC. In addition, timelines for the transmission of body-worn camera evidence by the LEA need to be established. Other requests for information need to be subject to a specified reporting deadline. It has been suggested by a prominent community stakeholder that 6-8 months be the designated time for the LEA to forward its completed investigation to the ACC.
- We recommend that the scope of disciplinary matters forwarded to the ACC be expanded to include *all* civilian complaints, not dependent on whether the LEA initiated an administrative investigation, and all disciplinary matters, regardless of the source of the complaint, pertaining to interactions between an LEA officer and member of the public.
- Due to the magnitude of the ACC duties, we recommend that the ACC meet at least once a month or more often as necessary.
- Since neither the MPAA nor the bill specifies how the chair of the ACC is to be selected; we recommend the bill provide that the members of the ACC select their chair.
- In addition to the MPAA-required training from the Maryland Police Training and Standards Commission, we believe that it is essential to the proper operation of the ACC that members be authorized to obtain and attend, at County expense, additional training in the civilian oversight of policing and other policing matters.

#### PAB and ACC Compensation

- The MPAA is silent on compensation for PAB members, and the bill only provides compensation for ACC members: \$22k a year for the chair, \$16k a year for the other members. Given the magnitude of the anticipated work by the PAB, PAB members should be compensated as well, comparable to the salaries of other paid commissions in the County. There should be a mechanism to review and adjust the compensation levels recognizing that the appointees cannot live on this compensation.

#### PAB and ACC Staffing

- The bill provides that for each board, the Chief Administrative Officer must provide appropriate staff to the Board and make available to the Board services and facilities that are necessary or appropriate for the proper performance of its duties. Such staffing needs to be clearly understood as independent and to be selected by the PAB and ACC. The services provided by such staff need to be articulated in the bill such as administration, research and report writing, investigation, and for the PAB, community outreach.

- The bill requires that the County Attorney must serve as counsel to the PAB and ACC. This is wholly unacceptable. Plainly, the County Attorney has a conflict of interest as counsel to the MCPD. The PAB and ACC must be authorized to retain or hire independent counsel, and such counsel must be adequately budgeted for.

#### Collective Bargaining Preemption

- We observe that under the MPAA, collective bargaining may not change the MPAA's requirements for police discipline. Accordingly, we recommend that the bill explicitly state that the operations of the PAB and the ACC are excluded from negotiation in a collective bargaining agreement between the county and employee representatives.

#### Referencing Non-MCPD Law Enforcement Agencies

- We recommend amending the bill to expressly include each law enforcement agency operating in Montgomery County that is subject to the PAB and ACC.

The Hiring and Discipline Subcommittee discussed these issues on January 10, 2022 and the bill on January 14, 2022. It prepared and reviewed this report on January 15-21, 2022.

### **PAC RECOMMENDATIONS**

---

The PAC met on January 31, 2022 to finalize the subcommittee recommendations. **The PAC voted to adopt the subcommittee's analysis and recommendations by a vote of 6-2.**

Two PAC members were in dissent of the subcommittee recommendations because:

- 1) One member believed that the Board should include someone with police history or experience.
- 2) One member believed that participants on the Board should represent or be chosen from different geographic areas in the County.

The PAC requests that they are extended an invitation to the next Council worksession on this legislation, currently scheduled for February 7th. As the PAC Chair and Vice Chair stated in their letter to the Council dated January 29th, it is important that the PAC be included in all worksessions for all legislation that involves policing.