Montgomery County Council

Committee: PS
Committee Review: Completed
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To make preliminary decisions – straw vote expected
Keywords: #PoliceAccountabilityBoard

AGENDA ITEM #3
March 8, 2022
Worksession

SUBJECT

Bill 49-21, Police – Police Accountability Board – Administrative Charging Committee – Established

Lead Sponsor: Council President at the request of the County Executive

EXPECTED ATTENDEES

To be determined.

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- The Public Safety Committee held 3 worksessions and amended the Bill to:
  a. increase the PAB membership to 9 voting members with at least 1 member residing in a municipality covered by the PAB and permit the Executive to appoint one or more non-voting members;
  b. clarify that all complaints from the public must be investigated and reported to the ACC;
  c. require funding for training of PAB and ACC members from the police and outside organizations; and
  d. authorize the Council to remove a member for failure to complete required training.
- The Council approved each of these Committee amendments at its first worksession and deleted a "violation of law" as one of the reasons for removal of a member.
- The Council also approved an amendment that replaces the professional experience required for a member with a member must "be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness."

DESCRIPTION/ISSUE

- What is the best way to implement the State-wide police disciplinary system in the County?

SUMMARY OF KEY DISCUSSION POINTS

- The 3 major issues that the Council must decide are:
  a. if the PAB members should be compensated for their service;
  b. the appropriate staffing and legal support for the PAB and ACC, and
  c. the transition clause.

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Agenda Item#3
March 8, 2022
Council Worksession 2

M E M O R A N D U M

March 3, 2022

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney

SUBJECT: Expedited Bill 49-21, Police - Police Accountability Board – Administrative Charging Committee – Established

PURPOSE: **Council Worksession 2** - recommendations expected

Bill 49-21, Police - Police Accountability Board – Administrative Charging Committee – Established, with Lead Sponsor Council President Albornoz on behalf of the County Executive, was introduced on December 14, 2021. Two public hearings were held for this Bill, the first on January 11 with 5 speakers and the second on January 18 with 30 speakers. Public Safety Committee worksessions were held on January 24, February 11, and February 16.[1] A full County Council worksession was held on March 1, 2022. A second Council worksession is scheduled for March 8, 2022.

Background

The Maryland General Assembly enacted a series of laws establishing uniform standards for police department operations throughout the State. One of these laws, House Bill 670, created a new uniform procedure for police accountability and discipline. An excerpt from HB 670 concerning police officer discipline is at ©12. This new law requires the governing body of each county to establish a Police Accountability Board (PAB) and an Administrative Charging Committee (ACC) to handle each complaint alleging police misconduct by a police officer employed by the County or a municipal police department located in the County filed by a member of the public.

HB 670 repealed and replaced the Law Enforcement Officers Bill of Rights (LEOBR) with a new State-wide disciplinary system for police officers in Maryland. The new uniform disciplinary system established in HB 670 generally applies to misconduct occurring on or after July 1, 2022. The new law also contains a grandfather clause that delays the effective date of the new disciplinary system until the expiration of any existing collective bargaining agreement for the duration of the agreement, excluding extensions. The current collective bargaining agreement between the Executive and the Fraternal Order of Police expires on June 30, 2023. Although deputy sheriffs are represented by MCGEO and also covered by this law, the Sheriff is the

[1] #PoliceAccountabilityBoard

employer for the purpose of negotiating provisions concerning discipline with the union. According to the Sheriff, the current agreement covering discipline for deputy sheriff's expired on June 30, 2021 and is currently being negotiated. Therefore, the current disciplinary system continues, unless modified, until then for police officers and deputy sheriffs represented by these unions. However, the new law takes effect for the unrepresented police management and sheriff's management on July 1, 2022.[2] Beginning on July 1, 2023, the uniform State-wide disciplinary system established in HB 670 will apply to complaints of misconduct filed by a member of the public against any sworn officer employed by the County Police Department or the County Sheriff's Department.[3] This State law expressly preempts the County from altering the new disciplinary system.[4]

A complaint of police misconduct may be filed with the PAB or the appropriate Police or Sheriff's Department. The PAB must forward a complaint to the Department within 3 days for investigation. The 5-member ACC must include the Chair of the PAB or another member of the PAB designated by the Chair, 2 civilian members selected by the PAB, and 2 civilian members selected by the Executive. The appropriate law enforcement agency must forward the results of a police misconduct complaint to the ACC. The ACC must decide whether to file disciplinary charges against a police officer in a written decision. The ACC may review body camera video, call a police officer to appear before the ACC accompanied by a representative, and may subpoena witnesses and documents to perform its duties. If the ACC determines that disciplinary charges are warranted, it must recommend a penalty based on a disciplinary matrix developed by the Maryland Police Training and Standards Commission. The Police Chief must offer that penalty or a higher penalty to the officer. If the officer does not accept the discipline, the officer has the right to challenge the decision in an adjudicatory hearing before a trial board.

The 3-member trial board must include an active or retired administrative law judge or a retired district court or circuit court judge appointed by the County Executive, a civilian selected by the PAB, and a police officer of equal rank to the officer being charged selected by the police chief. The trial board hearing must be open to the public except for certain exceptions. The trial board can administer oaths and issue subpoenas. The trial board decision is appealable to the circuit court on the record.

Summary of the Bill

Expedited Bill 49-21 would establish both the PAB and the ACC for the County. Although HB 670 requires a 5-member ACC and a 3-member trial board, the law is silent as to the number of members of the PAB. Bill 49-21, as amended by the Council, would create a 9-member PAB nominated by the Executive and confirmed by the Council. The Executive may appoint one or more non-voting members. At least one voting member must reside in a municipality that operates a police department within the jurisdiction of the PAB. All of the members of the PAB and the ACC must be County residents. The Bill, as amended by the Council, would require each member

[2] The new system would also apply to a complaint against a municipal police officer on July 1, 2022 or one year later if a collective bargaining agreement governing discipline procedures extends until that date.
[3] HB670 does not apply to a Police Chief, Assistant Police Chief, Sheriff, or the equivalent to an Assistant Chief in the Sheriff's Office.
[4] HB 670 includes other significant provisions concerning police officers that is not directly relevant to the new State-wide disciplinary system.

to "be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness."

Bill 49-21 would require the CAO to provide appropriate staff for both the PAB and the ACC and the County Attorney would provide legal services. The PAB members would serve without compensation other than reimbursement for expenses. The ACC Chair would receive an annual salary of $22,000 and the other 4 members would receive an annual salary of $16,000, both adjusted for changes in the consumer price index.[5] The Bill would require each member of the PAB and the ACC to serve a 3-year term of office with term limits after serving 2 complete terms. The Bill would also require the Executive to stagger the initial terms to ensure that the terms of approximately one-third of the members expire each year. The Committee amended the Bill to require both the PAB and the ACC to meet at least one time each month and to require County funding for training of members from both police department personnel and outside organizations. The Council also approved an amendment to authorize the removal of an ACC member, including the removal of a member who fails to complete the required training, and deleted a "violation of law" as one of the reasons for removal.

OLO concluded that Bill 49-21 would have an insignificant impact on economic conditions in the County (©29). OLO concluded that the Bill would have little to no impact on racial and social inequities because it does not follow "the best practices for advancing civilian oversight for police accountability." See ©31 OLO suggested several amendments to improve the Bill.

January 11 Public Hearing

All 5 speakers either suggested amendments to the Bill or opposed it in its current form. Mayor Jud Ashman of Gaithersburg requested amendments to require at least one member of the PAB to reside in one of the 4 municipalities in the County with a police department. Seth Grimes, representing Takoma Park Mobilization, requested amendments to the qualifications for members of the PAB and ACC. Rudy Logan, representing IMPACT Silver Spring, Heidi Rhodes, representing Jews United for Justice (©43), and Ilhan Cagri, representing Muslim Voices Coalition (©46), each opposed the Bill because they believe the Bill would require all of the civilian members of the PAB and the ACC would have to have policing experience.[6] Ms. Rhodes and Ms. Cagri also argued that the County Attorney would have a conflict of interest in representing both the County Police Department and the PAB and ACC.

January 18 Public Hearing

Each of the 30 speakers opposed the Bill as introduced and requested amendments. Almost all of the speakers objected to the qualifications for members of the PAB and the ACC arguing that it would result in all members being former police department personnel.[7] Many of the

[5] These salaries are consistent with the salaries provided for members of the County Board of Appeals.

[6] The Bill, as introduced, would not require each PAB and ACC member to have policing experience. The Bill would require each member to have experience in managing a law enforcement agency, evaluating citizen complaints against a police officer **or** experience in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator.

[7] The qualifications in the Bill, as introduced, are in the alternative. Although experience in police management or experience reviewing citizen complaints of police misconduct are listed as qualifications, the Bill would also permit

speakers also suggested amendments to require independent staff and counsel for the PAB and ACC, expansion of the scope of complaints that would be handled through the ACC, compensation for PAB members, additional members for the PAB and mandatory geographical representation of members. Many of the speakers also complained about the lack of community input before the Executive submitted the Bill to the Council, the provision permitting the removal of a member for violating the law, and the lack of a defined budget for the staff of the PAB and the ACC. Finally, one or more speakers complained that the ACC would review the investigation done by the police department instead of investigating the incident[8] and the use of retired judges on the trial board.[9]

PS Worksession 1

County Police Chief Marcus Jones, Dr. Earl Stoddard, ACAO, Elaine Bonner-Tomkins, OLO, Lee Holland, FOP Lodge 35 President, Chevy Chase Village Police Chief, John Fitzgerald, and Haley Roberts, OCA, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the Racial Equity and Social Justice Impact Statement for the Bill and the qualifications for members of the PAB and ACC without making any decisions. Chief Fitzgerald told the Committee that the Maryland Police Training and Standards Commission plans to propose regulations permitting settlements of disciplinary charges subject to ACC approval. The Committee agreed that the Bill should not be amended to increase the jurisdiction of the PAB/ACC to cover internal complaints. The Committee also approved an amendment to clarify that all external complaints must be investigated and reported to the ACC. Finally, the Committee agreed that the PAB membership should be increased from 5 members but did not agree on the final number.

The Committee requested information on how other Counties are handling these issues and committee to meeting as frequently as necessary to complete review of the Bill. The Committee also agreed to send staff the names and contact information for additional stakeholders they might want invited to the next worksession.

PS Worksession 2

Councilmember Will Jawando participated in the worksession. County Police Chief Marcus Jones, Dr. Earl Stoddard, ACAO, Assistant Chief Darren Francke, Chevy Chase Village Police Chief, John Fitzgerald, Joanna Silver, SSJC, Eric Sterling, PAC, Ashanti Martinez, CASA, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the qualifications for members of the PAB and ACC without making any final decisions. Chief Fitzgerald told the Committee that the Maryland Police Training and Standards Commission plans to propose regulations that may include minimum qualifications. The Committee approved an amendment to increase the size of the PAB to 9 members with at least

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a member to qualify with experience in "personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator" outside of law enforcement.

[8] This system was established by HB670. The Council does not have the authority to change it.

[9] The use of a retired judge or an administrative law judge is required by HB670 and is not part of Bill 49-21.

1 member residing in a municipality covered by the PAB. The Committee also approved an amendment requiring the PAB and the ACC to meet at least once a month.

The Committee discussed a possible amendment to prohibit a former police officer from being appointed to the PAB or the ACC and an amendment that would welcome applicants without regard to prior criminal record or immigration status. The Committee also discussed the possibility of adding one or more non-voting members to the PAB who are former police officers.

Council President Albornoz indicated that he would propose some language to prohibit disqualification of an applicant due to immigration status. Ashanti Martinez offered to provide an answer to the question of whether or not an undocumented member could be paid by the County.

PS Worksession 3

Councilmember Will Jawando participated in the worksession. Dr. Earl Stoddard, ACAO, Assistant Chief Darren Francke, Takoma Park Police Chief Tony DeVaul, Joanna Silver, SSJC, Alicia Hudson, PAC, and Senior Legislative Attorney Robert Drummer participated in the discussion.

The Committee discussed the qualifications for members of the PAB. AC Francke told the Committee that the Maryland Police Training and Standards Commission is meeting today to finalize proposed regulations that will include minimum qualifications. The Committee decided (3-0) not to prohibit the appointment of a former police officer to the PAB or the ACC. Councilmember Jawando and Ms. Silver argued that it is important to ensure that the PAB and ACC are civilian boards independent from police control and that a former police officer on the Board may dominate the discussion and give the appearance to community members that the Board is still run by the police department. The Committee approved an amendment to permit the Executive to appoint one or more non-voting members to the PAB.

The Committee also discussed an amendment outlining general desired qualifications for ACC members and asked staff to draft proposed language melding the ability to demonstrate the ability to perform the job with the language suggested by the SSJC.

The Committee also discussed training for PAB and ACC members in addition to the mandated State training. The Committee approved an amendment to require the County to provide funding for training for members provided by the Police Department in cooperation with the Municipal Police Departments and the Sheriff's Office as well as training by outside organizations. The Committee also approved an amendment to authorize the removal of an ACC member who fails to complete required training.

Council Worksession 1

The Council approved the Committee amendments to:

1. increase the PAB membership to 9 voting members with at least 1 member residing in a municipality covered by the PAB and permit the Executive to appoint one or more non-voting members;

2. clarify that all complaints from the public must be investigated and reported to the ACC;
3. require funding for training of PAB and ACC members from the police and outside organizations; and
4. authorize the Executive and the Council to remove a member for failure to complete required training in addition to the reasons established in the Bill.

The Council also amended the Bill to:

1. delete a violation of law as one of the reasons listed for removal of a member; and
2. amend the minimum qualifications for a member by deleting the experience requirements in the Bill as introduced and replace it with a requirement that a member "be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness."

Issues

1. What is the Racial Equity and Social Justice impact of the Bill?

OLO found that Bill 49-21 would have little to no impact on racial and social inequities concerning policing because it does not align with best practices for advancing civilian oversight to improve police accountability ©31. There are 4 major areas described by OLO where Bill 49-21 veers away from the best practices for advancing civilian oversight.

First, OLO argues that the ACC would be charged with a review-focused civilian oversight role because the police department would continue to investigate the complaint and report to the ACC. OLO points out that an investigation-focused civilian oversight role where the ACC investigates each complaint aligns with best practices. However, HB670 requires the County to establish the ACC with a review-focused civilian oversight role. The Council must follow the model established by the General Assembly in HB670.

Second, OLO concluded that the small size of the PAB (5 members) and the mandatory qualifications were likely to result in members that have direct policing experience at the expense of the BIPOC residents who have been disproportionately impacted by police misconduct. **The Council amended the Bill to increase the size of the PAB to 9 voting members and 1 or more non-voting members.**

Third, OLO concluded that the authority of the PAB and ACC under the Bill would not provide them with authority to review the majority of complaints of police misconduct made by the public. **The Council amended the Bill to clarify that the police department must investigate all complaints of police misconduct filed by a member of the public and forward an investigation report to the ACC.**

Fourth, OLO concluded that the Bill did not provide enough funding to support the work of the PAB and the ACC and suggested the Bill be amended to specify staffing and budget for these new Boards.

We will discuss the second, third, and fourth issues raised by OLO below because the Council has the authority to address each of them.

2. What should be the qualifications for serving on the PAB and the ACC?

Bill 49-21, as introduced, would establish the following qualifications for a member of the PAB:

> (b) *Composition and qualifications of members*. The members of the Board must reflect the racial, gender, and cultural diversity of the County. Each member must reside in the County and have experience
>
> (1) managing or evaluating the management of a law enforcement agency;
>
> (2) evaluating citizen complaints against a police officer; or
>
> (3) in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator.
>
> An active police officer must not be a member of the Board. A Board member must also meet all qualifications mandated by State law and implementing regulations while serving on the Board.

The Bill, as introduced, would establish the following qualifications for members of the ACC:

> The members of the Committee must reflect the racial, gender, and cultural diversity of the County. Each member must:
>
> (1) reside in the County; and have
>
> (2) experience managing or evaluating the management of a law enforcement agency;
>
> (3) experience evaluating citizen complaints against a police officer; or
>
> (4) experience in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator.

The Bill, as introduced, would establish experience in police management, evaluation of citizen complaints, and experience in disciplinary proceedings as alternative qualifications. Most of the public hearing speakers misread these alternative qualifications as requiring policing experience. They do not. They would require experience in personnel disciplinary proceedings either in a law enforcement context or any other organization outside of law enforcement. OLO concluded that the listed qualifications would increase the likelihood that the BIPOC residents who have experienced a disproportionate amount of police misconduct would be shut out of becoming members of the PAB

and ACC. Both the conclusions in the RESJ Impact Statement and the overwhelming testimony criticizing this list of qualifications make it clear that some amendments, or at least clarifications, to these provisions are necessary.

Although the duties of the PAB are more general and advisory, the Chair of the PAB or another member of the PAB designated by the Chair is automatically on the ACC. The PAB must select 2 additional members of the 5-person ACC. The ACC would be intimately involved in the disciplinary process. They would take the place of the Police Chief or Assistant Chiefs in reviewing the internal affairs investigation report and deciding whether or not to file charges against an officer. The mandatory training that must be provided by the Maryland Police Training and Standard Commission is not likely to replace the years of experience required to become the Chief of Police.

What should the Council be looking for? An ACC member should have the ability to be objective, have common sense, and the ability to evaluate an investigation report and reasonably arrive at a conclusion based on substantial evidence. An ACC member must exercise his or her duties in a manner that is fair to both the complainant and the officer accused of misconduct. A member must be familiar with investigatory techniques, police procedures, and human resources law in order to prepare charging decisions that can instill confidence in both the community and the police department. One possibility is to remove the experience requirements in the Bill and replace them with "the ability to demonstrate the capacity to objectively evaluate an investigation report and prepare a reasonable charging decision based solely on the evidence before the Committee." While prior work experience in a related field may be one method of demonstrating this capacity, there may be other ways of demonstrating this capacity.

It is also possible that the State may adopt regulations that place specific qualifications on PAB and ACC members. In order to avoid a conflict with possible future regulations of this nature, the Bill already requires that each member must also meet any eligibility requirements established by State law or regulation. Although final proposed regulations have not yet been released, we understand that the draft regulations would prohibit the appointment of an ACC member convicted of a felony or a misdemeanor with a potential jail sentence of 1 year or more.

The Committee agreed to amend the experience requirements for members of the PAB but did not arrive at a final decision on the qualifications. One possibility is to replace the professional experience requirement with the ability to demonstrate capacity for the job for the ACC. The Chair of the PAB or a member designated by the Chair to sit on the ACC would have to meet the qualifications of the ACC. One alternative would be to remove the professional experience requirements and replace them with a more general capability requirement that can be shown through professional work experience or lived experience. This could be done with the following amendment:

Amend lines 49-59 as follows:

(b) *Composition and qualifications of members*. The members of the Board must reflect the racial, gender, and cultural diversity of the County. Each member must reside in the County **[[**and have experience

(1) managing or evaluating the management of a law enforcement agency;

(2) evaluating citizen complaints against a police officer; or

(3) in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator**]]**.

An active or former police officer must not be a member of the Board. A Board member must also meet all qualifications mandated by State law and implementing regulations while serving on the Board. The Chair of the Board or a member designated by the Chair to serve as a member of the Administrative Charging Committee must meet the additional qualifications for that position.

Amend lines 123-133 as follows:

(c) *Composition and qualifications of members*. The Committee consists of a chair and 4 additional members. The members of the Committee must reflect the racial, gender, and cultural diversity of the County. Each member must **[[**:

(1) reside in the County; and have

(2) experience managing or evaluating the management of a law enforcement agency;

(3) experience evaluating citizen complaints against a police officer; or

(4) experience in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator**]]** be able to demonstrate the capacity to objectively evaluate an investigation report and prepare a reasonable charging decision based solely on the evidence before the Committee. An active police officer must not be a member of the Committee. A Committee member must also meet all qualifications mandated by State law and implementing regulations while serving on the Board.

Councilmember Jawando may introduce an amendment to prohibit a former police officer from being appointed to the PAB or ACC. A majority of the Policing Advisory Committee also recommends that individuals with prior law enforcement experience should not be permitted to be voting members of the PAB but would support a non-voting member who is a former police officer. The final recommendations of the PAC are at ©81. The Committee decided not to prohibit a former police officer from being appointed to the PAB or the ACC. The Committee also discussed without deciding an amendment that would clarify that an applicant for the Board or the Committee would not be disqualified due to past criminal record or current immigration status.

The Silver Spring Justice Coalition suggested the following qualification for members of the PAB and the ACC:

> The members of the Board [Committee] should reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County and should include members with a range of professional or lived experiences in areas including, but not limited to, mental health disabilities, substance use disorders, immigration, criminal justice, and living below the poverty guideline for the County."

The SSJC also suggested that the Bill should require that the "members must be able to balance effective oversight and procedural fairness."

The Committee requested Council staff to draft an amendment melding some of the language suggested by the SSJC with the staff suggested amendment described above. The proposed amendment for ACC members is:

Amend lines 133 to 143 as follows:

(c) *Composition and qualifications of members*. The Committee consists of a chair and 4 additional members. The members of the Committee must reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County. Each member must **[[**:

(1)**]]** reside in the County **[[**; and have

(2) experience managing or evaluating the management of a law enforcement agency;

(3) experience evaluating citizen complaints against a police officer; or

(4) experience in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator**]]** and be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness.

Council decision (9-0): the Council approved the melded language above for both the PAB and the ACC members. See lines 52-63 and lines 137-150 of the Bill.

3. Should the PAB and ACC handle complaints of police misconduct that do not originate from a member of the public?

Not all complaints of police misconduct begin with a complaint filed by a member of the public. However, HB670 only applies to a complaint of misconduct filed by a member of the public and Bill 49-21 follows with the same limitation. While the Council may have authority

through legislation to mandate that internal complaints against a County police officer be handled through the PAB and ACC, the Council does not have the authority to mandate this for municipal police departments or the Sheriff's Office.[10] Disciplinary decisions that are not covered by HB670 would be subject to collective bargaining with a union representing County police officers or deputy sheriffs.

If the Committee wants to expand the scope of the complaints against County police officers represented by the FOP under Bill 49-21, the Committee would have to add a provision removing disciplinary procedures for internal complaints from the scope of bargaining under the County Police Labor Relations Law. The statewide system for handling complaints from the public has not yet taken effect. The Committee may want to continue to limit the complaints to those required by HB670 for now until the new system can be evaluated. **Council decision (9-0):** Do not expand the jurisdiction of the PAB and ACC to internal generated complaints.

4. Should the law enforcement agency investigate each complaint from a member of the public and report the finding to the ACC?

OLO pointed out that of the 220 complaints of police misconduct file with the County Police Department in 2020, the Internal Affairs Division (IAD) only investigated 34 of them. The accused officer's chain of command investigated 120 of the complaints and an investigation was declined by IAD on 66 of the 220 complaints. OLO suggested that all complaints of police misconduct filed by a member of the public should be investigated by the Department and a report submitted to the ACC for a charging decision. Many of the public hearing speakers also complained about the narrow scope of the authority of the ACC.

HB670 does not appear to permit the department to pick and choose which complaints of police misconduct filed a member of the public should be investigated. Bill 49-21 is unclear if the Department has the authority to decline to investigate and report on each complaint to the ACC. While it is possible that not all of the 220 complaints cited by OLO would fit the definition of a complaint of police misconduct in HB670, the Committee may want to amend the Bill to clarify that the Department must investigate and submit a written investigation report to the ACC for each complaint of police misconduct filed by a member of the public. **Council decision (9-0):** amend the Bill to clarify that all complaints from the public must be handled by the PAB and ACC with the following amendment.

Add the following after line 202 of the Bill:

(l) *Duties of the law enforcement agency*. The law enforcement agency must investigate and submit a written investigation report to the Administrative Charging Committee for each complaint received by the agency or referred to the agency by the Police Accountability Board.

5. How many members should be on the PAB?

[10] Md. Courts and Judicial Proceedings Code Ann. § 2-329 provides for collective bargaining over the discipline of deputy sheriffs between the Sheriff and the union.

HB 670 mandates that the ACC be composed of 5 members. HB670 is silent on the number of members of the PAB. OLO suggested that the Board may increase its diversity by increasing the number of members. Although it is important to require an odd number of members to avoid tie votes, 7, 9, or 11 members are also reasonable. The Committee agreed to increase the size of the PAB to provide for more diversity but did not arrive at a final number. The PAC recommends increasing the size to 9 (©81).

Council decision (9-0): increase the size of the PAB to 9 members and permit the Executive to add one or more non-voting members.

Non-voting members are normally *ex officio* members appointed solely because of a position the person holds and serve only while holding that position. The Council decided not to specify any additional criteria for selection as a non-voting member.

6. Should the PAB include residents who live in one of the 4 municipalities with a police department?

HB670 requires the County to establish the PAB and the ACC to cover each of the municipal police departments operating in the County. Rockville, Gaithersburg, Takoma Park, and Chevy Chase Village each operate a police department in the County. Mayor Jud Ashman of Gaithersburg requested that the PAB include at least one member who resides in one of these 4 municipalities. If the Committee decides to increase the size of the PAB, the Committee may also decide to include a resident of one of the 4 municipalities.

Council decision (9-0): amend the Bill to require at least one voting member to reside in a municipality operating a police department within the jurisdiction of the PAB.

7. How should members of the PAB and the ACC be compensated?

Under the Bill, the Chair of the ACC receives a $22,000 annual salary and the other 4 members would receive a $16,000 annual salary. Each salary would be adjusted by the appropriate consumer price index each year. A member of the PAB would serve without compensation but would receive reimbursement for expenses. The salaries for ACC members are similar to the salaries provided for members of the County Board of Appeals. The Board of Appeals conducts quasi-judicial contested case hearings on land use issues. The ACC does not conduct quasi-judicial contested case hearings but is responsible for reviewing investigations of alleged police misconduct and issuing a written decision on whether an officer would be charged with discipline. The PAB is closer to a County advisory board with the added responsibility of selecting members of the ACC and the trial boards. Some of the speakers at the public hearing suggested that PAB members should also be paid to permit low income residents to serve.

Article 35 of the Declaration of Rights in the Maryland Constitution states:

> That no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State;

The courts have generally held that an office of profit is one that is created by law, requires continuing duties, requires the performance of important public duty, has a definite term of office, and includes compensation. See *Moser v. Board of County Commissioners*, 235 Md. 279, 281 (1964). In Moser, the Court held that accepting an appointment and qualifying as a notary public acted as a resignation of a position as a member of the Howard County Metropolitan Commission because it was an office of profit under Article 35 of the Declaration of Rights.

HB670 and Bill 49-21 require the Chair of the PAB or another Board member designated by the Chair to also serve as a member of the ACC. If both positions receive a salary and are considered an office of profit, a person cannot hold both offices at the same time. One could argue that since the law requires the PAB Chair to also serve on the ACC that it is actually only one office of profit. However, in order to avoid that issue, the Committee could provide a salary for all members of the PAB except the Chair or a Board member designated by the Chair to serve on the ACC. That would avoid double payment and the potential Article 35 issue.

The Council did not reach this issue.

8. How should the PAB and ACC be staffed?

Bill 49-21 would require the CAO to provide appropriate staff for the PAB and the ACC. The Bill would also require the Executive to recommend an appropriation for the PAB and require the Council to appropriate sufficient funds for the Board to operate. Although the operating budget would need to include funding for the ACC and the trial boards, the Bill should clarify this. The Bill would also require the County Attorney to provide legal support for both the PAB and the ACC.

Many of the speakers objected to this staffing model and argued that the County Attorney would have a conflict in representing the PAB, ACC, and the Police Department. While this argument may be valid if we were requiring the same attorney to represent Police management and the trial board, the County Attorney's Office (OCA) employs more than 50 attorneys. OCA occasionally assigns an attorney to represent a County agency conducting a hearing and a different attorney to prosecute the case. It is possible to avoid the conflict with different attorneys who do not confer about the case.

An attorney who represents the ACC during its deliberations may not have a conflict in also representing the Police Department management during the prosecution of the disciplinary matter before the trial board if the ACC decides discipline is warranted. As described earlier, the ACC is essentially replacing the Police Chief under the current system in reviewing the investigation report and deciding if the officer should be charged with discipline. If the Police Chief decides discipline is warranted, the Chief is also responsible for proving the offense at the trial board.

OCA has for many years assigned an attorney to work with the Internal Affairs Division during the investigation and also advise the Chief and the Assistant Chiefs who are reviewing the IAD investigation report and deciding whether impose discipline. That same attorney also would prosecute the case before the trial board. This is similar to the States Attorney working with the police to investigate a possible crime and then also representing the State in the criminal

prosecution in Court. OCA also assigns a different attorney to provide general legal advice to the Police Department as the Department's general counsel. This procedure does not raise a conflict of interest. The same attorney who works with IAD to investigate the case and advises the Chief as to the strength of the case naturally has a ready-made background to represent the Department in prosecuting the discipline case at the trial board. Inserting an independent attorney into the process after the investigation report goes to the ACC and then going back to the OCA attorney to represent the Department in the trial board hearing may make the prosecution more difficult.

However, the basic purpose of the civilian oversight of policing is to improve the community's trust in the police department. The independence of the civilian oversight board is one of the best practices cited by OLO. The independence of the civilian oversight system from the Police Department may be enhanced by requiring special legal counsel for the PAB and the ACC.

There are 3 alternatives the Committee may consider to provide this additional independence.

1. The Bill could be amended to mandate that an attorney assigned to represent the Police Department as its general counsel must not be assigned to provide legal support for the PAB or the ACC. This could be done with the following amendment:

Amend lines 87- 90 as follows:

> (f) *Staff.* 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. The County Attorney must **[[**serve as counsel**]]** ensure that any attorney assigned to serve as counsel to the Board must not also serve as general counsel to the Police Department.

Amend lines 147-150 as follows:

> (e) *Staff.* The Chief Administrative Officer must provide appropriate staff to the Committee and make available to the Committee services and facilities that are necessary or appropriate for the proper performance of its duties. The County Attorney must **[[**serve as counsel**]]** ensure that any attorney assigned to serve as counsel to the Committee must not also serve as general counsel to the Police Department.

2. The Bill could be amended to require the County Attorney to retain special legal counsel for the PAB and the ACC. This would require the County Attorney to retain outside counsel subject to Council approval under Charter §213. This could be done with the following amendment:

Amend lines 87-90 as follows:

(f) *Staff.* 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. The County Attorney must **[[**serve as counsel**]]** retain special legal counsel approved by the Council to serve as counsel to the Board.

Amend lines 147-150 as follows:

(e) *Staff.* The Chief Administrative Officer must provide appropriate staff to the Committee and make available to the Committee services and facilities that are necessary or appropriate for the proper performance of its duties. The County Attorney must **[[**serve as counsel**]]** retain special legal counsel approved by the Council to serve as counsel to the Committee.

Charter 213 provides the County Attorney with the authority and discretion to obtain outside counsel when necessary subject to Council approval. Using the term "must" retain outside counsel may raise a legal issue that the Council has reduced the authority of the County Attorney in violation of Charter § 213. The potential legal argument could be avoided by using the term "should" retain outside counsel. The practical effect would likely be the same because the County Attorney is unlikely to ignore the "should." It also must be noted that retaining outside counsel for the PAB and the ACC would likely increase the cost of the new system.

Councilmember Jawando may introduce an amendment for alternative 2 above.

3. The staff for the PAB and ACC could be part of the Legislative Branch.

Charter § 213 provides that the County Attorney is the Chief Legal Officer of the County. Therefore, if the PAB and ACC staff is part of the Executive Branch, the County Attorney must provide the legal support or approve the retention of special counsel to do so. In contrast, Charter § 108 authorizes the Council to provide by law for special legal counsel to assist, advise, or represent any office of the Legislative Branch to perform its duties. Therefore, if the Bill is amended to provide the staff for the PAB and the ACC in the Legislative Branch, the staff would be independent from the Executive Branch with separate legal counsel outside of the Office of the County Attorney.

Council staff has discussed this option with the County Attorney's Office. This option would raise a significant legal issue because it may violate the separation of powers between the Executive Branch and the Legislative Branch. The ACC will be performing an executive function currently performed by the Police Chief as an integral part of the disciplinary process for Executive Branch employees. In other words, deciding whether to impose discipline against a police officer

is not part of the duties of the Legislative Branch. However, this could be done with the following amendment:

Amend lines 73-78 as follows:

> (2) The Executive must recommend, and the Council must appropriate funds necessary for the Board and the Administrative Charging Committee to operate in the County's annual operating budget.

Amend lines 87-90 as follows:

> (f) *Staff.* The **[[**Chief Administrative Officer**]]** Executive Director of the Council must provide appropriate staff to the Board, including special legal counsel, and make available to the Board services and facilities that are necessary or appropriate for the proper performance of its duties. **[[**The County Attorney must serve as counsel to the Board.**]]**

Amend lines 147-150 as follows:

> (e) *Staff.* The **[[**Chief Administrative Officer**]]** Executive Director of the Council must provide appropriate staff to the Committee, including special legal counsel, and make available to the Committee services and facilities that are necessary or appropriate for the proper performance of its duties. **[[**The County Attorney must serve as counsel to the Committee.**]]**

The Council did not reach this issue.

9. What is the fiscal and economic impact of the Bill?

OLO estimated that Bill 49-21 would have an insignificant impact on economic conditions in the County ©29. OMB estimated that funding the PAB and the ACC under the Bill as introduced would cost $100,510 in the first year and $587,060 over the next 6 years (©87).

10. What are other Counties doing to implement HB 670?

The Committee requested Council staff to survey what other jurisdictions have done to implement HB 670. A chart showing what some other Counties are doing is at ©90. Charles County Commissioners adopted a resolution creating a PAB on December 7, 2021 and Baltimore City already had a Civilian Review Board before HB 670 was enacted. Howard County enacted a Bill on February 9, 2022 and Calvert County adopted a Resolution on February 16, 2022. Council staff was unable to find any legislation already enacted by another County implementing HB 670.

11. The effective date.

The Bill, as introduced, includes the following effective date:

> **Sec. 3. Expedited Effective Date.**
> The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law and must apply to eligible complaints based on an incident occurring on or after July 1, 2022.

This provision tracks HB670 for any police officer not currently covered by a collective bargaining agreement providing for a different disciplinary system that extends through June 30, 2023. The County's Agreement with FOP Lodge 35 extends until July 1, 2023. HB670 contains a grandfather clause delaying the effective date for a complaint against a County police officer represented by FOP Loge 35 until July 1, 2023.[11] Bill 49-21 should contain a similar grandfather clause. Council staff suggests the following amendment to lines 228-232:

Sec. 3. Expedited Effective Date, Transition.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law and must apply to eligible complaints based on an incident occurring on or after:

(a) July 1, **[[**2022**]]** 2023 against a police officer who is covered by a collective bargaining agreement entered into before June 30, 2022 that includes a different disciplinary system; and

(b) July 1, 2022 against any other police officer.

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[11] Council staff is unaware if any of the municipal police departments in the County also have similar collective bargaining agreements. If they do, the same grandfather clause would apply to them.

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Expedited Bill No. 49-21
Concerning: Police – Police Accountability Board – Administrative Charging Committee - Established
Revised: 3-2-22 Draft No. 8
Introduced: December 14, 2021
Expires: June 14, 2023
Enacted:
Executive:
Effective:
Sunset Date:
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the County Executive

AN EXPEDITED ACT to:

(1) establish the Police Accountability Board for the County;
(2) define the membership and duties of the Board;
(3) establish the Administrative Charging Committee for the County;
(4) define the membership, duties, and compensation for members of the Committee; and
(5) generally amend the law governing police accountability and discipline.

By adding
Montgomery County Code
Chapter 35, Police
Article IV, Police Discipline
Sections 35-23, 35-24 and 35-25

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Article IV, Sections 35-23, 35-24 and 35-25 are added as follows:

ARTICLE IV. POLICE DISCIPLINE

35-23. Definitions.

Definitions. In this Article, the following terms have the meanings indicated.

Administrative Charging Committee or *Committee* means the Committee established in Section 35-25 to serve Countywide law enforcement agencies and local law enforcement agencies within the County pursuant to Section 3-104 of the Public Safety Article of the Annotated Code of Maryland, as amended.

Administratively charged means that a police officer has been formally accused of misconduct in an administrative proceeding.

Complaint means an allegation of police misconduct filed by a member of the public.

Disciplinary matrix means a written, consistent, progressive, and transparent tool or rubric that provides ranges of disciplinary actions for different types of misconduct prepared by the Maryland Police Training and Standards Commission.

Exonerated means that a police officer acted in accordance with the law and agency policy.

Law enforcement agency means the County police force, sheriff's office, or other security force or law enforcement organization of the county or a municipal corporation that by statute, ordinance, or common law is authorized to enforce the general criminal laws of the State.

Not administratively charged means that a determination has been made not to administratively charge a police officer in connection with alleged misconduct.

Police Accountability Board or *Board* means the Police Accountability Board for the County established in Section 35-24 pursuant to Section 3-102 of the Public Safety Article of the Annotated Code of Maryland, as amended.

Police misconduct means a pattern, a practice, or conduct by a police officer or law enforcement agency that includes:

(1) depriving persons of rights protected by the Constitution or laws of the State or the United States;

(2) a violation of a criminal statute; and

(3) a violation of law enforcement agency standards and policies.

Police officer means an individual who:

(1) is authorized to enforce the general criminal laws of the State; and

(2) is a member of one of the following law enforcement agencies:

(a) the County police department;

(b) a municipal police department;

(c) the office of the County sheriff; or

(d) a County fire and explosive investigator.

A police officer does not include the sheriff, a chief of police, a deputy or assistant chief of police, or another individual with an equivalent title who is appointed or employed by a government to exercise equivalent supervisory authority.

35-24. Police Accountability Board.

(a) *Establishment.* There is a Police Accountability Board for the County. The Executive must appoint the **[[**five**]]** nine voting members of the Board, including the Chair, subject to confirmation by the Council. The Executive may appoint one or more non-voting members to the Board. At least one voting member must reside in a municipality operating a police department that is within the jurisdiction of the Board.

(b) *Composition and qualifications of members*. The members of the Board must reflect the racial, gender, gender-identity, sexual orientation, and

cultural diversity of the County. Each member must reside in the County and **[[**have experience:

(1) managing or evaluating the management of a law enforcement agency;

(2) evaluating citizen complaints against a police officer; or

(3) in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator**]]** be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness.

An active police officer must not be a member of the Board. A Board member must also meet all qualifications mandated by State law and implementing regulations while serving on the Board.

(c) *Chair*. The members of the Board may elect a Vice-Chair to serve as Chair in the absence of the Chair.

(d) *Term of office.* Each member serves a 3-year term. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(e) *Meetings, budget, and compensation for members*.

(1) The Board meets at the call of the Chair. The Board must meet as often as necessary to perform its duties, but not less than **[[**4 times each year**]]** than one time each month.

(2) The Executive must recommend, and the Council must appropriate funds necessary for the Board and the Administrative Charging Committee to operate in the County's annual operating budget. The annual appropriation for the Board and the Administrative

Charging Committee must include funding for training of members provided by:

(A) the County Police Department in cooperation with the Sheriff and each municipal police department within the jurisdiction of the Board; and

(B) appropriate outside organizations.

(3) The Board members must serve without compensation except for the reimbursement of expenses incurred in attending meetings or carrying out other duties, including travel and dependent care costs at rates established by the County, subject to appropriation.

(f) *Staff.* 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. The County Attorney must serve as counsel to the Board.

(g) *Duties.* The Board must:

(1) hold quarterly meetings with the directors of one or more law enforcement agencies operating in the County who employ one or more police officers;

(2) appoint civilian members to the Administrative Charging Committee and trial boards;

(3) receive complaints of police misconduct filed by a member of the public;

(4) review the outcomes of disciplinary matters considered by the Administrative Charging Committee on a quarterly basis;

(5) advise the Executive and the Council on policing matters; and

(6) refer each complaint of police misconduct filed with the Board to the appropriate law enforcement agency within 3 days after receipt for investigation.

(h) *Removal of a member*. The Executive with the approval of at least 6 members of the Council may remove a member for:

(1) neglect of duty, including failure to complete mandatory training;

(2) misconduct in office;

(3) a member's inability or unwillingness to perform the duties of the office;

(4) conduct that impairs a member from performing the duties of the office; or

(5) **[[**violation of law; or

(6)**]]** inability to meet the qualifications for a Board member mandated by State law or implementing regulations.

(i) *Reports.* The Board must submit an annual report to the Executive and the Council each December 31 that:

(1) identifies any trends in the disciplinary process of police officers in the County;

(2) recommends changes to policy that would improve police accountability in the County; and

(3) describes the activities of the Board and the numbers of complaints received.

35-25. Administrative Charging Committee.

(a) *Establishment.* There is an Administrative Charging Committee for the County.

(b) *Membership.* The Committee has 5 voting members. The members are:

(1) the Chair of the Police Accountability Board or another member of the Board designated by the Chair;

(2) 2 civilian members appointed by the Police Accountability Board; and

(3) 2 civilian members appointed by the Executive.

(c) *Composition and qualifications of members*. The Committee consists of a chair and 4 additional members. The members of the Committee must reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County. Each member must **[[**:

(1)**]]** reside in the County **[[**; and have

(2) experience managing or evaluating the management of a law enforcement agency;

(3) experience evaluating citizen complaints against a police officer; or

(4) experience in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator**]]** and be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness.

(d) *Training*. Each member of the Committee must complete training on matters relating to police procedures from the Maryland Police Training and Standard Commission before serving as a member.

(e) *Staff*. The Chief Administrative Officer must provide appropriate staff to the Committee and make available to the Committee services and facilities that are necessary or appropriate for the proper performance of its duties. The County Attorney must serve as counsel to the Committee.

(f) *Compensation*. The annual salary for the Chair is $22,000 and the annual salary for each member is $16,000. The salary for the chair and each member must be adjusted on the first Monday in December by the Consumer Price Index for All Urban Consumers (CPI-U) for the Washington-Arlington-Alexandria Core Based Statistical Area (CBSA), as published by the United States Department of Labor, Bureau of Labor Statistics, or a successor index.

(g) *Meetings.* The Committee must meet at least one time each month or **[[**as**]]** more frequently if needed.

(h) *Term of office.* Each member serves a 3-year term. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(i) *Duties.* The Committee must:

(1) review the findings of each law enforcement agency's investigation forwarded by the agency to the Committee;

(2) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct;

(3) authorize a police officer called before the Committee to be accompanied by a representative;

(4) determine if the police officer who is the subject of the investigation should be administratively charged or not administratively charged within 30 days after receipt of the law enforcement agency's investigatory file unless the Committee requests further review under subsections (j)(1) or (2);

(4) if the Committee determines that a police officer should be administratively charged, recommend discipline pursuant to the disciplinary matrix;

(5) if the Committee determines that a police officer should not be administratively charged, determine if:

(A) the allegations against the police officer are unfounded, including situations where existing departmental policy fails to properly address the situation for which the officer was charged; or,

(B) the police officer is exonerated;

(6) issue a written opinion for each complaint describing in detail the Committee's findings, determinations, and recommendations; and

(7) forward the written opinion to the director of the appropriate law enforcement agency, the accused police officer, and the complainant.

(j) *Authority of the Committee*. The Committee may:

(1) request information or action from the law enforcement agency that conducted the investigation, including requiring additional investigation;

(2) issue subpoenas for documents or witnesses necessary to execute the Committee's duties; and

(3) record, in writing, any failure of supervision that caused or contributed to a police officer's misconduct.

(k) *Confidentiality.* Each member of the Committee must maintain confidentiality relating to a matter being considered by the Committee until final disposition of the matter.

(l) *Duties of the law enforcement agency.* The law enforcement agency must investigate and submit a written investigation report to the Administrative Charging Committee for each complaint received by the agency or referred to the agency by the Police Accountability Board.

(m) *Removal of a member*. The Executive with the approval of at least 6 members of the Council may remove a member for:

(1) neglect of duty, including failure to complete mandatory training;

(2) misconduct in office;

(3) a member's inability or unwillingness to perform the duties of the office;

(4) conduct that impairs a member from performing the duties of the office; or

(5) **[[**violation of law; or

(6)**]]** inability to meet the qualifications for a Board member mandated by State law or implementing regulations.

Sec. 2. Transition. Notwithstanding Sections 35-24(d) and 35-25(h) in Section 1, the Executive must stagger the initial terms of the members of the Board and the Committee so that the terms of approximately one-third of the members expires each year.

Sec. 3. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law and must apply to eligible complaints based on an incident occurring on or after July 1, 2022.

LEGISLATIVE REQUEST REPORT

Bill 49-21

Police – Police Accountability Board – Administrative Charging Committee – Established

DESCRIPTION:	Bill 44-21 would establish a Police Accountability Board (PAB) and an Administrative Charging Committee (ACC) for the County, define the membership and duties of for each, and generally amend the law governing police accountability and discipline.
PROBLEM:	HB 670 requires the County to establish both the PAB and ACC to implement the new Statewide police disciplinary system.
GOALS AND OBJECTIVES:	The goal is to improve police accountability and discipline.
COORDINATION:	Police Department, Sheriff's Department, Municipal Police Departments, County Attorney
FISCAL IMPACT:	Office of Management and Budget
ECONOMIC IMPACT:	Office of Legislative Oversite
EVALUATION:	To be researched.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney (240) 777-7895
APPLICATION WITHIN MUNICIPALITIES:	Applies to municipal police departments in Rockville, Gaithersburg, Takoma Park, and Chevy Chase.
PENALTIES:	Disciplinary Matrix adopted by the State.

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~~(III) INFORMATION RELATING TO THE FAMILY OF THE PERSON IN INTEREST; OR~~

~~(IV) WITNESS INFORMATION.~~

~~(E) A CUSTODIAN SHALL NOTIFY THE PERSON IN INTEREST OF A RECORD DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION WHEN THE RECORD IS INSPECTED, BUT MAY NOT DISCLOSE THE IDENTITY OF THE REQUESTOR TO THE PERSON IN INTEREST.~~

~~SECTION 6. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

Article – Public Safety

SUBTITLE 1. POLICE ACCOUNTABILITY AND DISCIPLINE.

3–101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ADMINISTRATIVELY CHARGED" MEANS THAT A POLICE OFFICER HAS BEEN FORMALLY ACCUSED OF MISCONDUCT IN AN ADMINISTRATIVE PROCEEDING.

(C) "DISCIPLINARY MATRIX" MEANS A WRITTEN, CONSISTENT, PROGRESSIVE, AND TRANSPARENT TOOL OR RUBRIC THAT PROVIDES RANGES OF DISCIPLINARY ACTIONS FOR DIFFERENT TYPES OF MISCONDUCT.

(D) "EXONERATED" MEANS THAT A POLICE OFFICER ACTED IN ACCORDANCE WITH THE LAW AND AGENCY POLICY.

~~(E) "INDEPENDENT INVESTIGATIVE AGENCY" MEANS THE AGENCY ESTABLISHED UNDER § 3–102 OF THIS SUBTITLE.~~

~~(F)~~ ***(E)*** **"LAW ENFORCEMENT AGENCY" HAS THE MEANING STATED IN § 3–201 OF THIS TITLE.**

~~(G)~~ ***(F)*** **"NOT ADMINISTRATIVELY CHARGED" MEANS THAT A DETERMINATION HAS BEEN MADE NOT TO ADMINISTRATIVELY CHARGE A POLICE OFFICER IN CONNECTION WITH ALLEGED MISCONDUCT.**

~~(H)~~ ***(G)*** **"POLICE MISCONDUCT" MEANS A PATTERN, A PRACTICE, OR CONDUCT BY A POLICE OFFICER OR LAW ENFORCEMENT AGENCY THAT INCLUDES:**

(1) DEPRIVING PERSONS OF RIGHTS PROTECTED BY THE CONSTITUTION OR LAWS OF THE STATE OR THE UNITED STATES;

(2) A VIOLATION OF A CRIMINAL STATUTE; AND

(3) A VIOLATION OF LAW ENFORCEMENT AGENCY STANDARDS AND POLICIES.

~~(H)~~ ***(H)*** **"POLICE OFFICER" HAS THE MEANING STATED IN § 3–201 OF THIS TITLE.**

~~(J)~~ ***(I)*** **"SERIOUS PHYSICAL INJURY" HAS THE MEANING STATED IN § 3–201 OF THE CRIMINAL LAW ARTICLE.**

~~(K)~~ ***(J)*** **"SUPERIOR GOVERNMENTAL AUTHORITY" MEANS THE GOVERNING BODY THAT OVERSEES A LAW ENFORCEMENT AGENCY.**

~~(L)~~ ***(K)*** **"UNFOUNDED" MEANS THAT THE ALLEGATIONS AGAINST A POLICE OFFICER ARE NOT SUPPORTED BY FACT.**

3–102.

~~(A) THE INDEPENDENT INVESTIGATIVE AGENCY IS ESTABLISHED AS AN INDEPENDENT UNIT OF STATE GOVERNMENT FOR THE PURPOSE OF INVESTIGATING USE OF FORCE INCIDENTS INVOLVING POLICE OFFICERS.~~

~~(B) THE INDEPENDENT INVESTIGATIVE AGENCY MAY EMPLOY SWORN POLICE OFFICERS AND CIVILIANS TO CONDUCT ITS WORK.~~

~~(C) A SHOOTING INVOLVING A POLICE OFFICER OR ANOTHER INCIDENT INVOLVING THE USE OF PHYSICAL FORCE BY A POLICE OFFICER CAUSING DEATH OR SERIOUS PHYSICAL INJURY SHALL BE INVESTIGATED BY THE INDEPENDENT INVESTIGATIVE AGENCY.~~

~~(D) A LAW ENFORCEMENT AGENCY SHALL:~~

~~(1) NOTIFY THE INDEPENDENT INVESTIGATIVE AGENCY OF ANY ALLEGED OR POTENTIAL SHOOTING INVOLVING A POLICE OFFICER OR ANOTHER INCIDENT INVOLVING THE USE OF PHYSICAL FORCE BY A POLICE OFFICER CAUSING DEATH OR SERIOUS PHYSICAL INJURY AS SOON AS THE LAW ENFORCEMENT AGENCY BECOMES AWARE OF THE INCIDENT; AND~~

~~(2) COOPERATE WITH THE INDEPENDENT INVESTIGATIVE AGENCY IN THE INVESTIGATION OF THE INCIDENT.~~

~~(E) (1) ON COMPLETION OF AN INVESTIGATION UNDER THIS SECTION, THE INDEPENDENT INVESTIGATIVE AGENCY SHALL SUBMIT A REPORT CONTAINING THE FINDINGS OF THE INVESTIGATION TO THE STATE'S ATTORNEY WITH JURISDICTION OVER THE MATTER.~~

~~(2) AFTER THE STATE'S ATTORNEY MAKES A DECISION WHETHER OR NOT TO PROSECUTE, THE INDEPENDENT INVESTIGATIVE AGENCY SHALL PUBLICIZE THE REPORT.~~

~~(F) THE GOVERNOR ANNUALLY SHALL INCLUDE FUNDING IN THE STATE BUDGET SUFFICIENT TO PROVIDE FOR THE FULL AND PROPER OPERATION OF THE INDEPENDENT INVESTIGATIVE AGENCY.~~

~~3–103.~~

(A) EACH COUNTY SHALL HAVE A POLICE ACCOUNTABILITY BOARD TO:

(1) HOLD QUARTERLY MEETINGS WITH HEADS OF LAW ENFORCEMENT AGENCIES AND OTHERWISE WORK WITH LAW ENFORCEMENT AGENCIES AND THE COUNTY GOVERNMENT TO IMPROVE MATTERS OF POLICING;

(2) APPOINT CIVILIAN MEMBERS TO CHARGING COMMITTEES AND TRIAL BOARDS;

(3) RECEIVE COMPLAINTS OF POLICE MISCONDUCT FILED BY MEMBERS OF THE PUBLIC; AND

(4) *(I)* ON A QUARTERLY BASIS, REVIEW OUTCOMES OF DISCIPLINARY MATTERS CONSIDERED BY CHARGING COMMITTEES*; AND*

(II) ON OR BEFORE DECEMBER 31 EACH YEAR, SUBMIT A REPORT TO THE GOVERNING BODY OF THE COUNTY THAT:

1. IDENTIFIES ANY TRENDS IN THE DISCIPLINARY PROCESS OF POLICE OFFICERS IN THE COUNTY; AND

2. MAKES RECOMMENDATIONS ON CHANGES TO POLICY THAT WOULD IMPROVE POLICE ACCOUNTABILITY IN THE COUNTY.

(B) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, ~~THE MEMBERSHIP OF A POLICE ACCOUNTABILITY BOARD SHALL BE DETERMINED BY~~ THE LOCAL ~~LEGISLATIVE BODY~~ *GOVERNING BODY SHALL:*

1. ESTABLISH THE MEMBERSHIP OF A POLICE ACCOUNTABILITY BOARD;

2. ESTABLISH THE BUDGET AND STAFF FOR A POLICE ACCOUNTABILITY BOARD;

3. APPOINT A CHAIR OF THE POLICE ACCOUNTABILITY BOARD WHO HAS RELEVANT EXPERIENCE TO THE POSITION; AND

4. ESTABLISH THE PROCEDURES FOR RECORD KEEPING BY A POLICE ACCOUNTABILITY BOARD.

(II) AN ACTIVE POLICE OFFICER MAY NOT BE A MEMBER OF A POLICE ACCOUNTABILITY BOARD.

(2) TO THE EXTENT PRACTICABLE, THE MEMBERSHIP OF A POLICE ACCOUNTABILITY BOARD SHALL REFLECT THE RACIAL, GENDER, AND CULTURAL DIVERSITY OF THE COUNTY.

(C) (1) A COMPLAINT OF POLICE MISCONDUCT FILED WITH A POLICE ACCOUNTABILITY BOARD SHALL INCLUDE:

(I) THE NAME OF THE POLICE OFFICER ACCUSED OF MISCONDUCT;

(II) A DESCRIPTION OF THE FACTS ON WHICH THE COMPLAINT IS BASED; AND

(III) CONTACT INFORMATION OF THE COMPLAINANT OR A PERSON FILING ON BEHALF OF THE COMPLAINANT FOR INVESTIGATIVE FOLLOW–UP.

(2) A COMPLAINT NEED NOT:

~~(I) INCLUDE IDENTIFYING INFORMATION OF THE COMPLAINANT IF THE COMPLAINANT WISHES TO REMAIN ANONYMOUS; OR~~

~~(II)~~ BE NOTARIZED ~~OR SWORN TO UNDER THE PENALTY OF PERJURY~~.

(D) A COMPLAINT OF POLICE MISCONDUCT FILED WITH A POLICE ACCOUNTABILITY BOARD SHALL BE FORWARDED TO THE APPROPRIATE LAW ENFORCEMENT AGENCY WITHIN 3 DAYS AFTER RECEIPT BY THE BOARD.

~~**3–104.**~~ ***3–103.***

(A) AN INDIVIDUAL MAY FILE A COMPLAINT OF POLICE MISCONDUCT WITH THE LAW ENFORCEMENT AGENCY THAT EMPLOYS THE POLICE OFFICER WHO IS THE SUBJECT OF THE COMPLAINT.

(B) (1) A COMPLAINT OF POLICE MISCONDUCT FILED WITH A LAW ENFORCEMENT AGENCY SHALL INCLUDE:

(I) THE NAME OF THE POLICE OFFICER ACCUSED OF MISCONDUCT;

(II) A DESCRIPTION OF THE FACTS ON WHICH THE COMPLAINT IS BASED; AND

(III) CONTACT INFORMATION OF THE COMPLAINANT OR A PERSON FILING ON BEHALF OF THE COMPLAINANT FOR INVESTIGATIVE FOLLOW–UP.

(2) A COMPLAINT NEED NOT:

~~**(I) INCLUDE IDENTIFYING INFORMATION OF THE COMPLAINANT IF THE COMPLAINANT WISHES TO REMAIN ANONYMOUS; OR**~~

(II) BE NOTARIZED ~~**OR SWORN TO UNDER THE PENALTY OF PERJURY**~~**.**

~~**3–105.**~~ ***3–104.***

(A) (1) EACH COUNTY SHALL HAVE ONE ADMINISTRATIVE CHARGING COMMITTEE TO SERVE COUNTYWIDE LAW ENFORCEMENT AGENCIES AND LOCAL LAW ENFORCEMENT AGENCIES WITHIN THE COUNTY.

(2) A COUNTY ADMINISTRATIVE CHARGING COMMITTEE SHALL BE COMPOSED OF:

(I) THE CHAIR OF THE COUNTY'S POLICE ACCOUNTABILITY BOARD, ***OR ANOTHER MEMBER OF THE ACCOUNTABILITY BOARD DESIGNATED BY THE CHAIR OF THE ACCOUNTABILITY BOARD*****;**

~~(II) A DESIGNEE OF THE DISTRICT PUBLIC DEFENDER WHO IS:~~

~~1. A RESIDENT OF THE COUNTY;~~

~~2. NOT EMPLOYED BY THE OFFICE OF THE PUBLIC DEFENDER; AND~~

~~3. NOT CURRENTLY REPRESENTING A PARTY AS AN ATTORNEY IN A CRIMINAL MATTER PENDING IN A COURT IN THE COUNTY;~~

~~(III) A DESIGNEE OF THE STATE'S ATTORNEY FOR THE JURISDICTION WHERE THE ALLEGED MISCONDUCT OCCURRED WHO IS:~~

~~1. A RESIDENT OF THE COUNTY;~~

~~2. NOT EMPLOYED BY THE OFFICE OF THE STATE'S ATTORNEY; AND~~

~~3. NOT CURRENTLY REPRESENTING A PARTY AS AN ATTORNEY IN A CRIMINAL MATTER PENDING IN A COURT IN THE COUNTY;~~

~~(IV)~~ *(II)* ~~ONE CIVILIAN~~ *TWO CIVILIAN MEMBERS* **SELECTED BY THE COUNTY'S POLICE ACCOUNTABILITY BOARD; AND**

~~(V)~~ *(III)* ~~THE LEAD ATTORNEY FOR THE SUPERIOR GOVERNMENTAL AUTHORITY OF THE COUNTY~~ *TWO CIVILIAN MEMBERS SELECTED BY THE CHIEF EXECUTIVE OFFICER OF THE COUNTY*.

(B) (1) THERE SHALL BE AT LEAST ONE STATEWIDE ADMINISTRATIVE CHARGING COMMITTEE TO SERVE STATEWIDE *AND BI–COUNTY* **LAW ENFORCEMENT AGENCIES.**

(2) A STATEWIDE ADMINISTRATIVE CHARGING COMMITTEE SHALL BE COMPOSED OF:

~~(I) A DESIGNEE OF THE ATTORNEY GENERAL WHO IS NOT EMPLOYED BY THE OFFICE OF THE ATTORNEY GENERAL, THE OFFICE OF THE STATE PROSECUTOR, OR THE OFFICE OF THE UNITED STATES ATTORNEY;~~

~~(II) A DESIGNEE OF THE PUBLIC DEFENDER OF MARYLAND WHO IS NOT EMPLOYED BY THE OFFICE OF THE PUBLIC DEFENDER;~~

(I) THREE CIVILIAN MEMBERS APPOINTED BY THE GOVERNOR;

(II) ONE CIVILIAN MEMBER APPOINTED BY THE PRESIDENT OF THE SENATE; AND

(III) ONE CIVILIAN MEMBER APPOINTED BY THE SPEAKER OF THE HOUSE.

~~(III) A DESIGNEE OF THE GOVERNOR'S LEGAL COUNSEL;~~

~~(IV) ONE CIVILIAN APPOINTED BY THE GOVERNOR; AND~~

~~(V) ONE CIVILIAN JOINTLY APPOINTED BY THE SPEAKER OF THE HOUSE AND THE PRESIDENT OF THE SENATE.~~

(C) BEFORE SERVING AS A MEMBER OF AN ADMINISTRATIVE CHARGING COMMITTEE, AN INDIVIDUAL SHALL RECEIVE TRAINING ON MATTERS RELATING TO POLICE PROCEDURES FROM THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION.

(D) ON COMPLETION OF AN INVESTIGATION OF A COMPLAINT MADE BY A MEMBER OF THE PUBLIC AGAINST A POLICE OFFICER, THE LAW ENFORCEMENT AGENCY SHALL FORWARD TO THE APPROPRIATE ADMINISTRATIVE CHARGING COMMITTEE THE INVESTIGATORY FILES FOR THE MATTER.

(E) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL:

(1) REVIEW THE FINDINGS OF A LAW ENFORCEMENT AGENCY'S INVESTIGATION CONDUCTED AND FORWARDED IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION;

(2) MAKE A DETERMINATION THAT THE POLICE OFFICER WHO IS SUBJECT TO INVESTIGATION SHALL BE:

(I) ADMINISTRATIVELY CHARGED; OR

(II) NOT ADMINISTRATIVELY CHARGED;

(3) IF THE POLICE OFFICER IS CHARGED, RECOMMEND DISCIPLINE IN ACCORDANCE WITH THE LAW ENFORCEMENT AGENCY'S DISCIPLINARY MATRIX ESTABLISHED IN ACCORDANCE WITH § ~~3–106~~ *3–105* OF THIS SUBTITLE;

(4) REVIEW ANY BODY CAMERA FOOTAGE THAT MAY BE RELEVANT TO THE MATTERS COVERED IN THE COMPLAINT OF MISCONDUCT;

(5) AUTHORIZE A POLICE OFFICER CALLED TO APPEAR BEFORE AN ADMINISTRATIVE CHARGING COMMITTEE TO BE ACCOMPANIED BY A REPRESENTATIVE;

~~(4)~~ *(6)* ISSUE A WRITTEN OPINION THAT DESCRIBES IN DETAIL ITS FINDINGS, DETERMINATIONS, AND RECOMMENDATIONS; AND

~~(5)~~ *(7)* FORWARD THE WRITTEN OPINION TO THE CHIEF OF THE LAW ENFORCEMENT AGENCY, *THE POLICE OFFICER*, AND THE COMPLAINANT.

(F) IN EXECUTING ITS DUTIES IN ACCORDANCE WITH SUBSECTION (E) OF THIS SECTION, AN ADMINISTRATIVE CHARGING COMMITTEE MAY:

(1) REQUEST INFORMATION OR ACTION FROM THE LAW ENFORCEMENT AGENCY THAT CONDUCTED THE INVESTIGATION, INCLUDING REQUIRING ADDITIONAL INVESTIGATION AND THE ISSUANCE OF SUBPOENAS;

(2) IF THE POLICE OFFICER IS NOT ADMINISTRATIVELY CHARGED, MAKE A DETERMINATION THAT:

(I) THE ALLEGATIONS AGAINST THE POLICE OFFICER ARE UNFOUNDED; OR

(II) THE POLICE OFFICER IS EXONERATED; AND

(3) RECORD, IN WRITING, ~~A~~ *ANY* FAILURE OF SUPERVISION THAT CAUSED OR CONTRIBUTED TO A POLICE OFFICER'S MISCONDUCT.

(G) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL MEET ONCE PER MONTH ~~AND ADDITIONALLY~~ *OR* AS NEEDED.

(H) A MEMBER OF AN ADMINISTRATIVE CHARGING COMMITTEE SHALL MAINTAIN CONFIDENTIALITY RELATING TO A MATTER BEING CONSIDERED BY THE ADMINISTRATIVE CHARGING COMMITTEE UNTIL *FINAL* DISPOSITION OF THE MATTER.

~~3–106.~~ 3–105.

(A) THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION SHALL DEVELOP AND ADOPT, BY REGULATION, A MODEL UNIFORM DISCIPLINARY MATRIX FOR USE BY EACH LAW ENFORCEMENT AGENCY IN THE STATE.

(B) EACH LAW ENFORCEMENT AGENCY SHALL ADOPT THE UNIFORM STATE DISCIPLINARY MATRIX.

(C) (1) WITHIN 15 DAYS AFTER AN ADMINISTRATIVE CHARGING COMMITTEE ISSUES AN ADMINISTRATIVE CHARGE AGAINST A POLICE OFFICER, THE CHIEF OF THE LAW ENFORCEMENT AGENCY SHALL OFFER DISCIPLINE TO THE POLICE OFFICER WHO HAS BEEN ADMINISTRATIVELY CHARGED IN ACCORDANCE WITH THE DISCIPLINARY MATRIX.

(2) THE CHIEF MAY OFFER THE SAME DISCIPLINE THAT WAS RECOMMENDED BY THE ADMINISTRATIVE CHARGING COMMITTEE OR A HIGHER DEGREE OF DISCIPLINE WITHIN THE APPLICABLE RANGE OF THE DISCIPLINARY MATRIX, BUT MAY NOT DEVIATE BELOW THE DISCIPLINE RECOMMENDED BY THE ADMINISTRATIVE CHARGING COMMITTEE.

(3) IF THE POLICE OFFICER ACCEPTS THE CHIEF'S OFFER OF DISCIPLINE, THEN THE OFFERED DISCIPLINE SHALL BE IMPOSED.

(4) IF THE POLICE OFFICER DOES NOT ACCEPT THE CHIEF'S OFFER OF DISCIPLINE, THEN THE MATTER SHALL BE REFERRED TO A TRIAL BOARD.

(5) AT LEAST 30 DAYS BEFORE A TRIAL BOARD PROCEEDING BEGINS, THE POLICE OFFICER SHALL BE:

(I) PROVIDED A COPY OF THE INVESTIGATORY RECORD;

(II) NOTIFIED OF THE CHARGES AGAINST THE POLICE OFFICER; AND

(III) NOTIFIED OF THE DISCIPLINARY ACTION BEING RECOMMENDED.

~~**3–107.**~~ ***3–106.***

(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EACH LAW ENFORCEMENT AGENCY SHALL ESTABLISH A TRIAL BOARD PROCESS IN ACCORDANCE WITH THIS SECTION ***TO ADJUDICATE MATTERS FOR WHICH A POLICE OFFICER IS SUBJECT TO DISCIPLINE.***

(2) A SMALL LAW ENFORCEMENT AGENCY MAY USE THE TRIAL BOARD PROCESS OF ANOTHER LAW ENFORCEMENT AGENCY BY MUTUAL AGREEMENT.

(B) A TRIAL BOARD SHALL BE COMPOSED OF:

(1) AN ACTIVELY SERVING OR RETIRED ADMINISTRATIVE LAW JUDGE OR A RETIRED JUDGE OF THE DISTRICT COURT OR A CIRCUIT COURT, *APPOINTED BY THE CHIEF EXECUTIVE OFFICER OF THE COUNTY*;

(2) A CIVILIAN *WHO IS NOT A MEMBER OF AN ADMINISTRATIVE CHARGING COMMITTEE*, APPOINTED BY THE COUNTY'S POLICE ACCOUNTABILITY BOARD; AND

(3) A POLICE OFFICER OF EQUAL RANK TO THE POLICE OFFICER WHO IS ACCUSED OF MISCONDUCT *APPOINTED BY THE HEAD OF THE LAW ENFORCEMENT AGENCY*.

(C) BEFORE SERVING AS A MEMBER OF A TRIAL BOARD, AN INDIVIDUAL SHALL RECEIVE TRAINING ON MATTERS RELATING TO POLICE PROCEDURES FROM THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION.

(D) PROCEEDINGS OF A TRIAL BOARD SHALL BE OPEN TO THE PUBLIC, EXCEPT TO PROTECT:

(1) A VICTIM'S IDENTITY;

(2) THE PERSONAL PRIVACY OF AN INDIVIDUAL;

(3) A CHILD WITNESS;

(4) MEDICAL RECORDS;

(5) THE IDENTITY OF A CONFIDENTIAL SOURCE;

(6) AN INVESTIGATIVE TECHNIQUE OR PROCEDURE; OR

(7) THE LIFE OR PHYSICAL SAFETY OF AN INDIVIDUAL.

(E) A TRIAL BOARD MAY ADMINISTER OATHS AND ISSUE SUBPOENAS AS NECESSARY TO COMPLETE ITS WORK.

(F) ~~A POLICE OFFICER WHO IS THE SUBJECT OF A TRIAL BOARD MAY BE COMPELLED TO:~~

~~(1) TESTIFY;~~

~~(2) PRODUCE FINANCIAL RECORDS RELATING TO INCOME AND ASSETS; AND~~

~~(3) SUBMIT TO A POLYGRAPH EXAMINATION.~~

~~(G)~~ **A COMPLAINANT HAS THE RIGHT TO BE NOTIFIED OF A TRIAL BOARD HEARING AND, EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE RIGHT TO ATTEND A TRIAL BOARD HEARING.**

(G) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A LAW ENFORCEMENT AGENCY HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE IN ANY PROCEEDING UNDER THIS SUBTITLE.

(H) A POLICE OFFICER MAY BE DISCIPLINED ONLY FOR CAUSE.

~~(H)~~ ~~(G)~~ ***(I)*** **(1) WITHIN 30 DAYS AFTER THE DATE OF ISSUANCE OF A DECISION OF A TRIAL BOARD, THE DECISION MAY BE APPEALED BY THE EMPLOYEE:**

(I) IF THE TRIAL BOARD IS FROM A LOCAL LAW ENFORCEMENT AGENCY, TO THE CIRCUIT COURT OF THE COUNTY IN WHICH THE LAW ENFORCEMENT AGENCY IS LOCATED; AND

(II) IF THE TRIAL BOARD IS FROM A STATEWIDE *OR BI–COUNTY* LAW ENFORCEMENT AGENCY, TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY.

(2) AN APPEAL TAKEN UNDER THIS SUBSECTION SHALL BE ON THE RECORD.

~~(I)~~ ~~(H)~~ ***(J)*** **A TRIAL BOARD DECISION THAT IS NOT APPEALED IS FINAL.**

~~3–108.~~ ***3–107.***

(A) (1) PENDING AN INVESTIGATORY, ADMINISTRATIVE CHARGING COMMITTEE, AND TRIAL BOARD PROCESS, THE CHIEF MAY IMPOSE AN EMERGENCY SUSPENSION WITH OR WITHOUT PAY IF THE CHIEF DETERMINES THAT SUCH A SUSPENSION IS IN THE BEST INTEREST OF THE PUBLIC.

(2) AN EMERGENCY SUSPENSION WITHOUT PAY UNDER THIS SUBSECTION MAY NOT EXCEED 30 DAYS.

(3) A POLICE OFFICER WHO IS SUSPENDED WITHOUT PAY UNDER THIS SUBSECTION IS ENTITLED TO RECEIVE BACK PAY IF AN ADMINISTRATIVE CHARGING COMMITTEE DETERMINES NOT TO ADMINISTRATIVELY CHARGE THE POLICE OFFICER IN CONNECTION WITH THE MATTER ON WHICH THE SUSPENSION IS BASED.

~~(B) (1) PENDING AN INVESTIGATORY, ADMINISTRATIVE CHARGING COMMITTEE, TRIAL BOARD, AND CRIMINAL PROSECUTION PROCESS, THE CHIEF SHALL IMPOSE AN EMERGENCY SUSPENSION WITHOUT PAY IF THE POLICE OFFICER IN QUESTION IS CRIMINALLY CHARGED WITH:~~

~~(I) A FELONY;~~

~~(II) A MISDEMEANOR COMMITTED IN THE PERFORMANCE OF DUTIES AS A POLICE OFFICER;~~

~~(III) A MISDEMEANOR RELATED TO DOMESTIC VIOLENCE; OR~~

~~(IV) A MISDEMEANOR INVOLVING DISHONESTY, FRAUD, THEFT, OR MISREPRESENTATION.~~

(B) (1) A CHIEF OR A CHIEF'S DESIGNEE MAY SUSPEND A POLICE OFFICER WITHOUT PAY AND SUSPEND THE POLICE OFFICER'S POLICE POWERS ON AN EMERGENCY BASIS IF THE POLICE OFFICER IS CHARGED WITH:

(I) A DISQUALIFYING CRIME, AS DEFINED IN § 5–101 OF THIS ARTICLE;

(II) A MISDEMEANOR COMMITTED IN THE PERFORMANCE OF DUTIES AS A POLICE OFFICER; OR

(III) A MISDEMEANOR INVOLVING DISHONESTY, FRAUD, THEFT, OR MISREPRESENTATION.

(2) A POLICE OFFICER WHO WAS SUSPENDED WITHOUT PAY UNDER THIS SUBSECTION IS ENTITLED TO RECEIVE BACK PAY IF THE ~~POLICE OFFICER IS FOUND NOT GUILTY OF THE CRIMINAL CHARGE OR CHARGES ON WHICH THE SUSPENSION WAS BASED~~ ***CRIMINAL CHARGE OR CHARGES AGAINST THE POLICE OFFICER RESULT IN:***

(I) A FINDING OF NOT GUILTY;

(II) AN ACQUITTAL;

(III) A DISMISSAL; OR

(IV) A NOLLE PROSEQUI.

(C) ***(1)*** **THE CHIEF SHALL TERMINATE THE EMPLOYMENT OF A POLICE OFFICER WHO IS CONVICTED OF** ~~OR~~ ***A FELONY.***

(2) THE CHIEF MAY TERMINATE THE EMPLOYMENT OF A POLICE OFFICER WHO:

(I) **RECEIVES A PROBATION BEFORE JUDGMENT ~~FOR:~~ *FOR***

~~(1)~~ **A FELONY;** ***OR***

~~(2)~~ ***(II)*** ~~A~~ ***IS CONVICTED OF:***

1. ***A*** **MISDEMEANOR COMMITTED IN THE PERFORMANCE OF DUTIES AS A POLICE OFFICER;**

~~(3) A MISDEMEANOR RELATED TO DOMESTIC VIOLENCE; OR~~

2. ***MISDEMEANOR SECOND DEGREE ASSAULT; OR***

~~(4)~~ ***3.*** **A MISDEMEANOR INVOLVING DISHONESTY, FRAUD, THEFT, OR MISREPRESENTATION.**

(D) (1) IN CONNECTION WITH A DISCIPLINARY MATTER UNDER THIS SUBTITLE, A POLICE OFFICER MAY BE REQUIRED TO SUBMIT TO BLOOD ALCOHOL TESTS, BLOOD, BREATH, OR URINE TESTS FOR CONTROLLED DANGEROUS SUBSTANCES, POLYGRAPH EXAMINATIONS, OR INTERROGATIONS THAT SPECIFICALLY RELATE TO THE SUBJECT MATTER OF THE INVESTIGATION.

(2) IF A POLICE OFFICER IS REQUIRED TO SUBMIT TO A TEST, EXAMINATION, OR INTERROGATION ~~DESCRIBED IN~~ *UNDER* PARAGRAPH (1) OF THIS SUBSECTION AND THE POLICE OFFICER REFUSES TO DO SO, THE LAW ENFORCEMENT AGENCY MAY COMMENCE AN ACTION THAT MAY LEAD TO A PUNITIVE MEASURE AS A RESULT OF THE REFUSAL.

(3) ***(I)*** **IF A POLICE OFFICER IS REQUIRED TO SUBMIT TO A TEST, EXAMINATION, OR INTERROGATION ~~DESCRIBED IN~~ *UNDER* PARAGRAPH (1) OF THIS SUBSECTION, THE RESULTS OF THE TEST, EXAMINATION, OR INTERROGATION ARE NOT ADMISSIBLE OR DISCOVERABLE IN A CRIMINAL PROCEEDING AGAINST THE POLICE OFFICER.**

(II) IF A POLICE OFFICER IS REQUIRED TO SUBMIT TO A POLYGRAPH EXAMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE RESULTS OF THE POLYGRAPH EXAMINATION ARE NOT ADMISSIBLE OR DISCOVERABLE IN A CRIMINAL OR CIVIL PROCEEDING AGAINST THE POLICE OFFICER.

~~(E) IN CONNECTION WITH A DISCIPLINARY MATTER UNDER THIS SUBTITLE, FORFEITURE OF A POLICE OFFICER'S PENSION MAY BE IMPOSED AS A DISCIPLINARY ACTION IN ACCORDANCE WITH § 20–210 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.~~

~~3–109.~~ *3–108.*

(A) (1) A LAW ENFORCEMENT AGENCY SHALL DESIGNATE AN EMPLOYEE AS A VICTIMS' RIGHTS ADVOCATE TO ACT AS THE CONTACT FOR THE PUBLIC WITHIN THE AGENCY ON MATTERS RELATED TO POLICE MISCONDUCT.

(2) A VICTIMS' RIGHTS ADVOCATE SHALL:

(I) EXPLAIN TO A COMPLAINANT:

1. THE COMPLAINT, INVESTIGATION, ADMINISTRATIVE CHARGING COMMITTEE, AND TRIAL BOARD PROCESS;

2. ANY DECISION TO TERMINATE AN INVESTIGATION;

3. AN ADMINISTRATIVE CHARGING COMMITTEE'S DECISION OF ADMINISTRATIVELY CHARGED, NOT ADMINISTRATIVELY CHARGED, UNFOUNDED, OR EXONERATED; AND

4. A TRIAL BOARD'S DECISION;

(II) PROVIDE A COMPLAINANT WITH AN OPPORTUNITY TO REVIEW A POLICE OFFICER'S STATEMENT, *IF ANY*, BEFORE COMPLETION OF AN INVESTIGATION BY A LAW ENFORCEMENT AGENCY'S INVESTIGATIVE UNIT;

(III) NOTIFY A COMPLAINANT OF THE STATUS OF THE CASE AT EVERY STAGE OF THE PROCESS; AND

(IV) PROVIDE A CASE SUMMARY TO A COMPLAINANT WITHIN 30 DAYS AFTER FINAL DISPOSITION OF THE CASE.

(B) EACH LAW ENFORCEMENT AGENCY SHALL CREATE A DATABASE THAT ENABLES A COMPLAINANT TO ENTER THE COMPLAINANT'S CASE NUMBER TO FOLLOW THE STATUS OF THE CASE AS IT PROCEEDS THROUGH:

(1) INVESTIGATION;

(2) CHARGING;

(3) OFFER OF DISCIPLINE;

(4) TRIAL BOARD;

(5) ULTIMATE DISCIPLINE; AND

(6) APPEAL.

~~(C) (1) THE INVESTIGATING UNIT OF A LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REVIEW A COMPLAINT BY A MEMBER OF THE PUBLIC ALLEGING POLICE OFFICER MISCONDUCT.~~

~~(2) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL REVIEW AND MAKE A DETERMINATION OR ASK FOR FURTHER REVIEW WITHIN 30 DAYS OF COMPLETION OF THE INVESTIGATING UNIT'S REVIEW.~~

~~(3) THE PROCESS OF REVIEW BY THE INVESTIGATING UNIT THROUGH DISPOSITION BY THE ADMINISTRATIVE CHARGING COMMITTEE SHALL BE COMPLETED WITHIN 1 YEAR AND 1 DAY AFTER THE FILING OF A COMPLAINT BY A CITIZEN.~~

~~3–110.~~ *3–109.*

A POLICE OFFICER WHO IS THE SUBJECT OF A COMPLAINT OF POLICE MISCONDUCT AND A COMPLAINANT ~~HAVE THE RIGHT TO REPRESENTATION~~ ***MAY HAVE THE ASSISTANCE OF A REPRESENTATIVE*** **IN CONNECTION WITH PROCEEDINGS UNDER THIS SUBTITLE.**

~~3–111.~~ *3–110.*

(A) A POLICE OFFICER MAY NOT BE DISCHARGED, DISCIPLINED, DEMOTED, OR DENIED PROMOTION, TRANSFER, OR REASSIGNMENT, OR OTHERWISE DISCRIMINATED AGAINST OR THREATENED IN REGARD TO THE POLICE OFFICER'S EMPLOYMENT BECAUSE THE POLICE OFFICER:

(1) DISCLOSED INFORMATION THAT EVIDENCES:

(I) MISMANAGEMENT;

(II) A WASTE OF GOVERNMENT RESOURCES;

(III) A DANGER TO PUBLIC HEALTH OR SAFETY; OR

(IV) A VIOLATION OF LAW OR POLICY COMMITTED BY ANOTHER POLICE OFFICER; OR

(2) LAWFULLY EXERCISED CONSTITUTIONAL RIGHTS.

(B) A POLICE OFFICER MAY NOT BE DENIED THE RIGHT TO BRING SUIT ARISING OUT OF THE POLICE OFFICER'S OFFICIAL DUTIES.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A POLICE OFFICER HAS THE SAME RIGHTS TO ENGAGE IN POLITICAL ACTIVITY AS A STATE EMPLOYEE.

(2) THIS RIGHT TO ENGAGE IN POLITICAL ACTIVITY DOES NOT APPLY WHEN THE POLICE OFFICER IS ON DUTY OR ACTING IN AN OFFICIAL CAPACITY.

(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A LAW ENFORCEMENT AGENCY MAY NOT PROHIBIT SECONDARY EMPLOYMENT BY POLICE OFFICERS.

(2) A LAW ENFORCEMENT AGENCY MAY ADOPT REASONABLE REGULATIONS THAT RELATE TO SECONDARY EMPLOYMENT BY POLICE OFFICERS.

~~**3–112.**~~ ***3–111.***

A LAW ENFORCEMENT AGENCY MAY NOT NEGATE OR ALTER ANY OF THE REQUIREMENTS OF THIS SUBTITLE THROUGH COLLECTIVE BARGAINING.

~~**3–113.**~~ ***3–112.***

~~**A RECORD RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION, MAY NOT BE:**~~

~~**(1) EXPUNGED; OR**~~

~~**(2) DESTROYED BY A LAW ENFORCEMENT AGENCY.**~~

A RECORD RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION, MAY NOT BE:

(1) EXPUNGED; OR

(2) DESTROYED BY A LAW ENFORCEMENT AGENCY.

3–113.

(A) THE INVESTIGATING UNIT OF A LAW ENFORCEMENT AGENCY SHALL IMMEDIATELY REVIEW A COMPLAINT BY A MEMBER OF THE PUBLIC ALLEGING POLICE OFFICER MISCONDUCT.

(B) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL REVIEW AND MAKE A DETERMINATION OR ASK FOR FURTHER REVIEW WITHIN 30 DAYS AFTER COMPLETION OF THE INVESTIGATING UNIT'S REVIEW.

(C) THE PROCESS OF REVIEW BY THE INVESTIGATING UNIT THROUGH DISPOSITION BY THE ADMINISTRATIVE CHARGING COMMITTEE SHALL BE COMPLETED WITHIN 1 YEAR AND 1 DAY AFTER THE FILING OF A COMPLAINT BY A CITIZEN.

3–114.

THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE.

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Public Safety

3–203.

(a) The Commission consists of the following members:

(1) the President of the Maryland Chiefs of Police Association;

(2) the President of the Maryland Sheriffs Association;

(3) the Attorney General of the State;

(4) the Secretary of State Police;

(5) the agent in charge of the Baltimore office of the Federal Bureau of Investigation;

(6) one member representing the Maryland State Lodge of Fraternal Order of Police;

Economic Impact Statement

Office of Legislative Oversight

Expedited Bill 49-21

Police – Police Accountability Board – Administrative Charging Committee – Established

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Expedited Bill 49-21 would have an insignificant impact on economic conditions in the County.

BACKGROUND

The purpose of Expedited Bill 49-21 is to improve police accountability and discipline. If enacted, the Bill would establish a Police Accountability Board (PAB) and an Administrative Charging Committee (ACC) for the County and define the membership and duties of these Committees. In the case of the ACC, the Bill would also define the compensation for members of the Committee. The Chair of the ACC would receive an annual salary of $22,000 and the other four members would receive an annual salary of $16,000. Salaries would be adjusted for changes in the consumer price index.[1]

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

By establishing the ACC, Expedited Bill 49-21 could result in a net increase in household earnings for members of the Committee totaling $86,000 across all members. This net increase in earnings, however, would have insignificant impacts on other residents and private organizations in the County in terms of the Council's priority economic indicators. Moreover, while establishing the PAB and ACC may influence policing practices and policies in ways that economically impact certain residents and private organizations in the future, estimating these potential, secondary impacts of the Bill is beyond the scope of this analysis. For these reasons, OLO concludes that enacting the Bill would have no significant impacts on local economic conditions.

VARIABLES

Not applicable

[1] Montgomery County Council, Expedited Bill 49-21, Police – Police Accountability Board – Administrative Charging Committee – Established, Introduced on December 14, 2021.

Economic Impact Statement

Office of Legislative Oversight

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Businesses, Non-Profits, Other Private Organizations

Not applicable

Residents

Not applicable

DISCUSSION ITEMS

Not applicable

WORKS CITED

Montgomery County Code. Sec. 2-81B, Economic Impact Statements.

Montgomery County Council. Expedited Bill 49-21, Police – Police Accountability Board – Administrative Charging Committee – Established. Introduced on December 14, 2021.

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

EXPEDITED BILL 49-21: POLICE — POLICE ACCOUNTABILITY BOARD — ADMINISTRATIVE CHARGING COMMITTEE — ESTABLISHED

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Expedited Bill 49-21 will have little to no impact on racial and social inequities as it does not consistently align with best practices for advancing civilian oversight to improve police accountability. To improve the racial equity and social justice (RESJ) impact of this bill, this statement offers several potential amendments for Council consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of racial equity and social justice (RESJ) impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.[1] Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.[2]

BACKGROUND ON EXPEDITED BILL 49-21

Addressing allegations of police misconduct has been a challenge for law enforcement. In 2000, the Montgomery County Police Department entered into an agreement with the Justice Department and the Fraternal Order of Police (FOP) to resolve complaints alleging racial discrimination in investigations of police misconduct as well as traffic stops and use of force.[3] The Law Enforcement Officers Bill of Rights (LEOBR) has been viewed as a deterrent to holding police officers accountable for misconduct and making investigations of misconduct transparent to the community.[4]

With House Bill 670, the General Assembly eliminated LEOBR and required localities to establish police disciplinary systems with civilians that make such systems more accessible and transparent to the community.[5] Expedited Bill 49-21 seeks to establish a Police Accountability Board and Administrative Charging Committee in the County by July 1, 2022 that complies with HB 670.[6] The bill was introduced to the Council at the request of the County Executive on December 14, 2021.[7] To align with state law, the bill creates three entities to address complaints of police misconduct:

- ***A Police Accountability Board (PAB)*** that meets quarterly, receives complaints of police misconduct from the public, shares them with law enforcement within 3 days, and issues annual reports describing police discipline and recommendations for improving police accountability. No active police officers may serve on the PAB; and to the extent practicable, PAB members "shall reflect the racial, gender, and cultural diversity of the County."
- ***An Administrative Charging Committee (ACC),*** a five-member committee led by the chair of the PAB or their designee, includes two additional civilian members from the PAB and another two civilian members selected by the Executive. The ACC reviews findings from agency investigations to determine if an officer should be charged and recommends discipline to the Chief of Police for the charged officer that aligns with the Maryland Police Training and Standards Commission (MPTSC) disciplinary matrix. ACC members can review camera footage, subpoena officers, and request additional information; they must also receive training from MPTSC.

- ***A Trial Board*** to determine an officer's discipline if they do not accept the Chief's offer of discipline. Each Trial Board must include three members: a retired administrative law judge or retired district court or circuit court judge appointed by the County Executive, a civilian appointed by the PAB who is not a member of the ACC, and a police officer of equal rank to the police officer accused of misconduct that is appointed by their agency. Like the ACC, the Trial Board may issue subpoenas and members must receive training from the MPTSC.

Yet, HB 670's requirement that PAB's only review allegations of police misconduct from the public captures a small subset of the actual allegations of misconduct reported to the police as exemplified by an examination of local data:[8]

- In 2020, there were 220 complaints of police misconduct made to MCPD.
- MCPD's Internal Affairs Division (IAD) declined 66 complaints for investigation, 120 cases were investigated by the accused officer's chain of command, and 34 were investigated by IAD.
- Of the 34 IAD investigations opened in 2020, 26 were still open at the time of the IAD annual report publication.
- Of the 8 investigations resolved by the 2020 annual report, 6 were administratively closed due to IAD determining that the investigation could not continue, one exonerated an officer, and another found sufficient evidence to prove an allegation of misconduct.
- So, of the 220 complaints received by MCPD in 2020, a PAB and ACC would have had the authority to review up to 8 complaints of policing misconduct (less than 4 percent) if the allegation emerged from a citizen.
- Yet, the 220 complaints in IAD's Annual Report reflect allegations of police misconduct made by the public and by law enforcement. HB 670 does not authorize PAB's to review IAD investigations that originate from internal complaints. As such, the PAB's actual authority to review IAD investigations is quite limited.

Expedited Bill 49-21 also establishes additional local requirements for the PAB not specified under state law:[9]

- The PAB will consist of five members, each appointed by the Executive, subject to the Council's approval;
- PAB and ACC members will serve three-year terms with no more than two consecutive terms; the initial terms will stagger to ensure that no more than one third of the members expire annually;
- PAB and ACC members must have experience in managing or evaluating the management of a law enforcement agency, evaluating citizen complaints against a police officer, or in personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator;
- PAB members will serve without compensation except reimbursement for expenses. ACC members, however, meet monthly and receive annual salaries of $16,000 with the chair receiving an annual salary of $22,000;
- The PAB will recommend changes to policy that would improve police accountability in the County;
- The Chief Administrative Officer will provide appropriate staff and support to the PAB; and
- The County Attorney will serve as counsel to the PAB.

OLO finds the functions of the County's current police disciplinary process established under LEOBR overlap with the functions of the police disciplinary system required under HB 670 and proposed by Expedited Bill 49-21. They both add civilians to local police disciplinary processes where they were previously excluded. Yet, the civilians included in the updated system tend to represent law enforcement rather than the community at large. As such, OLO finds that:

- ***The ACC has the same function as the Internal Investigation Review Panel.*** MCPD's Internal Investigation Review Panel - consisting of the Assistant Chiefs, the Internal Affairs Director, and the head of the division of the involved employee - currently makes the recommendation to the Chief on whether an officer should be charged. Bill 49-21 shifts this responsibility from a committee of active duty police officers to a committee of civilians that also represent law enforcement given the bill's requirements that PAB and ACC members have experience in law enforcement as managers or evaluators, or in personnel disciplinary proceedings.

- ***The Trial Board replaces the Hearing Board for first level appeals***. A police officer charged with misconduct can currently appeal the Chief's recommendation for discipline to a hearing board comprised of three sworn officers with one at the rank of the defendant. HB 670 shifts the first level appeals process for a Chief's recommendation for discipline from a hearing board comprised of three active duty police officers to a Trial Board consisting of one active duty police officer, a civilian who may have experience in law enforcement, and a retired judge.
- ***District Court replaces the Alternative Hearing Board for final appeals.*** A police officer charged with misconduct that disputes the discipline recommended by a hearing board can seek a final appeal to their decision via an alternative hearing board that includes an arbitrator, a member selected by the FOP, and a member selected by the Chief. In turn, HB 670 shifts consideration for a final appeal from a committee comprised mostly of active duty officers in law enforcement to other law enforcement personnel (i.e. judges) in a District Court.

POLICING, RACIAL EQUITY, AND CIVILIAN OVERSIGHT BOARDS

Understanding the impact of Expedited Bill 49-21 on racial and social inequity in Montgomery County requires understanding the history of racial inequity that shapes policing outcomes today. Toward this end, this section describes the origins of policing in the U.S., data on disparities in police interactions with the public by race and ethnicity, the features of civilian oversight boards that reflect best practices for promoting accountability in policing and how Bill 49-21 aligns with these best practices.

Inequities in Policing. Modern policing in the United States emerges from a legacy of racial inequity. The mandate of the earliest policing efforts, slave patrols, were to apprehend escaped Africans and to instill fear among enslaved Africans to deter slave revolts.[10] The first municipal police forces, beginning in Boston in 1838, were about controlling people in response to public intoxication, gambling and population growth.[11] Both slave patrols and municipal policing were known for their brutality and ruthlessness.[12]

Moreover, with the end of slavery, the legacy of slave patrols to intimidate and terrorize African Americans continued. Post-Reconstruction racism in law enforcement persisted via the creation of Jim Crow laws that criminalized inconsequential charges such as vagrancy to maintain slavery by another name through convict leasing and chain gangs.[13] Despite advances in law enforcement to promote constitutional policing and community trust, racial inequities in policing persist with harsher treatment of Black, Indigenous and other People of Color (BIPOC) in the criminal justice system, mass incarceration, and the collateral punishment of incarceration on BIPOC families and communities.[14]

Survey data demonstrates the legacy of racial inequity in policing: in 2014, 76 percent of African Americans believed there was a problem with the justice system when it comes to law enforcement and race compared to 33 percent of their White counterparts.[15] Both state and local data also demonstrate the over-representation of African Americans at every point in the criminal justice system and higher incidents of traffic stops among Latino and Other race men. More specifically, while Black people represented 29-30 percent of Maryland's population, they accounted for:

- 54 percent of arrests for marijuana use;[16]
- 71 percent of the state's correctional population;[17]
- 77 percent of the maximum-security correctional population and prisoners serving life sentences;[18] and
- 100 percent of exonerated individuals across the state.[19]

And in Montgomery County, where Black people accounted for 18 percent of the population, they accounted for:[20]

- 55 percent of MCPD uses of force;
- 44 percent of MCPD arrests; and
- 32 percent of MCPD traffic stops.

Among those with traffic stops initiated by MCPD:[21]

- Black men were three times as likely as White men to receive any traffic violation (46% v. 17%);
- Latino men were twice as likely as White men to receive any traffic violation (32% v. 17%); and
- Other race men were more than twice as likely as White men to receive any traffic violation (42% v. 17%).

Civilian Oversight Boards. As issues of trust and accountability have characterized community-police relations, particularly in communities of color, civilian oversight of law enforcement has emerged as a best practice to enhance police accountability and performance.[22] Civilian oversight agencies are often established after an incident of police misconduct when a community identifies a need for such an agency. The first modern forms of civilian oversight in the U.S. began in several large cities during the Civil Rights era out of conflicts between police and local communities of color.[23] Today, there are more than 150 civilian oversight agencies in the U.S. that generally fall into three types:[24]

- **Investigation-focused civilian oversight agencies** that conduct independent investigations of complaints against police officers separate from internal affairs investigations conducted by law enforcement. Non-police, "civilian" investigators, usually staff investigation-focused agencies. Strengths of this model include the potential to reduce bias in investigations into citizen complaints and civilian-led investigations may increase community trust in the investigations. Conversely, the public may get disillusioned if the community expectations for change are not met.
- **Auditor- or monitor-focused civilian oversight agencies** that usually emerge from federal consent decrees and focus on large-scale and system reforms. An inspector general with significant law enforcement expertise often staffs these agencies. Auditor-focused agencies promote broad organizational change by conducting systematic reviews of police policies, practices or training and make recommendations for improvement. Promoting long-term systemic change is a potential strength of this model while the inability to compel law enforcement to make recommended changes is a potential drawback.
- **Review-focused civilian oversight agencies** that consider the quality of completed police internal affairs investigations and make recommendations regarding findings. Review-focused civilian oversight agencies are commonly composed of citizen volunteers. Strengths of this approach include the potential for civilian reviews of complaint investigations to increase public trust in the process. Potential drawbacks to this approach include the review-focused board having too limited authority and/or organizational resources to provide effective oversight and being less independent than investigation-focused and auditor-focused forms of civilian oversight.

Experts generally find that investigation-focused agencies are the most successful civilian oversight approach for holding police officers accountable for misconduct because they focus on individual complaints.[25] Yet, the Police Accountability Board model advanced by Bill 49-21 generally aligns with the review-focused civilian oversight model. Conversely, the County's Policing Advisory Commission functions as a hybrid between the auditor- and review-focused approaches as it relies on citizen volunteers rather than an auditor's office proposes systemic changes in policing policies and practices.[26]

For any civilian oversight agency to succeed, experts also advise that three conditions are essential:[27]

- **Independence** from the police department so the civilian agency's recommendations can be trusted
- **Power** so law enforcement cannot ignore the civilian oversight agency's recommendations
- **Resources** to meet civilian oversight agency goals in a timely-fashion (e.g. investigate cases, issue reports)

These three essential conditions of successful civilian oversight overlap with the following twelve core elements of successful oversight identified by the National Association of Civilian Oversight of Law Enforcement: independence, adequate jurisdictional authority, adequate resources, unfettered access to records, access to law enforcement executives and internal affairs staff, full cooperation, support of process stakeholders, public reporting or transparency, pattern analysis, community outreach, community involvement, and respect for confidentiality requirements.[28]

A comparison of the three oversight approaches (investigative-, audit- and review-focused models) to the three lead conditions of effective civilian oversight (independence, power, and resources) further demonstrate the limits of the review-focused model to enhance police accountability. As previously noted, experts find the review-focused model demonstrates less independence than other civilian oversight models, their authority is limited and they can lack the organizational resources they need to make improvements to systems that make police accountable for misconduct.

The Police Accountability Board proposed with Expedited Bill 49-21 reflect the risks associated with the review-focused agency model that may undermine its oversight. Moreover, the civilians included in the PAB and ACC often represent retired law enforcement rather than the community at large. As such, OLO finds that Bill 49-21 does not align with best practices for civilian oversight of police accountability systems, as the PAB proposed is unlikely to:

- Be independent of MCPD because it requires its members to have significant law enforcement experience.
- Have the power to recommend changes to policy that would improve police accountability because its scope by default is limited to the minority of misconduct cases resulting from complaints from the public that are investigated by IAD rather than the totality of police misconduct complaints made from the public.
- Have sufficient resources to carry out its mission since its budget and staffing are not specified in the legislation.

ANTICIPATED RESJ IMPACTS

Understanding the anticipated impact of Expedited Bill 49-21 on RESJ requires understanding how the bill aligns with best practices for improving accountability for police misconduct and the anticipated impact of this alignment on the community at large and BIPOC residents in particular. As residents of color and Black residents in particular are over-represented in their interactions with law enforcement relative to their share of the County's population, they are the most likely to benefit from any improvements in police accountability for misconduct that derive from this bill.

Yet, as currently structured, Bill 49-21 offers few changes to the County's existing police accountability process that would meaningfully change the current disciplinary process of police or improve accountability for misconduct. In adherence to HB 670, Bill 49-21 structures the County's new civilian oversight for the police accountability with the weakest oversight model available. It also limits the PAB's review to investigate complaints from the public without also considering investigations that emerge from internal complaints of police misconduct.

Less independence, authority and resources necessary to challenge and improve current models of police accountability characterize the review-focused civilian oversight model that forms the basis of the proposed PAB's scope compared to other civilian oversight approaches. Limiting the role of the PAB to formally review MCPD's internal investigations of complaints generated from the public is unlikely to change current police accountability policies or practices. Formal IAD investigations from external and internal complaints that could lead to administrative charges comprised only 15 percent of all MCPD investigations (34 of 220) of police misconduct in 2020.[29]

Expedited Bill 49-21's exclusion of civilians without law enforcement or dispute resolution experience also skews the membership of the PAB to civilians representing law enforcement rather than the public at large. Given the demographics of active law enforcement personnel and retirees in the County, the PAB and ACC member eligibility requirements under the Bill also exclude women and BIPOC residents who more than likely account for a majority of police misconduct complainants. The exclusion of BIPOC residents without law enforcement backgrounds from the PAB and ACC could undermine efforts to improve community trust in the County's police accountability systems especially among BIPOC residents.

Overall, OLO anticipates that Expedited Bill 49-21 is unlikely to advance racial equity and social justice in policing because the PAB it proposes is analogous to the current police accountability system. The addition of civilians to existing systems of police oversight is a marginal improvement in civilian oversight at best. Further, OLO anticipates Bill 49-21 could increase the demand for police accountability by increasing the reporting of allegations. An increase in reporting is unlikely to increase the number of police officers held accountable for misconduct because the core functions of the current police accountability system remain and continue without civilian oversight. In particular, IAD continues to decide which complaints are dismissed and which merit investigation as intakes to an officer's chain of command or as formal investigations that are conducted by IAD.

In short, civilian oversight does not apply to majority of the misconduct allegations that IAD receives and considers under Bill 49-21. While the public may feel an increased sense of accountability for police misconduct with this bill because they will be able to submit complaints directly to the PAB, IAD investigation processes will likely remain the same without increased civilian oversight or understanding or their operations. If BIPOC residents in particular have increased expectations for police accountability that are not reflected to actual changes for allegations of police misconduct, OLO anticipates this bill could widen racial inequities in perceptions of policing fairness and could erode police-community relations.

RECOMMENDED AMENDMENTS

The County's Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.[30] OLO finds that Expedited Bill 49-21 sustains racial and social inequities as the police accountability system it proposes neither aligns with best practices nor meaningfully provides civilian oversight for the County's system of police discipline. Available data suggests Black and Latinx residents are most harmed by the County's current accountability system for police misconduct because they are the most likely to involuntarily interact with law enforcement in the County.

Should the Council seek to improve the RESJ impact of Bill 49-21. The following best practices aimed at increasing the independence, authority and resources allocated to the Police Accountability Board (PAB) could be considered as potential recommended amendments to the bill.

- To increase the **independence** of the PAB, consider amending the bill to increase the size of its membership and change its eligibility requirements to ensure BIPOC residents disproportionately impacted by policing and misconduct are represented. For example, the Policing Advisory Commission has 13 members and requires each to have an interest or expertise in policing matters rather than law enforcement or dispute resolution experience.

- To increase the **authority** of the PAB, consider amending the bill to expand the PAB's scope to review all allegations of police misconduct made by the public, not just cases where administrative charges are being considered. To support this expanded scope, the bill could be amended to require MCPD provide the PAB access to relevant data and assign a designating point person to address all PAB data requests. The bill could also be amended to ensure PAB members follow the same confidentiality requirements for ACC members.
- To enhance the **resources** available to the PAB to fulfill its mission, consider amending the bill to specify the staffing and budget expected annually to support the work of the PAB and ACC. Some jurisdictions, for example, have specified a certain percentage of the police department's annual budget fund the work of its civilian oversight function.

To further align Expedited Bill 49-21 with other best practices for civilian oversight recommended by National Association for Civilian Oversight of Law Enforcement (NACOLE), the Council may also want to consider additional amendments that mandate the County's Police Accountability Board has unfettered access to records, access to law enforcement executives and internal affairs staff, full cooperation from MCPD, and the support of process stakeholders.[31]

Additionally, NACOLE finds civilian oversight agencies that operationalize public reporting and transparency, pattern analysis, community outreach, community involvement, and respect for confidentiality requirements are most successful.[32] While Bill 49-21 mandates that members of ACC maintain confidentiality on matters being considered by the Committee until final disposition, it does not specifically include these other best practices. As such, the Council may want to consider amendments reflecting these best practices for consideration as well.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO Senior Legislative Analyst Elaine Bonner-Tompkins drafted this RESJ impact statement.

[1] Definition of racial equity and social justice adopted from "Applying a Racial Equity Lends into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools https://www.racialequitytools.org/glossary
[2] Ibid
[3] Memorandum of Agreement Between the United States Department of Justice, Montgomery County, Maryland, the Montgomery County Department of Police and the Fraternal Order of Police, Montgomery County Lodge 35, Inc. January 14, 2000 https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/MontgomeryCounty.pdf
[4] Maryland Coalition for Justice and Police Accountability, Testimony on HB 670 – Police Reform and Accountability Act of 2021, February 9, 2021
[5] Maryland Police Accountability Act of 2021, Police Discipline and Law Enforcement Programs and Procedures, House Bill 670
[6] Ibid
[7] Ibid
[8] Montgomery County Department of Police, Internal Affairs Division Annual Report, 2020

[9] Montgomery County Council, Bill 49-21
[10] Danyelle Solomon, The Intersection of Policing and Race, Center for American Progress, September 1, 2016
[11] Ibid
[12] Ibid
[13] Andrea Flynn, Susan Holmberg, Dorian Warren and Felicia Wong, The Hidden Rules of Race: Barriers to An Inclusive Economy, 2017
[14] Ibid
[15] Data from 2014 McClatchy-Marist Poll cited by Danyelle Solomon
[16] Jasmon Bailey, Racial Equity Note for House Bill 32, Department of Legislative Services, Maryland General Assembly
[17] Jasmon Bailey, Racial Equity Note for House Bill 3, Department of Legislative Services, Maryland General Assembly
[18] Ibid
[19] Jasmon Bailey, Racial Equity Note for House Bill 740, Department of Legislative Services, Maryland General Assembly
[20] Elaine Bonner-Tompkins and Nataliza Carrizosa, Local Policing Data and Best Practices, OLO Report 2020-9, Office of Legislative Oversight, July 12, 2020
[21] Ibid
[22] Also referred to as citizen oversight, external review, and citizen review boards.
[23] Joseph De Angelis, Richard Rosenthal, and Brian Butcher, Civilian Oversight of Law Enforcement: Assessing the Evidence, OJP Diagnostic Center and National Association for Civilian Oversight of Law Enforcement, 2016
[24] Ibid and Michael Vitoroulis, Cameron McEllhiney and Liana Perez, Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices, Washington, DC: Office of Community Oriented Policing Services, 2021
[25] Joseph De Angelis, Richard Rosenthal, and Brian Butcher
[26] Montgomery County Code, Section 35-6. Policing Advisory Commission
https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-19952#JD_35-6
[27] Olugbenga Ajilore, Are civilian oversight agencies actually holding police accountable? Urban Wire: Crime, Justice, and Safety, Urban Institute, July 19, 2018
[28] Joseph De Angelis, Richard Rosenthal, and Brian Butcher
[29] Montgomery County Department of Police
[30] Montgomery County Council, Bill 27-19, Administration – Human Rights - Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee - Established
[31] Joseph De Angelis, Richard Rosenthal, and Brian Butcher
[32] Ibid

The inconsiderate 49-21 was expedited with further inconsideration of community input. Excluding community members (with the required experience that the board members must have, according to the bill) from the PAB will continue the monopoly that members of law enforcement have on the PAB, which stalls or completely prevents accountability for the Montgomery County law enforcement system. The bill even discourages community members from participating because it does not require compensation for them, which is especially important for the minorities and poor people who bear the brunt of bad policing, so their participation is crucial. Thus, expediting the bill, let alone having it in the first place, is very dangerous and harmful.

Dana Ayebare

Silver Spring, MD
20902 January 7, 2022

Montgomery County Council
Rockville, MD
(submitted online)

Dear County Council Members:

I appreciate this opportunity to provide testimony on MC Bill 49-21 (Enabling Legislation for Police Accountability Board and Administrative Charging Committee. I was surprised to see that our county executive created this bill with little input from community members and trust that you will involve more diverse voices going forward. In particular, I recommend that you listen to the voices speaking through Action in Montgomery, The People's Community Baptist Church, and the Silver Spring Justice Coalition.

In concert with the global outcry over the vicious murder of George Floyd and the forward-thinking provisions of the Maryland Police Accountability Act (HB 670, MPAA), which was enacted in the 2021 Legislative Session, I am pleased to see that you are considering local legislation to create meaningful citizen oversight of the Montgomery County police department. Civilian oversight is just part of the broader set of structural changes needed to better align our law enforcement resources to make our County a more perfect union.

I am a lay person with no special knowledge about how to mend the broken parts of our policing system but have found some hopeful information via the internet that can inform your urgent legislative work. While not a panacea for the horrors of racism, building transparent accountability systems should become a standard practice at every level of government, as we seek to reframe the relationship between Black Americans and predominately white power structures.

The National Association for Civilian Oversight of Law Enforcement (NACOLE) has a wealth of information on their website: https://www.nacole.org/. In addition to a sobering letter about the killing of George Floyd, they describe the benefits of civilian oversight and thoroughly address a list of frequently asked questions that can provide talking points for your members and constituents. Furthermore, NACOLE released a succinct list of recommendations on June 2nd for local, state, and federal policymakers in their press release titled, "Civilian Oversight of Law Enforcement Necessary for Meaningful Reform" as listed below and available at the following weblink: https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/1/attachments/original/1591134883/NACOLE_Floyd_Press_Release_FINAL_20200602.pdf?1591134883:

1. *To start, NACOLE strongly recommends that the U.S. Department of Justice once again conduct systematic and thorough pattern-or-practice investigations.*
2. *We strongly recommend that legislatures repeal laws that conceal police disciplinary records from public view.*
3. *We strongly recommend changes to state licensing laws and the mandatory use of a national de-certification index to prevent bad officers, terminated from one police force, from getting a job at another.*

4. *We strongly recommend that state and local laws and law enforcement policies and procedures require the greatest possible transparency of internal processes, community inclusion, and strong accountability mechanisms.*
5. *We strongly recommend that oversight entities have unfettered access to department data and records, personnel files, and police, jail, and prison facilities, so that they can carry out their existing mandates.*
6. *We strongly recommend that oversight agencies have the authority to investigate, take testimony, audit or review internal investigations or processes, and make policy recommendations that will allow law enforcement departments to begin to serve communities in a truly just and unbiased way*

Montgomery County's civilian oversight authority should be a practical mechanism to help 1) protect civil rights by revising individual cases or patterns of potential civil rights cases, such as the use of excessive force and racial profiling; 2) ensure greater accountability and compliance with existing laws; 3) build bridges between police forces and communities; 4) increase public trust and confidence in the police; 5) support effective policing by fostering public cooperation with law enforcement; and 6) help municipalities and agencies manage risk from lawsuits claiming unlawful actions by individual officers or departmental failures. In your legislation, please state the congress' intent to evaluate the effectiveness of these new civilian oversight boards so we can learn what is working and what needs to change over time.

NACOLE's FAQs address critical issues that must be discussed locally here in Montgomery County if we are to generate the widespread political and public support needed to establish and sustain an effective oversight boards. Please address these topics in your anticipated hearings and rule-making processes.

- What are the benefits of police oversight?
- Oversight Models: Is one model better than another?
- What are the features of an effective police oversight body?
- What are the steps a community should take in establishing effective police oversight?
- How can NACOLE help community members/city officials implement or improve oversight?
- What should the qualifications and training be for oversight practitioners?
- What types of complaints should be accepted?
- Is it necessary for an oversight authority to conduct investigations?
- Who should make the final determination as to whether the allegations in a complaint should be sustained and what corrective actions, or disciplinary measures should be imposed?
- Should the oversight entity have subpoena power?

Another credible third-party information source is The Urban Institute, which published a short article titled, "Are civilian oversight agencies actually holding police accountable?" at the following web address:

https://www.urban.org/urban-wire/are-civilian-oversight-agencies-actually-holding-police-accountable#:~:text=Although%20there%20is%20no%20strict,of%20complaints%20against%20police%20officers. Organizations like this will be needed to assess the effectiveness of oversight bodies at every level of government.

Two examples illustrate the variation regarding civilian oversight at the local level:

- Next door in the District of Columbia, the Office of Police Complaints appears to be a functional oversight entity, as described on its website at https://policecomplaints.dc.gov/page/opc-police-complaints-board. The Office consists of a five-member board that must include four individuals who live in DC, but do not work for the Metropolitan Police Department. The website provides meeting minutes since 2008, but no stand-alone audit reports or assessments.
- Spokane, Washington, also established an Office of the Police Ombudsman in 2008, as described on their website at https://my.spokanecity.org/opo/. One of their major accomplishments has been publishing an independent analysis of data on the use of force by Spokane police from 2013 – 2018, which available online at https://static.spokanecity.org/documents/opo/analysis/spd-use-of-force-summary-report-from-2013-to-2018.pdf.

For an international perspective, check out the United Kingdom's civilian oversight commissions.

- The Independent Office for Police Conduct (IOPC) oversees the police complaints system in England and Wales. According to their website, https://policeconduct.gov.uk/, "We investigate the most serious matters, including deaths following police contact, and set the standards by which the police should handle complaints. We use learning from our work to influence changes in policing. We are independent, and make our decisions entirely independently of the police and government."
- In Northern Ireland, Mrs. Marie Anderson serves as the Police Ombudsman. Her office "….provides an independent, impartial system for the handling of complaints about the conduct of police officers. We will deal with those complaints in a manner which is free from any police, governmental or sectional community interest and which is of the highest standard." See more at https://www.policeombudsman.org/Home.

We desperately need to engage more civilians in our democratic institutions and use them to assure police accountability regardless of one's race or ethnicity.

Please let me know if you have any questions. I appreciate your courage and leadership on this and so many other issues.

Sincerely,

Daniel Campion

Silver Spring, MD
20902

Jews United for Justice
Heidi Rhodes
Colesville, Maryland
www.jufj.org

JEWS UNITED FOR JUSTICE
THINK JEWISHLY. ACT LOCALLY.

JUFJ Official Testimony - Opposed Unless Amended
Bill 49-21: Enabling Legislation for Police Accountability Board and Administrative Charging Committee

My name is Heidi Rhodes. I live in Colesville and I am a resident of District 5. I am submitting this testimony on behalf of Jews United for Justice on Bill 49-21, with the position of opposed unless amended. JUFJ represents over 2,000 Jews and allies from across Montgomery County, who act on our shared Jewish values by pursuing social and economic justice and racial equity in our local community.

I have learned through my over 35 years working in the intelligence community that those with the extraordinary power to prevent or cause damage to our community require civilian oversight, primarily by those most affected by that potential harm. In the intelligence community, we trained **every year** on the limits of our authorities, the past abuses of those authorities, and the rules, procedures and oversight put in place to ensure we stayed within the limits of those authorities. In fact, after the Snowden revelations, a new civilian oversight and privacy organization was established, run by those *outside* the intelligence community. It had the authority to delve into every aspect of our work to ensure we were adhering to our own standards and to institute new control procedures as part of its oversight duties.

Without this oversight, abuse can occur from both ignorance and malice. Rabbi Yitzhak taught that "a ruler is not to be appointed unless the community is first consulted" (Babylonian Talmud Berachot 55a) – his teaching reminds us that this vital oversight needs to be by and for the community that is being policed.

We remind the Council that law enforcement officers in Montgomery County killed six residents in 2021. Each was an unacceptable loss of life that must not only be mourned, but whose communities must also have a say in the disciplinary process if the Police Accountability Board (PAB) is to follow the teachings of our Jewish tradition. **The PAB as structured under Bill 49-21 fails to enable real community participation in the disciplinary process.** Here are our concerns with the legislation:

<u>Lack of Community Input</u>

This bill was drafted without any community input, and thus does not reflect the needs of the

general public – especially those communities most impacted by police abuses. Real police accountability depends on civilian oversight. Advocates fought for a law that would allow for enforceable civilian oversight of policing, but we did not achieve that goal. The PAB, a board with oversight but not enforcement powers, **populated by members of the community,** was the compromise. This PAB was intended to ensure meaningful community involvement in the disciplinary process. The Council must gather additional community input on the structure and needs of both the PAB and the Administrative Charging Committee (ACC) for a bill that is more in-line with the intent of the new state law.

Exclusion of Community Members from the PAB

Proper civilian oversight requires that the PAB – and its staff – be broadly representative of our County. We know that our County leaders can shape a board composed of impacted people, as our Police Advisory Commission shows.

Though the PAC and the PAB have two distinct and important purposes, both must be representative of our community's most impacted members. Bill 49-21's criteria for board members, which limits membership only to those with significant law enforcement experience, excludes those communities which have suffered the brunt of bad policing, negating important lived and professional expertise. These criteria perpetuate the status quo for police discipline in Montgomery County and will lead to a PAB that looks exactly like our current MCPD hearing board. Any revision of this bill must include a Racial Equity and Social Justice Impact Statement that reviews how its structures will affect impacted community members.

Substantial Conflicts of Interest

The bill creates unacceptable conflicts of interest by requiring the County Attorney to serve as PAB counsel, when the County Attorney also represents the Montgomery County Police Department and the County itself. The PAB must have its own, independent counsel and staff in order to engage in the responsibilities delegated to it by the Maryland Police Accountability Act (MPAA), which include: reviewing the results of investigations of civilian complaints; reviewing disciplinary procedures of all law enforcement agencies in the County; and advising the head of each of those agencies and elected officials about improvements in policing.

Lack of Adequate Staffing and Funding

Any final PAB bill must provide adequate funding to compensate members of both the PAB and the ACC. The current bill only provides compensation for the ACC. The lack of compensation for PAB members not only diminishes the importance of the PAB's work, but also creates

additional barriers to meaningful community participation – even if the current membership requirements were eliminated.

The PAB must also have an adequate budget for an independent staff to support the investigation and research of citizen complaints; communications needs; and public education and outreach. Without funding for compensation and independent counsel and staff, the PAB and ACC will not be effective or credible.

As drafted, this bill will not create an independent civilian police review process that reflects the diversity of the community most impacted by policing. Bill 49-21 is contrary to the spirit of the MPAA and will only maintain the status quo. **JUFJ respectfully urges the Council to oppose Bill 49-12 in its current form, and to substantially revise the legislation based on community input and guidance in the forthcoming Racial Equity and Social Justice Impact Statement from the Office of Legislative Oversight.**

Thank you, and we look forward to continuing to work with the Council and other community advocates to ensure real safety for everyone in our County.

Testimony on Expedited Bill 49-21, Police Accountability Board - Administrative Charging Committee – Established

My name is Ilhan Cagri and I am testifying on behalf of the Muslim Voices Coalition, a coalition of individuals and organizations belonging to the Muslim faith who envision a county where every individual can thrive and develop to his fullest potential. We oppose this bill, unless it is significantly amended to reflect the full range of affected communities and fully empowers the Police Accountability Board. The American Muslim community represents an intersectionality of backgrounds and races. Specifically, members often suffer discrimination because of their color, ethnicity, religious affiliation, and the perception that they are "foreign", suspect, and/or have illegal immigrant status. This otherizing view of the Muslims in our county (as well as South Asians and anyone who presents as Muslim) permeates interactions between law enforcement and community members. It is thus important to our community that Bill 49-21 fulfill its goals of enlisting a broad range of impacted communities to oversee that justice is done when civilians are harmed by police and helping to improve policing across the County by serving on the Police Accountability Board.

Because this Bill was drafted without any community input, without hearing the voices and experiences of those communities most impacted by police and police abuses, we urge you to re-design this flawed Bill from the ground up.

For example, the requirements stipulated for board membership makes it police-centric. Not only does this criteria perpetuate the status quo for police discipline in Montgomery County, it also conflicts with the intent of the HB 670. Although the MPAA does not go so far as to provide enforceable civilian oversight of policing, it did establish the PAB, an oversight board populated by members of the community. The intent was to ensure true community involvement in the disciplinary process. The criteria for board membership must be such that it ensures diversity in background and experience. The PAB must be structured so that the rights and voices of the most vulnerable are heard and protected.

Also, the County Attorney cannot serve as PAB counsel while at the same time representing the MCPD and the County. The PAB must have its own, independent counsel and staff in order to conduct the responsibilities delegated to it by the MPAA, free of conflict of interest.

At a time when police interactions with minorities and people suffering from mental illness have been shown to be deeply flawed and have even resulted in killings by police, we look to the County Council to pass a bill that will create strong community participation in and oversight of policing.
Thank you.

Ilhan Cagri, Ph.D.
9318 Walden Road, Silver Spring, MD 20901
Email: ilhancagri@gmail.com Tel: 301-404-2247

Jesse Glickstein
Takoma Park, MD

Testimony Against Unless Amended MC Bill 49-21 (Enabling Legislation for Police Accountability Board and Administrative Charging Committee)

January 11, 2021

To: Montgomery County Council
From: Jesse Glickstein

My name is Jesse Glickstein. I live in Takoma Park, Maryland in District 5 with my wife and two children. This testimony is to oppose MC Bill 49-21 (Enabling Legislation for Police Accountability Board ("PAB") and Administrative Charging Committee ("ACC")) unless amended in order to strengthen the bill, something that I understand is supported by several Councilmembers and the majority of organizations engaged on this issue in our community. I am testifying on behalf of myself and am a member of Jews United for Justice.

A great Jewish leader who recently passed away, Rabbi Jonathan Sacks, published Seven Principles of Jewish Leadership. I urge this Council to read all seven of these principles, but the following principle struck me as particularly relevant here:

> "**Leadership means believing in the people you lead**: Judaism prefers the leadership of influence to the leadership of power. Kings had power. Prophets had influence but no power at all. Power lifts the leader above the people. Influence lifts the people above their former selves. Influence respects people; power controls people"

As most on the County Council are aware, in 2021 alone, there have been six unjustified killings by police in Montgomery County. To date, no police responsible for these deaths have been convicted, and most have been exonerated of any crime. Since 2004 there have been at least ten unnecessary killings by police. This does not take into account the many instances of police abuse that did not end up in killings – the officers who abused the five-year old child at East Silver Spring Elementary School and the officer convicted of assaulting a young man by slamming his face into the ground are still on active duty. Montgomery County has not been immune to the problems of police abuse that have been highlighted long before, and since, George Floyd's murder.

I have several concerns I would like to express with MC Bill 49-21 in its current form, which are also against the Jewish principles of leadership I outlined above. First, the bill was drafted without any community input, and so does not reflect the needs of the community (especially those communities most impacted by police and police abuses). The bill also requires members of the boards to have experience in one of three areas, which will perpetuate the status quo for police discipline in Montgomery County. The bill's membership requirements will lead to a PAB that looks exactly like our current law enforcement agencies, and makes it almost impossible for people outside of law enforcement to serve on the PAB, therefore excluding those communities who have suffered from bad

policing. This does not reflect the Jewish values of respecting and listening to those you lead. The exclusion of community members, particularly from the PAB, conflicts with the intent of the new state law. The PAB is intended to ensure true community involvement in the disciplinary process. Further, the bill fails to ensure regional representation and diverse lived and professional experience, and only provides compensation for the ACC. Not requiring compensation for members of the PAB diminishes the importance of the work of that board and creates additional barriers to meaningful community participation. The Bill also creates unacceptable conflicts of interest by requiring the County Attorney to serve as PAB counsel, when the County Attorney also represents the MCPD and the County.

As stated above, leadership is about listening to and respecting those you have been elected to lead. Therefore, I respectfully urge the Montgomery County Council to amend MC Bill 49-21 in order to address the above concerns. I urge the Council to follow the Jewish principle of believing in the people you lead when the community is speaking to you and advising its leaders on their needs.

Regards,

Jesse Glickstein

Testimony for Strengthening Bill 49-21

I am Jim Henkelman-Bahn from Christ Congregational Church, United Church of Christ, and a member of its Racial Justice Circle. Our Racial Justice Circle wants Bill 49-21 to establish a Police Accountability Board (PAB) strengthened by amendments.

Our church became interested in police accountability and transparency in 2019 when Robert White was senselessly killed in the neighborhood of our church, which is also the place where he and his parent owned a home and lived peacefully. Robert White was walking, unarmed, through his own neighborhood where he was profiled, confronted, followed, and finally shot and killed by a Montgomery County police officer. Essentially he was shot for walking while Black. Unjustified killing of Black men by police in Montgomery County has continued with no convictions. More accountability is needed.

In the 2021 Maryland Legislative Session, The Maryland Police Accountability Act was passed to provide for more accountability. We do not think that Bill 49-21, which is intended to implement the state law, reflects the needs of the community. We were disappointed that Bill 49-21 was drafted without community input.

The bill requires members of the board to have experience in one or more of the following areas:
1) Managing or evaluating the management of law enforcement agency;
2) Evaluating citizen complaints against police officers; and
3) Personnel disciplinary proceedings as a manager, employee representative, mediator or arbitrator.

These criteria perpetuate the status quo for police discipline in Montgomery County. The bill's membership requirements will lead to a Police Accountability Board that looks exactly like our current MCPD Hearing Board and makes it almost impossible for people outside of law enforcement to serve on the PAB, excluding those very communities who have suffered the brunt of bad policing.
The exclusion of community members, particularly from the PAB, conflicts with the intent of the new state law.

Bill 49-21 needs to be amended to include a broader representation of Montgomery County on the PAB.

Submitted by

Jim Henkelman-Bahn
Racial Justice Circle
Christ Congregational Church, United Church of Christ
9525 Colesville Road
Silver Spring, MD 20901

5 January 2022

Testimony for the Montgomery County Council

January 11, 2022 public hearing on
Bill 49-21 - Police – Police Accountability Board – Administrative Charging Committee - Established

OPPOSE UNLESS AMENDED

To: Council President Gabe Albornoz and Councilmembers:

My name is Paul Holmes and I am a twenty-nine-year resident of Silver Spring, Maryland. I am testifying in opposition to Bill 49-21 because I firmly believe that justice, an end to racial violence, and reconciliation are all impossible absent meaningful law enforcement accountability.

Here in Montgomery County, we've wasted opportunities for improving trust between police and the communities they serve because law enforcement has refused to provide information about police abuse, including several police-killings in recent years.

I work with the Montgomery County Lynching Memorial Project. As the County Executive and Councilmembers know, the County Office Building sits on the site of the old county jail. In 1880 and again in 1896, men were dragged from that jail and lynched on the edges of Rockville.

Despite the very public and repulsive nature of those lynchings, the juries of inquest determined that those men had "died at the hands of persons unknown." Sherylyn Iffyl's "On the Courthouse Lawn" notes that "In the fourteen cases of reported lynchings in Maryland beginning in 1885 and ending in 1933, no suspected lynchers were ever indicted." Whites "closed ranks" to protect … their neighbors and acquaintances from prosecution…" Besides the certainty of White silence, the bold brutality of the lynch mobs was buoyed by confidence that "the system" would let them go unpunished.

Nationally, state-wide and right here in Montgomery County, vivid threads connect those barbaric acts of the past to common practices today. Police boards have disciplined officers only in a very low percentage of cases, even then, rarely resulting in punishment commensurate with the gravity of the misconduct. That history sends the dangerous message that the police can act with impunity and it erodes any community trust in the concept of police accountability.

Given that history and because the state of Maryland had ranked among the least transparent states in regards to police misconduct complaints, I was encouraged that the 2021 Legislative Session repealed the Law Enforcement Officers Bill of Rights (LEOBR) and replaced it with the Maryland Police Accountability Act (HB 670, MPAA). Though MPAA should have been stronger, I still was optimistic that it would help the community gain greater control and oversight over police misconduct. Because MPAA mandates that each county creates a police accountability board and an administrative charging committee, I was confident that we would do it right, at least here in Montgomery County. I imagined that here, in what is usually

considered a “progressive” county, we might even establish what could be a model for the state and the nation.

I was dismayed, however, when I learned that County Executive Elrich had introduced expedited Bill 49-21 on December 14 with no community input, set a public hearing date of January 11, and did not require a Racial Equity and Social Justice Impact Statement. As currently drafted, Bill 49-21 makes a mockery of true public accountability. By fraudulently coopting the word “accountability,” it asks the public to swallow the rebranding, essentially perpetuating the status quo while denying the public meaningful citizen participation.

Besides the lack of community input, the bill itself has numerous additional flaws, including:

- The specific experience it requires of PAB members;
- Perpetuation of the status quo, virtually excluding people outside of law enforcement, particularly those most impacted by bad policing;
- The fact that exclusion of community members from the PAB not only conflicts with the intent of the new state law, but substantially eviscerates it, essentially denying meaningful community involvement in the police disciplinary process;
- Diluting the value and standing of the PAB by not providing compensation to the members. That also throws up additional barriers to serious community participation; and
- Setting up an improper conflict of interest by requiring the County Attorney to serve as PAB counsel, when the County Attorney also represents the MCPD and the County.

Numerous community partners have demonstrated their commitment to work with the county on rebuilding trust and on establishing real, effective and transparent police oversight which can benefit all county stakeholders. That process must begin with public input and be sustained by maintaining public confidence and communications. I ask that the Council defeat Bill 49-21 and restart the legislative process with substantial public input.

Lynchings were racially violent extralegal practices that denied citizens due process and their “day in court.” By again allowing law enforcement to “close ranks” and by failing to hold law enforcement meaningfully accountable for misconduct, Bill 49-21 would preserve their role as agents of extrajudicial justice. It must be defeated.

Sincerely,
Paul Holmes

Council President Albornoz

Honorable County Council

Greetings to this August Body

My name is Robert Stubblefield and I am an activist and organizer here in Montgomery County. More important than that, I am an African-American and I am disgusted, I am outraged and I am against Bill 49-21 as it is currently designed. My reasons are discussed in details below.

Let me be clear. I am in favor of a Police Accountability Board because of the history of MCPD. Why this is necessary requires a timeline. In 1998, MCPD was put under a consent decree by the Department of Justice because it led the nation in racial profiling. Fast forward to 2004, Peter N'jang was shot and killed by MCPD while trying to get into his apartment. In 2011, Emmanuel Okutuga was shot and killed by Officer Christopher Jordan as he was coming home from work. In 2015, MCPD was once again placed under a consent decree despite the uprisings in Ferguson, in Baltimore and elsewhere in this country, MCPD was found to leading in racial profiling and targeting of its black citizens. In 2018 Robert White was killed by MCPD officer Bhadjugar while he was out walking around in his neighborhood. In 2019, four black teenagers were accosted and called the N-Word and later on that summer, undercover officer Morris repeatedly slammed his knee into the back of the neck of Arnaldo Pesoa. In 2020, Finan Berhe was killed by Officer Cohen while in the midst of a mental health crisis. And in 2021, Ryan Leroux was shot and killed by MCPD while also in a mental health crisis. In addition to these deaths and beatings, MCPD has a nasty history racially profiling during traffic enforcement and within our schools disproportionately arresting black and Hispanic students despite them being 18% and 20% of school population. Another disturbing trend is that 13 people have died while in the custody of MCPD. I write all of these things to establish a pattern of why a Police Accountability Board is necessary as well as for those who feel that MCPD is the best police department in the country that all they have done is hide their mess better than others. This among other jurisdictions throughout Maryland is why the House of Delegates passed HB670 which called for local jurisdictions to create a Police Accountability Board along with an Administrative Charging Committee and a Trial Board and its purpose that communities have greater input and oversight of police misconduct or as I call it police terrorism.

With that being said, I cannot in good conscience support Bill 49-21 as it is now. I cannot support this bill because this bill did not have any community input at all. Instead, this bill was

pushed forward by a County Executive who claims to champion racial justice, who claims to put the community yet pushed this bill. This right here is a problem because it means that the voices that are much needed to be heard in the development of this bill are once again marginalized. The bill also creates criteria that it is nigh impossible for anybody in the community to be on the Board. For instance the criteria on this requires members to have experience either in managing or evaluating of law enforcement, evaluating of civilian complaints, and personnel disciplinary proceedings as a manager, mediator or arbitrator. Which brings up the question of how many citizens satisfy these criteria? The third reason for not supporting this bill is that it goes against the state law as mentioned previously to include our voices and to reflect the diverse experience and regional representation. The fourth issue with this bill is that as it currently is structured is that it only provides compensation for the ACC but not the PAB, which creates the barrier of monetary compensation because you are asking people to take time away from work to handle this responsibility without money is incredulous at best considering that it is county policy to compensate anyone who serves on a board or commission so why are we not doing it here?. The fifth issue is that this bill provides conflict of interest of having the County attorney serve as the counsel for the PAB while at the same time serving as counsel for MCPD which is a disbarable event so why would seek to legalize that here? These things are why people say that Montgomery County is a place high in resources but low in competency.

Let me be blunt: Personally I feel that any Police Accountability Board should not only be a democratically elected body but also must have stronger enforceable civilian oversight of police considering that this is about community control of this peculiar institution that has roots in white supremacy and anti blackness. Because this is where we are here are some things to either create a new bill or add amendments. I would actually like to commend the council for calling out this bill as horrible. The recommendations that I feel would make this bill stronger would be the following: Provide the PAB with independent counsel and staff that will review civilian complaints, review departmental procedure and advise on improvements. The other recommendation would be to eliminate the criteria that are listed currently listed to ensure that the PAB is getting a diverse, both professionally and regionally from the county. Ensure that those from the most affected communities that deal with police terrorism are the ones who hold at least 70% of the seats on the board. Finally, get the community input that actually reflects what the community wants the PAB to look like.

Thank you for your time and always remember that not only Black Lives Matter, But also Black Voices Matter and Black Experiences Matter as well.

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DEFENDING
RIGHTS & DISSENT

Testimony Regarding
MC Bill 49-21
(Enabling Legislation for Police Accountability Board and Administrative Charging Committee)

Submitted by Susan Udry, Executive Director
Defending Rights & Dissent
January 11, 2022

Founded in 1960, Defending Rights & Dissent (DRAD) is a national civil liberties organization dedicated to seeing the promise of the Bill of Rights made real for everyone in the U.S. True community empowerment and oversight over the police, as well as strong police accountability mechanisms are a requirement to fulfill the promise of our democracy. DRAD has deep roots in Montgomery County, with hundreds of supporters in the county, and we are a member of the Silver Spring Justice Coalition, and the Montgomery County Civil Rights Coalition.

We strongly oppose MC BIll 49-21 unless it is significantly amended to reflect community input, and to meet the goals set forth in MoCo's Racial Equity Social Justice Impact Statement.

DRAD supports the call of the Silver Spring Justice Coalition and 18 other community groups (which can be viewed here) for public input to create a Police Accountability Board and an Administrative Charging Committee that is responsive to community needs and requirements.

This bill was drafted without any community input. As a result, the bill does not reflect the needs of the community, especially those communities most impacted by police and police abuses.

Substantively, this bill is lacking. The bill requires members of the boards to have experience that perpetuates the status quo for police discipline in Montgomery County. The bill's membership requirements will lead to a PAB that looks like a law enforcement agency and makes it almost impossible for people outside of law enforcement to serve on the PAB. This obviously excludes those communities who have suffered the brunt of bad policing.

MC Bill 49-21 ignores the intent of the state law. As you know, while advocates fought for a law that would allow for enforceable civilian oversight of policing, we did not achieve that goal. However, the PAB, a board with oversight but not enforcement powers, populated by members of the community, was the compromise; this board was intended to ensure true community involvement in the disciplinary process.

The bill also creates a conflict of interest by requiring the County Attorney to serve as PAB counsel, when the County Attorney also represents the MCPD and the County. The PAB must have its own, independent counsel and staff in order to engage in the responsibilities delegated to it by the MPAA which include: reviewing the results of investigations of civilian complaints; reviewing disciplinary procedures of all law enforcement agencies in the County; and advising the head of each of those agencies and elected officials about improvements in policing.

Montgomery County can, and must, do better.

Anita Lampel
Bethesda, MD

TESTIMONY AGAINST UNLESS AMENDED: BILL 49-21 (ENABLING LEGISLATION FOR POLICE ACCOUNTABILITY BOARD AND ADMINISTRATIVE CHARGING COMMITTEE)

January 18, 2022

To: Montgomery County Council
From: Anita Lampel

My name is Anita Lampel. I live in Bethesda, Maryland, in District 1 with my husband. I am submitting this testimony to oppose Bill 49-21 unless it is significantly amended.

I am a retired child psychologist, a parent of two, and grandparent of four. My heart broke when I saw the body cam footage of a little – really, tiny – kindergarten boy being handcuffed, loaded into a police car, called out in the harshest way, and threatened to be whooped. Montgomery County Police Officers did this. And I know that County Councilmembers also reacted! I attended the hearing in which Police Chief Jones testified that the officers were somehow vaguely disciplined but he could not say how, and they were back on the street where they could do this very same behavior again. I was appalled. I saw the shock on the faces of Councilmembers, too.

This Police Accountability Board addresses police misconduct at all levels, from the most egregious killing of an innocent person to the level of profound psychological harm. It addresses issues of repeated complaints against officers. The intent of the Maryland Police Accountability Act, the state-level bill which mandates our County's creation of Police Disciplinary Boards, is to make police accountable to the communities they serve in a way that has not existed before.

However, what we have in front of us is a proposal that, as the Office of Legislative oversight's powerful RESJ Impact Statement explains, mimics in all ways the current MCPD hearing board, stacked with folks who understand policing and administrative issues but not with folks who understand their community's distress and lived experience. This bill was drafted with no community input. The bill creates an unacceptable conflict of interest by requiring the County Attorney to serve as PAB counsel, even though the County Attorney also represents the MCPD and the County. Additionally, the bill does not allow for compensation to PAB members, diminishing its importance and also the likelihood that community members can serve who are not retired, or have lots of money, or plenty of time.

Leadership is about listening to community input and being in front when positive social change needs to occur. I respectfully urge the Montgomery County Council to amend the bill to address the issues noted above.

Submitted by:

Anita Lampel

LWVMC Testimony to Montgomery County Council re MC Bill 49-21 (Enabling Legislation for Police Accountability Board and Administrative Charging Committee)

Thank you for the opportunity to speak before the council. My name is Cynthia Boddie-Willis, and I am here to testify in opposition to expedited Bill 49-21 on behalf of the League of Women Voters of Montgomery County.

The League has long held that governmental bodies, both administrative and legislative, must protect the citizen's right to know by giving adequate notice of proposed actions. Regrettably, the process by which Bill 49-21 has been drafted by the County's Executive Office and introduced in the County Council has not satisfied this basic requirement of good governance. This despite repeated requests for public hearings.

On October 28, in a letter to the County Executive (CE) and County Council (CC), the Silver Spring Justice Coalition (SSJC) called for public hearings prior to the drafting of legislation to create the Police Accountability Board (PAB) and the Administrative Charging Committee (ACC) mandated by the Maryland Police Accountability Act of 2021. On December 10, the SSJC learned that a bill written by the County Executive would be introduced in the County Council on December 14, with no community input. On December 12, the SSJC, joined by the League and 18 other community and advocacy organizations called, again, for public hearings before the bill is introduced. On December 13, the SSJC and the ACLU of Maryland issued a press release calling for the County Executive to withdraw the bill and for the County Executive and the County Council to hold public hearings to gather community input.

Despite these efforts, expedited Bill 49-21 was introduced to the County Council on December 14, without any community input. As a result, the voices of the citizenry at large, but most especially of those who have had the most interactions with the police and who are the most impacted by police practices, were neither sought nor heard.

The League also promotes an open governmental system where all aspects of that system are not only accountable and responsive but also representative. Expedited Bill 49-21 currently stipulates that all members of the PAB have experience in (1) managing or evaluating the management of a law enforcement agency; (2) evaluating citizen complaints against a police officer; or (3) personnel disciplinary proceedings as a manager, employee representative, mediator, or arbitrator. This requirement would seem to severely restrict the pool of eligible participants, forcing the League to take issue with this aspect of the bill as well.

However, expedited Bill 49-21 did call for today's public hearing, and the County Council has kept its promise to hold the public hearing in the evening rather than during regular business hours. It is the League's further expectation that all who wish to testify either for or against this bill will be given the opportunity to do so. These measures are needed to enable community engagement to the greatest extent possible as well as to help ensure that the amended bill is true to the intent of the Maryland Police Accountability Act of 2021.

Melissa Coretz Goemann
Silver Spring, MD

Testimony Against Unless Amended

Bill 49-21 (Enabling Legislation for Police Accountability Board and Administrative Charging Committee)

January 14, 2021

To: Montgomery County Council
From: Melissa Coretz Goemann

My name is Melissa Coretz Goemann and my family and I have lived in Silver Spring, Maryland in District 5 for over a decade. I write this testimony in opposition to MC Bill 49-21 unless amended in order to significantly strengthen the bill. I am testifying on behalf of myself, and I am a member of the Silver Spring Justice Coalition.

In 2018, Robert White, a valued member of our Silver Spring community, was shot and killed by a Montgomery County police officer after being stopped because he looked suspicious due to a ripped jacket and hands in his pockets. I went with my daughter to a vigil for him shortly after he was killed and we were very moved by the heartbreaking testimony of his family, friends, and neighbors. This was a man who had been beloved in his community. Sadly, I have been to more vigils since then for men killed by Montgomery County police; Robert White's killing was followed by six more killings of individuals by members of law enforcement agencies in our County.

The Jewish precept, *destroy a life and it's as if you destroyed the world,* is a very important value to me. Destroying these lives has been devastating to our Montgomery County communities. As police violence and destruction continues, we must take action. Police carry deadly force. As a result, they carry a heavy responsibility and must be accountable to the community. The intent of the Maryland Police Accountability Act (MPAA), which mandated the creation of new police disciplinary boards, was to provide this police accountability to the community through enforceable civilian oversight of policing. The Office of Legislative oversight's powerful RESJ Impact Statement clearly states how this proposed county bill does not accomplish that, stating that "***the PAB [Bill 49-21] proposes is analogous to the current police accountability system.***"

In order to establish a system to provide true police accountability to the community, it is essential that community members have input in designing that system. In this case, no community input was sought in drafting this bill and as a result it does not reflect the needs and desires of the community, particularly those that have been most impacted by police misconduct. Moreover, the Police Accountability Board (PAB) created by this bill would end up

excluding community members most impacted by policing, rather than ensuring true community involvement in the police disciplinary process, as was the intent of the MPAA. Instead, the criteria that the bill establishes for members of the PAB, as well as the fact that no compensation is provided for members of the PAB it what will undoubtedly be a very labor intensive position, will end up perpetuating the status quo for police discipline in Montgomery County and continue to shut the community out of the process.

Finally, the PAB must be provided with its own independent counsel and staff if it is to engage in the responsibilities delegated to it by the MPAA with integrity and have the trust of the community. It is an outrageous conflict of interest for the bill to appoint the County Attorney to serve as PAB counsel when the County Attorney already represents the Montgomery County police and the County.

I urge you not to pass this bill until you make substantial amendments in line with the recommendations described above.

Respectfully submitted,

Melissa Coretz Goemann

Testimony - Opposed Unless Amended - Montgomery County Expedited Bill 49-21
Police - Police Accountability Board – Administrative Charging Committee – Established

January 14, 2022

To: Montgomery County Council and County Executive

From: Rebecca Baier, Gaithersburg, MD

My name is Rebecca Baier, and I am a 39-year-old resident of Gaithersburg and District 3. This testimony is in opposition to MC Bill 49-21, Enabling Legislation for Police Accountability Board and Administrative Charging Committee.

As a resident of the state of Maryland, I advocated for The Maryland Police Accountability Act (HB 670, MPAA), which was enacted in the 2021 Legislative Session. This legislation requires each county to establish a Police Accountability Board (PAB), among other measures. An important goal of the MPAA is to give communities a critical role in oversight of police misconduct. This community oversight is in stark contrast to the previous processes that have unfortunately been highly favorable to police who have abused their power.

In 2021 alone, six people have been killed by unnecessary police violence in our county. This is heart-wrenching. My values and faith tradition affirm that these lives have inherent value: Montgomery County is a worse place to live because these people were killed by the police. I expect you, as our elected officials, to support community involvement in police accountability that those who choose to abuse their power and authority will be held accountable for the pain and loss they cause. The expectation is that police accountability, in combination with training and effective leadership, will lead to a cultural shift that decreases the incidence of police violence in our communities.

What I see in the bill, as confirmed by the OLO's Racial Equity and Social Justice analysis, is that the PAB membership requirements will make it extremely difficult for people outside of law enforcement to serve on the PAB. By requiring certain experience, many of our community members are unnecessarily excluded from participating and contributing their voice. This criteria perpetuates the status quo for police discipline in Montgomery County, and this is in stark contrast with the intent of the new statewide MPAA. As the RESJ Impact Statement states, **"the police accountability system [Bill 49-21] proposes neither aligns with best practices nor meaningfully provides civilian oversight for the County's system of police discipline."**

Furthermore, the lack of financial compensation for most PAB members means that even if the membership requirements were to be changed, many impacted community members could still be de facto excluded from the process.

Also, I understand that MC Bill 49-21 requires the County Attorney to serve as PAB counsel, when the County Attorney also represents the MCPD and the County. This creates unnecessary

and unacceptable conflicts of interest. The PAB must have its own, independent counsel and staff in order to engage in the responsibilities delegated to it by the MPAA.

In closing, I think the bill will be ineffective at improving policing and police accountability, and that ultimately the outcome will perpetuate unsafe neighborhoods in our county. I respectfully request you to take into account the significant feedback from myself, other community members, and the County's own Office of Legislative Oversight, and oppose MC Bill 49-21 unless it is significantly amended.

Thank you,

Rebecca

January 13, 2022

Mr. Gabe Albornoz
President, Montgomery County Council
Montgomery County Councilmembers
Stella Werner Council Office Building
100 Maryland Ave
Rockville, MD 20850

Re: Testimony on Police Accountability Bill 49-21

Dear Mr. Albornoz and Montgomery County Council Members:

On behalf of the Council on American-Islamic Relations, I thank you for this opportunity to testify on Bill 49-21 Police Accountability Board. CAIR is America's largest Muslim civil rights and advocacy organization.

By now, you have seen the disturbing data and statistics on excessive use of force by law enforcement in Montgomery County. Under House Bill 670, which passed through the General Assembly last year, each jurisdiction in Maryland is mandated to create police accountability boards and administrative charging committees to investigate and resolve police misconduct complaints by the public, and we are glad to see the Montgomery County Council move on this issue. However, we have some concerns we hope that you can address.

A robust measure that will have a meaningful impact on accountability requires expansive community buy-in – particularly from those members of the public who are most directly and disproportionately impacted by problematic policing policies.

As the bill currently stands, it requires that board members have prior experience in management in a law enforcement agency, evaluating citizen complaints against police officers and mediation or personnel disciplinary proceedings. This unfairly excludes a large segment of potentially otherwise capable and qualified candidates from consideration, and may perpetuate problematic aspects of current policing practices. Bill 49-21 also does not guarantee equitable representation from Montgomery County's diverse districts.

The legislation mandating the establishment of police accountability boards was already significantly watered down to exclude enforcement capabilities. Not allowing space for substantive, meaningful community input defeats the objective of establishing such boards in the first place.

The Office of Legislative Oversight has released a Racial Equity and Social Justice (RESJ) impact statement that offers meaningful amendments to help make Bill 49-21 more effectively align with best practices to advance civilian oversight and improve police accountability. Among these amendments, we urge you to especially consider approving a request to expand the scope of the misconduct complaints that PAB's can review.

We respectfully urge a favourable report. Thank you for your consideration.

Sincerely,

Zainab Chaudry, Pharm.D.
Director, CAIR Office in Maryland
Council on American-Islamic Relations
Email: zchaudry@cair.com

City of Takoma Park, Maryland

Office of the Mayor
Kate Stewart
KateS@takomaparkmd.gov

7500 Maple Avenue
Takoma Park, MD 20912
www.takomaparkmd.gov

January 14, 2022

County Council President Gabe Albornoz
Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Letter Sent by Email Only

Dear President Albornoz:

We are following up on prior letter regarding Expedited Bill 49-21 "Police – Police Accountability Board – Administrative Charging Committee – Established" which was introduced on December 14, 2021 and is scheduled for a second public hearing on January 18th.

Unfortunately, given the City Council schedule we are unable to testify on the bill at the public hearing on January 18th. However, we wanted to share our continued concerns with the bill.

First, we are disturbed that it was drafted and introduced without notification to or consultation with the City of Takoma Park. Since our Police Department, along with the Departments of Gaithersburg, Rockville, and Chevy Chase, will be covered by the legislation, we would have expected to be notified and consulted before the bill was introduced.

Second, we want to raise concerns about the qualifications included in the current bill because there is a need to ensure that the boards represent the community, not law enforcement or law enforcement aligned interests.

Third, we would ask the Council to consider requiring compensation for members of the PAB. Providing compensation will assist in removing potential barriers to participation.

Fourth, we request the Council review the conflicts of interest created by requiring the County Attorney to serve as PAB counsel, when the County Attorney also represents the MCPD and the County. Please consider providing the PAB with its own, independent counsel and staff in order to engage in the responsibilities delegated to it by the MPAA which include: reviewing the results of investigations of civilian complaints; reviewing disciplinary procedures of all law enforcement agencies in the County; and advising the head of each of those agencies and elected officials about improvements in policing.

Finally, please ensure that municipalities with police departments are included when the PAB provides its annual report.

We value having a collaborative and cooperative relationship the County Council and County Executive, and we hope to continue to grow and develop the relationship for the benefit of all our residents.

Sincerely,

Kate Stewart
Mayor

cc: County Executive Elrich

Written Testimony on MC Bill 49-21 (Enabling Legislation for Police Accountability Board and Administrative Charging Committee)

I request that the Council substantially rewrite this legislation to reflect the needs of the community, not protect the status quo.

First, the PAB should be inclusive of the community, not tied to experience within the existing law enforcement agencies or other similar personnel management. It is hard to tell how the PAB will be meaningfully different from the current MCPD hearing board. The new state law is intended to ensure that the community has a role in oversight of Montgomery County's police discipline processes, but the proposed rules are fundamentally at odds with those principles.

In addition to excluding viewpoints from lived and professional experiences, the PAB will be restricted to people with independent financial means or financial interests in participation because there is not real compensation for PAB members. It is ironic that the proposed legislation sets out professional requirements, but then offers no professional compensation for service in an administrative function for the County.

I am also concerned about the lack of independence in other aspects. For example, the bill requires the County Attorney to serve as PAB counsel. If the PAB and a police department develop different interpretations of law, how will the County Attorney represent both parties in resolving the dispute? In particular, if the PAB has significant questions about whether law enforcement agencies have adequate disciplinary procedures, but those procedures have previously been reviewed by the County Attorney, there will be very strong pressure on the PAB to drop the matter. This will undermine the effectiveness of the PAB in transforming the disciplinary procedures of law enforcement agencies.

Thank you for considering my comments.

907 Loxford Terrace • Silver Spring, MD 20901-1126 • 301-588-2363 •
wilson@jdwilson.net

January 17, 2022

TO: Montgomery County Council

CC: Marc Elrich, County Executive
Robert Drummer, Senior Legislative Attorney
Dr. Elaine Bonner-Tompkins, Office of Legislative Oversight
Dalbin Osorio, Policing Advisory Commission

The Silver Spring Justice Coalition (SSJC) submits the following recommendations for amendments to Expedited Bill 49-21, Police Accountability Board and Administrative Charging Committee – Establishment.

INTRODUCTION

These recommendations have been developed in close consultation with representatives from various community organizations including the ACLU of Maryland, the Maryland Coalition for Justice and Police Accountability, Jews United for Justice, Impact Silver Spring, CASA, and a number of individual community members. As we state in our public testimony on the bill, we believe the bill fails to reflect the broad community inclusion intended by the Maryland Police Accountability Act (MPAA) and lacks the structure, power, and resources necessary for meaningful civilian oversight of police discipline.

Of greatest concern is the inclusion of membership requirements that shut out the people in this County who are most impacted by policing: people of color, those impacted by mental illness and substance abuse, members of the LGBTQ+ community, people who have suffered at the hands of a racially discriminatory criminal justice system, and those living in poverty. However, there are many other amendments required to ensure that effective community oversight is possible. As noted in the Racial Equity and Social Justice Impact Statement, there are recognized best practices for civilian oversight of police discipline, and the amendments below are based in large part on those best practices. In this way, and in many others, the RESJ Statement provides compelling support for our requests.

We cannot fail to remind you that this discussion is not academic: six people died at the hands of police officers in Montgomery County last year, and others have suffered from publicly-witnessed abuse, with little or no consequence. Of the many salient points made in a recent report analyzing the failures that led to the Baltimore City Gun Trace Task Force Scandal, the following is instructive in considering our amendments:

> The historical failures of the accountability function are starkly illustrated in the experiences of the former BPD members who were prosecuted. Several of them engaged in misconduct that should have ended their BPD careers, but did not do

so because of profound weaknesses in the system for investigating, charging, and adjudicating allegations of misconduct. Instead of suffering the consequences for their actions, these officers learned that there were inadequate institutional constraints and guardrails to prevent them from engaging in misconduct or punishing them if they did.

REQUESTED AMENDMENTS

Membership in the Police Accountability Board and Administrative Charging Committee

1. Member Qualifications

    a. Strike the current membership qualifications for the PAB and ACC.
    b. Prohibit from PAB membership, except in an non-voting position, anyone previously employed by a law enforcement agency. Prohibit from ACC membership anyone previously employed by a law enforcement agency.
    c. Candidates for PAB or ACC membership shall not be excluded from consideration or disqualified on the basis of their immigration status or criminal history.
    d. Include the following language 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, immigration, criminal justice, and living below the poverty guideline for the County.”

2. Member Appointment Process
    a. The County Executive shall solicit nominations for members from the public prior to selecting PAB members and the Executives two ACC appointees.
    b. The County Executive must present candidates for the PAB and the two ACC appointees to the Council for approval.
    c. 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.

3. PAB Membership Size: Increase the number of PAB members to nine.

4. PAB Member Removal: strike (h)(5) “violation of law” as a basis for removal from the PAB.

The Powers and Obligations of the Police Accountability Board

5. Meeting Frequency: The PAB shall meet at least monthly, or more often as needed.

6. Working With Law Enforcement and the County Government to Improve Matters of Policing
    a. Replace Sections 35-24(g)(1) and (5) with the language from MPAA, sec. 3-102(a)(1): “hold quarterly meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the County government to improve matters of policing.”
    b. Add language empowering the PAB to:
        i. Attend law enforcement agency trainings
        ii. Attend relevant local, regional, and national trainings at County expense
        iii. Obtain internal reports and non-publicly available data from law enforcement agencies
        iv. Seek community feedback on policing and provide information about policing matters to the community

7. Reviewing the Outcomes of Disciplinary Matters Considered By the ACC: Add language empowering the PAB to:
    a. Have access to all evidence considered by the law enforcement agency and the ACC
    b. Request additional information from the law enforcement agency
    c. Issue subpoenas, interview witnesses, and employ any other investigative powers necessary to complete their obligation to review outcomes of disciplinary matters considered by the ACC.

8. Accepting Civilian Complaints: The PAB is empowered to establish its own rules and procedures regarding the acceptance of civilian complaints and to educate the public about the process of submitting civilian complaints.

The Powers and Obligations of the Administrative Charging Committee

9. Meeting Frequency: The ACC shall meet at least once a month or more if needed.

10. Selecting the Chairperson: Members of the ACC shall select the chairperson of the ACC.

11. Training: In addition to the MPAA-required training from the Maryland Police Training and Standards Commission, ACC members shall be permitted to attend, at County expense, additional training in the civilian oversight of police and related policing matters.

12. Impose Timeline Requirement for ACC Receipt of Investigation From LEA:
    a. Codify MPAA sec. 3-113(c), which provides: “The process of review by the investigating unit through disposition by the administrative charging committee shall be completed within 1 year and 1 day after the filing of a complaint by a citizen.”

b. Add language requiring the LEA to forward its completed investigation to the ACC by a certain time - for example, 6-8 months.

13. Impose Time Limits on Law Enforcement Agency Responses to Inquiries by the ACC
    a. Bill sec. 35-25(i) authorizes the ACC to review relevant body-worn camera footage and authorizes the ACC to summon a police officer to testify before the ACC, and sec. 35-25(j) authorizes the ACC to request information or action from the relevant law enforcement agency, including requiring additional investigation, and to issue subpoenas for documents or witnesses.
    b. Add language requiring the LEA to respond to AAC requests within 10 business days.

14. Describing Policy Failures: Amend Sec. 35-25(i)(5)(A)[1] to require the ACC to describe any and all situations where existing policy of the law enforcement agency fails to properly or adequately address the situation for which the officer was charged; not just when the ACC determines that the allegations are unfounded.

15. The Scope Of Disciplinary Matter Reviews and Referrals
    a. Expand the scope of disciplinary matters that must be forwarded to the ACC for review to include "all civilian complaints, whether or not the LEA initiated an administrative investigation, and all disciplinary matters, regardless of the source of the complaint, that involve an interaction between a law enforcement officer and a member of the public."
    b. Require LEAs to notify the ACC at regular intervals (e.g., monthly) of all civilian complaints received by the LEA during the interval in question.

PAB Member Compensation

16. PAB members should be compensated commensurate with County's other paid board or commission members and at least comparably with the compensation for ACC members. The bill should state that salaries may be increased if PAB or ACC duties increase beyond those initially contemplated when salaries are established.

PAB and ACC Staffing

17. Independent Counsel
    a. Strike sections 35-24(f) and 35-25(e), which specify that the County Attorney shall act as counsel to the PAB and ACC.
    b. Invoke the provision of the County Charter sec. 213, which permits the County Attorney, with the approval of the Council, to temporarily employ special legal counsel to work on problems of an extraordinary nature when the work to be

[1]This reference is paragraph (5) as used in the bill; however, the bill has a numbering typo in sec. 35-25(i): paragraph number (4) is used twice.

done is of such character or magnitude as to require services in addition to those regularly provided by the County Attorney. Include a finding that the nature of the work of these boards presents an inherent conflict that is of such character as to require independent counsel outside of the Office of the County Attorney.

c. In the alternative, employ language such as that found in County Code sec. 33-14(b), pertaining to the Merit System Protection Board, which states that the MSPB may request outside counsel when there is a representational conflict of interest within the County Attorney's office. A County Attorney legal opinion states that the special counsel must be acceptable to the board.
d. In the alternative, employ any other legal mechanism necessary to provide the boards with legal counsel independent of the County Attorney.

18. Independent and Dedicated Staff: Require the Executive to provide dedicated and independent staff, in consultation with the members of the boards, to include, but not be limited to: administration, research and policy expertise, investigation, and, for the PAB, community outreach.

19. PAB and ACC Budgets: Amend the bill to specify the budget expected annually to support the work of the PAB and ACC. Specify a certain percentage of the police department's annual budget to fund the work of its civilian oversight function. Empower the boards to submit their own budget requests annually.

Collective Bargaining Preemption

20. Apply MPAA sec. 3-111 (A law enforcement agency may not negate or alter any of the requirements of this subtitle through collective bargaining) to Bill 49-21 in its entirety, not just to those portions that track the requirements of the MPAA.

Referencing Non-MCPD Law Enforcement Agencies

21. Amend the bill to expressly reference the inclusion of each law enforcement agency operating in Montgomery County that is subject to the PAB and ACC.

OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

December 8, 2021

TO: Gabe Albornoz, President
Montgomery County Council

FROM: Marc Elrich, County Executive

SUBJECT: Introduction of Bill XX-21, Establishment of Police Accountability Board for the County

In the attached Bill XX-21, I propose creation of a Police Accountability Board (PAB) and Administrative Charging Committee (ACC) as required under the Maryland Police Accountability Act of 2021. This new state law is aimed at improving police accountability and transparency. It mandates that each county shall establish a PAB, an ACC, and trial boards that will receive public complaints, review investigations conducted on these complaints, bring administrative charges where appropriate, and make determinations on those charges. Under this new law, the Maryland Police Training and Standards Commission (MPTSC) is required to develop a disciplinary matrix that will prescribe administrative penalties for similar offenses across the State. The Maryland Police Accountability Act requires that the PAB and ACC be operational on or before July 1, 2022.

In my proposed County legislation, the PAB would be comprised of five members, including a designated Chair, nominated by the County Executive and confirmed by the County Council. Among their legislatively mandated responsibilities, the PAB would meet at least quarterly with Police leadership, receive and refer public complaints to the Police Department for investigation, analyze trends in complaints, and issue an annual report at the end of each calendar year. The proposed ACC would be comprised of the PAB Chair, two civilian members selected by the PAB, and two civilian members appointed by the County Executive. The ACC would be responsible for reviewing the investigative files of complaints and determining charges within thirty days of receipt of the investigative files. This Bill proposes that the ACC will meet at least monthly and receive compensation comparable to other similarly time-consuming and high

consequence boards. Members of both the PAB and ACC would be required to be County residents and possess some experience in administrative disciplinary proceedings whether in law enforcement or other sectors. As required by the Maryland Police Accountability Act, they may not be active-duty police officers.

I appreciate the work of the Reimaging Public Safety Implementation Committee (RPSIC), which includes County Council central staff, in the development of this proposed Bill. Staff from my office and from the RPSIC are available to answer your questions.

Thank you.

cc: Richard Madaleno, Chief Administrative Officer
Earl Stoddard, PhD, MPH, CEM, Assistant Chief Administrative Officer
Marcus Jones, Chief of Police, Montgomery County Department of Police
Darren Francke, Assistant Chief, Montgomery County Department of Police

Maryland's First
Nationally Accredited
Sheriff's Office

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SHERIFF DARREN M. POPKIN

January 18, 2022

Gabe Albornoz, Council President
Montgomery County Council
Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Bill 49-21, Police – Police Accountability Board – Administrative Charging Committee

Dear Gabe:

Recently, I had the opportunity to review a memorandum (December 9, 2021) regarding the above-referenced bill that was scheduled to be introduced on behalf of the County Executive on December 14, 2021. This legislation is intended to implement portions of HB 670 insofar as it establishes a Police Accountability Board ("PAB") and an Administrative Charging Committee ("ACC") for the County as required by HB 670. However, the memorandum describing the background for Expedited Bill 49-21 misstates several key facts regarding the status of the MCSO's collective bargaining agreement(s), as well as the impact of the repeal of the LEOBR. I thought the Council should be made aware of the Sheriff's position regarding certain inaccuracies in the December 9 legislative memorandum ("December 9 memorandum") since this bill is currently scheduled for a work session before the Council's Public Safety Committee on January 24 at 9:30 a.m.

Background

As you know, MCGEO represents both the sworn and civilian personnel within the Montgomery County Sheriff's Office (MCSO), with the County bargaining regarding those employees limited to compensation, pension, fringe benefits and hours, and MCSO bargaining as their employer regarding *all other terms and conditions of employment, including with respect to disciplinary matters.*

As you are also aware, the Montgomery County Sheriff, as a state judicial officer independently elected by a vote of the entire County, has the authority to negotiate all working conditions with the Union not within the limited authority of the County as employer, as described above, all of which is provided by state statute. *See* Md. Cts. & Jud. Proc. (hereinafter "CJP"), § 2-329. It is not a "Department" of the Montgomery County government as the December 9 memorandum repeatedly suggests. The MCSO has exercised, for more than fifteen years in numerous negotiations with the Union, its more extensive statutory authority to negotiate an Addendum to the Agreement ("the Addendum"). The Addendum is required by these statutory provisions and is to contain agreed-

upon terms concerning the terms and conditions of employment for the employees of the MCSO within the statutory bargaining authority of the Sheriff.

The MCSO's current Addendum agreement with MCGEO, expired on June 30, 2021. However, the parties have been actively engaged in collective bargaining negotiations during the past six (6) months for the purposes of reaching an agreement on a successor Addendum agreement. Currently, the parties have scheduled a private mediation on February 2, 2022 to resolve the limited number of remaining bargaining disputes. Until those Addendum negotiations are completed, we will, as required by established labor law principles, maintain the status quo with regard to existing terms and conditions of employment that are contained in the most recent Addendum agreements between MCGEO and the MCSO.

Disciplinary Matters Not Addressed in HB 670

As an initial matter, the December 9 memorandum states that "HB 670 repealed and replaced the Law Enforcement Officers Bill of Rights (LEOBR) with a new State-wide disciplinary system for police officers in Maryland." While it is true that the LEOBR is repealed effective June 30, 2022, it is less than accurate to state that HB 670 replaces the LEOBR in its entirety. For example, as the Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) noted in their opposition to HB 670 last April, this legislation establishes a process for public complaints, but is virtually silent on the disciplinary process each law enforcement agency should follow for internal complaints and disciplinary actions regarding officers. This flaw in the legislation has the potential for significant disruption in the MCSO's ability to exercise it managerial prerogatives to discipline sworn law enforcement officers because the vast majority of such disciplinary matters originate internally within the MCSO.

Moreover, while the ACC required by HB 670 is established to receive *public* complaints, review investigative findings, request additional information, issue subpoenas, and determine whether an officer should be administratively charged or not, it is not clear whether such committee has jurisdiction over a Sheriff's office which, as explained above, is a state constitutional office within the Judicial branch of state government. Thus, contrary to the assertion in the December 9 memorandum that "[t] he new uniform disciplinary system established in HB 670 generally applies to misconduct occurring on or after July 1, 2022," it is entirely unclear whether, and to what extent, disciplinary actions that are *not* matters of public complaints, e.g., internal discipline meted out to sworn officers of the Sheriff's who fail to comply with MCSO internal policies or who are subject to MCSO's internal conduct complaints or investigatory processes, fall within the scope of the ACC's authority. It also remains unclear whether the Sheriff's authority to "suspend, discharge, or otherwise discipline sworn employees for cause under the Maryland LEOBR" (*see* CJP § 2-329(f)(7)(xix)1) has been eliminated, or merely curtailed to the extent such disciplinary matters are initiated by public complaints.

Disciplinary Systems Under the Current Collective Bargaining Agreement

The December 9 memorandum also misstates the status of the MCSO's collective bargaining agreement with MCGEO and the impact. As described above, the current collective bargaining agreement between MCGEO and Montgomery County *only applies to sworn officers of the MCSO to the extent the current Addendum agreement between the MCSO and MCGEO does not otherwise address the matter.* Here, the MCSO's Addendum agreement with MCGEO expressly provides that Article 28 ("Disciplinary Actions") under the County/MCGEO collective bargaining agreement "shall

only apply to non-probationary civilian employees of the Sheriff's Office." Implicitly, sworn employees of the MCSO are *not* covered by terms of Article 28 of the Montgomery County/MCGEO collective bargaining agreement. Thus, there is no basis for the assertion in the December 9 memorandum that "the current disciplinary system continues until June 30, 2023" as provided under "[t]he current collective bargaining agreement[] between the Executive … and MCGEO covering deputy sheriffs [that] expire[s] on June 30, 2023." There is no contractual disciplinary system applicable to deputy sheriffs of the MCSO under either the Montgomery County/MCGEO contract or the MCSO/MCGEO Addendum agreement.

From the foregoing, it should be clear that the MCSO has special authority for its own independent collective bargaining process with MCGEO governed by a state statute that, as relevant here, includes the right and responsibility of the Sheriff to "suspend, discharge or otherwise discipline sworn employees under the Maryland Law Enforcement Officers Bill of Rights." While the Maryland LEOBR is repealed effective June 30, 2022, the current legislative guidance contained in the December 9 memorandum misstates the effect of that repeal. The express terms of the MCSO's current Addendum agreement with MCGEO makes clear there is no default disciplinary system under the terms of the MCSO's Addendum agreement. Hopefully, this clarification will assist the Council in its consideration of the current proposed Expedited Bill 49-21.

Best regards,

Darren M. Popkin

Darren M. Popkin
Sheriff

cc: Sidney Katz, Chair, Public Safety Committee
Robert H. Drummer, Senior Legislative Attorney

Montgomery County Lodge 35, Inc.
301-948-4286
www.foplodge35.com

STATEMENT ON EXPEDITED BILL 49-21
LEE HOLLAND
PRESIDENT, MONTGOMRY COUNTY FRATERNAL ORDER OF POLICE LODGE 35

Honorable Members of the Council:

On behalf of the membership of more than 1500 active and retired women and men in Montgomery County law enforcement, thank you for the opportunity to comment on Expedited Bill 49-21, Police Accountability Board - Administrative Charging Committee – Established.

While this legislation doesn't currently apply to members of Montgomery County FOP Lodge 35 (our collective bargaining agreement does not expire until June 30, 2023), as partners in reform, we are hopeful that the system and composition of the hearing boards envisioned by this proposed legislation will advance fairness, justice and due process through the greatest possible degree of citizen input.

To be clear, we believe there can be no true reform without robust citizen input through representation on hearing boards.

This is and has been the position of Montgomery County FOP Lodge 35 for over 30 years, including:

· Being the first law enforcement agency with a citizen member (Since 1991 have had a neutral citizen who has resided in most cases within the State of Maryland and Montgomery County);
· Advocating for the addition of two citizen members to the states hearing board process during the General Assembly's 2016 LEOBR police reforms; and
· Advocating for a greater number of citizens on hearing boards than the recently passed HB670 in 2021.

Having spent thousands of human hours at the bargaining table, proposing/enacting a fair hearing process with citizen input and during the previous administration defending the removal of the citizen from the process, we have come to believe that citizens with experience and/or training of employment law, are in the best position to be impartial, deliberative and fair when it comes to review of police matters.

For those citizens and law enforcement who remember history, police management is not always the best arbiter of truth and fairness when it comes to administering its own departments. To that point, decisions made by the self-interests and preservation of a few police chiefs over the decades represent a marred history, replete with examples of

rampant racial, sexual, and gender discrimination and graft by police management, and against sworn officers and the public, in some police department across our great state.

It is this terrible history that has informed our position and belief that the most judicious and fair arbiter of justice are unbiased and trained citizens, disconnected from political, self-interested, and career entanglements of a bureaucratic actors within the labyrinth of police management. To that end, we hope that the Council and Executive take the opportunity and this moment to enact reforms that truly advance the cause of citizen input, above all else.

Thank you, and we look forward to our continuing partnership with the public, the Council and the Executive in order to build reforms that deliver true accountability and justice in the criminal justice system.

Sincerely,

Lee Holland

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.

<u>The Powers and Obligations of the Police Accountability Board</u>

- 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.

Fiscal Impact Statement
Expedited Bill 49-21, Police – Police Accountability Board – Established

1. **Legislative Summary**

In accordance with House Bill 670 of the Maryland General Assembly, Bill 49-21 would amend Chapter 35, Article IV of the Montgomery County Code to create a Police Accountability Board (PAB), and an Administrative Charging Committee (ACC) that would compile data, as well as review, adjudicate, and report on law enforcement officers being investigated or charged for disciplinary infractions.

Expedited implementation of this Bill would make it effective July 1, 2022.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

The PAB will consist of five voting members with one member serving as the Board's Chair. None of these members will be compensated for their service, however, each will be reimbursed for expenses incurred while fulfilling their duties. Because the Bill specifies that each member must reside within the County, travel expenses for at least four annual meetings are expected to be minimal but will likely vary. Other expenses for office supplies, printing and scanning, mail, and dependent care cost reimbursements are expected to commensurate with other boards and commissions in operation within the County.

The Administrative Charging Committee (ACC) will consist of the Chair of the PAB or the Chair's appointed designee, and four other civilian members. These members will be compensated, with the Chair receiving an annual salary of $22,000 and each civilian member receiving $16,000 annually.

Each member of the ACC must complete a training on police procedures provided by the Maryland Police Training and Standards Commission (MPTSC). Because this training course has not been developed, reliable cost estimates are not available. Officer certification provided by the MPTSC for officers with prior experience seeking certification in Maryland costs approximately $800 for a four-week course. Because this training would include coursework on Maryland police procedure, it provides a reliable estimate of the training costs for the 5-member ACC. Each new Committee member would be required to complete the training during their 3-year term.

The ACC will have the authority to subpoena witnesses and may therefore require the services of an interpreter. While the number of witness interviews and the amount of time needed for each is unknowable at this time, it is reasonable to assume the equivalent of at least one meeting per month for an average of three hours. These assumptions equate to a minimum cost of $3,060 for interpreter services annually.

The Chief Administrative Officer will supply the PAB and the ACC with appropriate staffing from their existing complement and additional costs are not anticipated for this

purpose. The County Attorney will provide counsel to both the PAB and the ACC. Additional costs are not anticipated for this purpose.

First year projected costs are as follows with the understanding that travel and childcare expenses will be submitted for reimbursement to the Boards, Commissions, and Committees (BCC) non-departmental account. This NDA allows for a reimbursement of $40 per member per meeting for transportation and dependent care.

	Police Accountability Board Budget (5 Members)	Administrative Charging Committee (5 members)	Total
Salary Compensation	-	86,000	86,000
Office Supplies	3,500	-	3,500
Printing/Copying & Imaging	400	-	400
Interpreter Services	-	3,060	3,060
Mail	200	150	350
Training	-	4,000	4,000
PAB/ACC NDA Subtotal	**4,100**	**89,210**	**93,310**
Travel	200	600	800
Dependent Care Costs	600	1,800	2,400
BCC NDA Subtotal	**800**	**2,400**	**3,200**
Total	**4,900**	**95,610**	**100,510**

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.** County revenues are not expected to be impacted by this legislation. Costs in the out-years do not include inflation or changes to compensation.

	FY23	FY24	FY25	FY26	FY27	FY28	6-Year Total
Salaries	86,000	86,000	86,000	86,000	86,000	86,000	516,000
Office Supplies	3,500	3,500	3,500	3,500	3,500	3,500	21,000
Printing/Copying & Imaging	400	400	400	400	400	400	2,400
Interpreter Services	3,060	3,060	3,060	3,060	3,060	3,060	18,360
Mail	350	350	350	350	350	350	2,100
Training	4,000	-	-	4,000	-	-	8,000
Travel/Dependent Care	3,200	3,200	3,200	3,200	3,200	3,200	19,200
Total	**100,510**	**96,510**	**96,510**	**100,510**	**96,510**	**96,510**	**587,060**

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs**.

Not applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   Not applicable.

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Bill 49-21 does not authorize future spending.

7. **An estimate of the staff time needed to implement the bill.**

   Staffing from the Chief Administrator's Office (CAO) and the Office of the County Attorney (OCA) will provide the Board and Committee with the various services and facilities they will need to perform their duties as outlined in the legislation. The PAB will meet at least once per quarter, and the ACC will meet at least once per month. Assuming each meeting requires at least one hour for pre-meeting preparations, and administrative support during and after each meeting, from both the CAO and the OCA, an estimated 32 hours per year of staff time will be needed to implement this Bill.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   The new responsibilities of County staff are consistent with existing roles and work assignments. Implementation of this Bill is not expected to impact other assigned duties.

9. **An estimate of costs when an additional appropriation is needed.**

   There are no additional appropriations required to implement this Bill.

10. **A description of any variable that could affect revenue and cost estimates.**

    The cost of implementing this Bill is dependent on the number of meetings each administrative body will conduct above the minimum requirements, which is unknown at this time. In addition, the costs of police procedure training provided by the MPTSC to the ACC have not been established. Beyond the unit cost of training, it is also unknown if a voting member of the ACC must be replaced during their 3-year tenure and require the unanticipated training of a new voting member.

11. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    All operating costs are challenging to project because neither administrative body has been implemented previously across Maryland. Based on the legislation and the operation of similar Boards and Committees, the estimates contained in this fiscal impact statement represent a reasonable minimum expectation of expenditures.

12. If a bill is likely to have no fiscal impact, why that is the case.

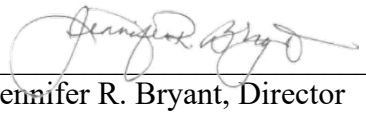
Not applicable.

13. Other fiscal impacts or comments.

There are no other fiscal impacts or comments.

14. The following contributed to and concurred with this analysis:

Dr. Earl Stoddard, Office of the County Executive
Taman Morris, Office of Management and Budget



1/21/22

Jennifer R. Bryant, Director
Office of Management and Budget

Date

Jurisdiction	PAB Size	PAB Member Qualifications	PAB Compensation	Legislative Status
Baltimore City	Have a Civilian Review Board that has been in place prior to the passage of HB607. The Civilian Review Board is an independent agency in the city through which members of the public can issue a complaint against officers of various law enforcement units. The Civilian Review Board takes complaints that allege the use of excessive force, abusive language, harassment, false arrest, and false imprisonment.	Board members are composed of a member of the public from each of the nine police districts in Baltimore City. Members of the Board are selected by the Mayor and subject to the advice and consent of the City Council. Also, on the Commission as nonvoting members, are one representative of the Fraternal Order of Police, one representative of the Vanguard Justice Society, the Baltimore City Police Commissioner or the Commissioner's designee, one representative of the American Civil Liberties Union of Maryland (ACLU), and one representative of the Baltimore City Branch of the National Association for the Advancement of Colored People (NAACP).	All board members serve without compensation, but voting board members may be reimbursed for certain authorized expenses incurred in the performance of their official duties.	
Calvert County	PAB: Composed of nine (9) members selected by the Board of County Commissioners,	Both PAB and ACC members must: - reflect the racial, gender, and cultural diversity of Calvert County.	A quarterly stipend for members in such amount as the Board of County	Resolution# 07-22 Was signed into law on February 16, 2022

	including a Chairperson appointed by the Board of County Commissioners; Except as initially staggered, members shall serve a term of three years and shall not be eligible for reappointment after a total of nine years of service on the CCPAB. Chairperson must have experience relevant to the position. Members of the PAB, specifically, - include, no less than two members from each County Commissioner District. - Two members shall be retired, sworn law enforcement officers who retired in good standing at least three years prior to appointment on the CCPAB, with at least 20 years of service in a Maryland Law Enforcement Agency or Federal Law Enforcement Agency;	- Not be an active police officer, nor any person that fully retired from law enforcement less than three (3) years prior to the date of appointment. - be adults not having been or be convicted, in a federal or State court of record, of a crime punishable by imprisonment exceeding 1 year and received a sentence of imprisonment for more than 1 year, unless pardoned. - No member shall have a charge pending, in a federal or State court of record, for a crime punishable by imprisonment exceeding 1 year. - All members must be able to comprehend spoken English and speak English, comprehend written English, read English, and write English proficiently enough to complete a standard form application for appointment satisfactorily Members of the PAB specifically must: - include no less than two members from each County	Commissioners may deem appropriate.	

	- No less than 3 members shall be from "minority populations" and 1 member must be a mental health practitioner	Commissioner District. - Two members shall be retired, sworn law enforcement officers who retired in good standing at least five years prior to appointment on the CCPAB, with sufficient service in a Maryland Law Enforcement Agency or Federal Law Enforcement Agency.		
Charles County	9 member PAB appointed by the County Commissioners. Terms are four years, with initial terms being staggered. Members can be reappointed for one additional term.	Membership Qualifications: - 2 members from each of the four Commissioner Districts - 1 members from any of the districts - to the extent practicable, must reflect the racial, gender, and cultural diversity of the County - County Commissioners shall appoint the Chair who must have extensive knowledge of police practices and professional experience interacting with the criminal justice system. - all members must have a criminal background check conducted prior to appointment.	If budgeted by the Board of County Commissioners, each member may receive an annual stipend.	Resolution creating PAB adopted on Dec 7, 2021.

		- An applicant convicted of a felony is ineligible to serve. - An applicant who has been convicted of a misdemeanor with: 1) a max penalty of more than one year; 2) a crime of violence; or 3) perjury, within the last 15 years is ineligible to serve. - Members must be residents of the County for at least six consecutive months prior to applying for membership. - Must be registered voters of the County. - All members shall have a demonstrated commitment to just and fair outcomes, as well as respect and adherence for established processes and procedures in a professional setting.		
Fredrick County	5 voting members appointed by the County Executive and confirmed by the County Council. The Board also includes ex-officio members as follows: - a designee of the Chief of Police for each municipal police force within the County, who is	To the extent practicable, the membership of the Board shall reflect the racial, gender, and cultural diversity of the County. Voting members must: - Be county residents - Be at least 18 years of age - Have familiarity or experience with human resources, the	No information on compensation.	County Executive has proposed the draft bill but it has not yet been introduced by the Council. Bill deliberated at Council Meeting on February 22. Significant changes on

	not an active police officer - a designee of the Sheriff who is not an active police officer. Each will serve three year terms, after the initial staggering. Members may be reappointed but cannot serve more than 2 full consecutive 3 years terms. CE shall nominate and the Council shall approve the Board Chairperson, who shall have familiarity with the criminal justice system. Their term is three years.	operation of a govt agency, criminal justice agency, or community service organization - Submit to a vetting process that includes intensive in-person interviews by the CE (or designee) and the municipal head (or designee) from each municipality with a police force within the County and appropriate background research to determine that each member is free from political bias and able to make objective decisions free from outside influence. - Complete MPTSC training - Be a registered voted in Frederick County An individual may not serve on the board is they: - are an active police officer, an employee of County govt, an employee of a municipal govt located in the County, or an employee of the Sheriff's Office. - have been convicted, or received probation before judgement for a felony or		requirements expected to be made.

		misdemeanor with statutory penalty of more than two years.		
Howard County	7 voting members, appointed by the County Executive and confirmed by the County Council. A member will be delegated from each of the 5 County Districts with 2 at-large members Initial Members will have staggered terms so that 1 appointee shall have a term of 1 year, 2 appointees shall have a term of 2 years, and 2 appointees, one of which shall be the chairperson, shall have a term of 3 years. (Text of the bill only seems to have 5 members, though the bill as enacted calls for 7) CE nominates and Council approves the Board Chair who shall have familiarity with the criminal justice system. Term is 3 years.	Membership of the board, to the extent practicable, shall reflect the racial, gender, and cultural diversity of the County. Voting members must be 1) County residents; 2) at least 25 years of age; 3) have a committed interest and demonstrated active involvement in Howard County Community Service Those prohibited from being members of the PAB are: 1) active police officers; 2) employee of County gov; 3) employee of the Sheriff's office; 4) those convicted of a felony or a misdemeanor with a statutory penalty of more than 2 years.	No information on compensation	CB No. 83-2021 was approved and signed by the County Executive on February 9, 2022.
Prince George's County	According to an ABC7 News Article from Jan 27, 2022, the County Executive's plan is	As of now, any county resident is eligible except those currently serving as police officers.	Unknown	County currently accepting applications for members,

	for the board to be composed of seven members. An internal group of about 30, made up of county staffers, members of law enforcement and reps from the Citizen Complaint Oversight Panel, are working on the legislation and budget that would affect the board.			but legislation has not been publicly released. According to a *Washington Examiner* article from February 23, 2022, PGC has started receiving dozens of applications for the PAB
Anne Arundel County	Will consist of NINE members appointed by the County Executive and confirmed by the Council - 8 members have lived in the County for at least 3 years, 1 must have lived in the City of Annapolis for the last three years and be recommended by the Mayor - Initially 4 members will serve 3-year terms and 5 shall serve 2 years. After this, terms will be 3 years.	Those prohibited from serving are: - Active police officer Members of the board should: 1. reflect the racial, gender, and cultural diversity of the county 2. include representation from communities that experience a higher frequency of interactions with the law 3. include a diversity of experience in community and policing service 4. Subject to a background check 5. File financial disclosure forms as required	Compensation to be determined through the annual budget process	Bill 16-22 (Police Accountability Board) introduced on February 7, 2022. Public Hearing set for March 7, 2022
St. Mary's County	Will be composed of five members, including a	The chairperson shall have experience	Chairperson will get stipend of $3,500 and	PH 3-1-2022

	Chairperson, who will be appointed by the County Commissioners. - Initially 3 members will serve a term of 3 years and 2 will serve a term of 2 years. 3-year terms will be standard after initial terms. No one can serve more than 9 years	relevant to the position. Members shall reflect the racial, gender, and cultural diversity of the county.	other members $2,500	Decision scheduled to be made on March 15, 2022

No information found on:

- Allegany County

- Baltimore County

- Caroline County

- Carroll County

- Cecil County

- Dorchester County

- Garrett County

  - Will be discussed at the Feb 7, 2022 County Commissioner Meeting

- Harford County

- Kent County

- Queen Anne's County

- Somerset County

- Talbot County

  - County Council also held a Work Session on Jan 4 to discuss the creation of a PAB for Talbot County
  - County Council will hold a Work Session with Sheriff Gamble, Towns and Police Chiefs on Tuesday, February 8, 2022 to discuss Maryland House Bill 670, Police Reform and Accountability Act of 2021. - https://talbotcountymd.gov/uploads/File/Council_2022/Transcripts/February%208,%202022%20Council%20Work%20Session%20(Police%20Accountability%20Board).pdf

- Washington County

- Wicomico County

  - Held an open work session on Oct 5 to discuss HB 670 and the PAB/ACC requirements

Worcester County

  - Discussed HB 670 at Nov 16, 2021 Commissioner Meeting