

MONTGOMERY COUNTY'S POLICE ACCOUNTABILITY BOARD

November 10, 2022

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The Honorable Marc Elrich
Montgomery County Executive
101 Monroe Street
Rockville, Maryland 20850

The Honorable Gabriel Albornoz
President, Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear County Executive Elrich and President Albornoz:

The purpose of this letter is to communicate the views of the Police Accountability Board of Montgomery County with respect to [emergency regulations](#) promulgated by the Maryland Police Training and Standards Commission (MPTSC) concerning the government entities created under Maryland Police Accountability Board Act of 2021 known as the Police Accountability Board (PAB) and Administrative Charging Committee (ACC). We are available to meet and work with you as you consider your official response. Thank you in advance for your consideration of our views.

PAB AND ACC Eligibility Requirements

The MPTSC's regulations at .03D(1)(b) and .04D(1)(b) permit local jurisdictions to limit membership on PABs and ACCs to "legal residents or citizens of the United States." It is unclear how the term "legal resident" is intended to be defined and this could be problematic for compliance with the requirements. There is a distinction under immigration laws, for example, between legal permanent residents (green card holders) and those permitted to remain in the country under the DACA program or pursuant to a pending asylum application. Yet, both categories arguably are "legal residents." In addition, immigration status as a criterion is not mandated in the [law](#) enacted by the General Assembly, and therefore was not subject to a racial impact evaluation by the Racial Equity Impact Note ([REIN](#)) unit of the General Assembly. As you know, the mission of REIN is to evaluate the racial impact of criminal justice legislation and to provide an objective assessment of disparities experienced by racial or ethnic groups as unintended result of legislation under consideration by the General Assembly.

For more information on Montgomery County's Police Accountability Board, please visit:

Website: www.mocopab.org

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The faith and confidence of Maryland communities in the work of their local PABs and ACCs is important and is impacted by who is allowed to serve on those bodies. The law establishing PABs and ACCs was enacted in significant part due to racial and ethnic inequities in policing. It is important that a citizenship or legal residency requirement for PAB or ACC membership does not undermine efforts to achieve this goal. If the regulation is retained beyond the “emergency” period, supplemental regulations should be added to welcome and encourage consideration of applicants from a diverse spectrum of racial and ethnic communities.

ACC Fitness Requirements

Under the regulations at .04D(1)(d), any local jurisdiction may limit its ACC members to persons of “good moral character.” The initial “emergency regulation” defined “Good moral character” as meaning “an individual’s behavior, habits, and actions may generally be regarded as being: (a) Honest, ethical, candid, trustworthy, diligent, and fair; (b) Respectful of the law and committed to the administration of justice; and (c) Observant of the rights of other individuals.” At its meeting on September 21, 2022, however, the MPSTC voted to remove the definition of “good moral character” from the regulation. Whether defined or not, a “good moral character” criterion is both vague and dependent on the subjective perspective of the appointing official or officials. It is not difficult to envision scenarios under which terms potential ACC candidates are excluded from applying based on involvement with certain organizations or causes or any life experience deemed not of “good moral character.” Potentially under such criterion, an individual’s criminal history (including a mere arrest without subsequent conviction), social media presence, history of involvement in civil lawsuits, personal or professional associations, or past participation in lawful First Amendment activities could form the basis for preventing someone from joining an ACC.

In addition, at .04D(2) of the regulations, local jurisdictions are permitted to exclude an individual from appointment because either the individual “is under criminal investigation by a law enforcement agency,” “charged with a crime pending before a court,” or “has been convicted of, or has receive probation before judgement for a felony or misdemeanor for which a sentence for one or more years could have been imposed.” Thus, an individual’s criminal history could remove that person from ACC eligibility even absent any conviction. Likewise, an otherwise eligible applicant could or would be precluded from applying if there is evidence of rehabilitation after conviction.

The “fitness” requirement in the regulations frustrates the very purpose and reason for the PAB and ACC’s creation: to empower civilian oversight of policing in order to investigate and adjudicate civilian complaints of inequities in policing and disparate treatment faced by BIPOC persons. This “fitness” regulation could effectively remove from consideration those persons of racial or ethnic groups who historically have experienced disparate treatment by the criminal justice system. The work of an ACC may actually benefit from the insight of those with lived encounters with the criminal justice system, which may be why the legislation creating the ACC’s does not contain such limiting membership rules. Not to be discounted is the possibility that such regulations would exacerbate the public perception that persons returning from incarceration are incapable of trust and are not entitled to full civic participation. In sum, this eligibility criteria risks undermining the very purposes of the legislative reforms intended to address inequities in policing and law enforcement.

Transparency

The regulations at .03D(2) and .04E(1)(c) require individual PAB and ACC members to maintain the confidentiality of “matters and information” considered until “final disposition.” This is unnecessary and frustrates the work and mission of these entities. Indeed, the [State law](#), already provides that ACC members “shall maintain confidentiality relating to a matter being considered by the administrative charging committee until final disposition of the matter.” In addition, both PAB and ACC members are already governed by the [Maryland Public Information Act](#) and must abide by its requirements. Further, Montgomery County employees (which would include PAB and ACC members) are already subject to [local confidentiality provisions](#) that provide “a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public,” or to “use confidential information for personal gain or the gain of another,” among other prohibitions. The reasons for extending the State rule to PABs is also unclear. PABs should be free to make discretionary releases of information in the public interest consistent with existing laws. Indeed, we view it as an essential duty of a PAB to hear from and remain accountable to the community. Providing the community with important informational disclosures from time to time is key to transparency and accountability.

The mandatory confidentiality agreement may also undermine existing public disclosure policies by prohibiting PAB and ACC members from discretionary release of information consistent with existing laws. For example, the Maryland Attorney General has provided [guidance](#) concluding that “records relating to investigations of alleged misconduct by police officers” are no longer protected from disclosure as personnel records under the Maryland Public Information Act.

Moreover, the regulations at .04H(4)(b) mandate that local jurisdictions “remove a [ACC] member who fails to maintain confidentiality” as set forth in the regulations. This requirement is inconsistent with the statutory scheme of local control and operation of the ACC. Montgomery County, for example, already has a robust and transparent [process](#) in its law for removal of PAB or ACC members “by the [County] Executive with the approval of at least 6 members of the [County] Council” for “neglect of duty,” “misconduct in office,” and other criteria.

ACC Member Conflict of Interest and “Self-Reporting”

The regulations at .04G mandate “self-reporting” by ACC members of conflicts of interest, criminal charges, and criminal investigations, or conviction. Montgomery County already possesses [extensive rules and regulations](#) regarding conflicts of interest, and these existing rules are in addition to other current state and local laws intended to promote trust in public officials. The definition of the term “conflict of interest” in the regulations at .01B(5) is also vague and may cause confusion with current clear standards. Under the regulations, “conflict of interest” means “real or seeming incompatibility between an individual’s private interests and the individual’s official responsibilities in a position of trust.” By contrast, already existing local rules for Montgomery County explicitly prohibit participation of public employees (which would include ACC members) in a broad and well-defined list of activities involving the economic interests and property holdings of public employees, affiliation or favoritism with and businesses regulated by or doing business with the County government, and provide regulations concerning the misuse of office, improper influence, outside employment, and receipt of and solicitation of gifts. In addition, under the current existing rules, unlike with respect to the

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MPTSC regulations, ACC members can consult the Montgomery County Ethics Commission for authoritative guidance if a potential conflict of interest situation arises.

The broad self-reporting provision also is concerning because, as noted, past or current personal encounters with law enforcement or the criminal justice system should not disqualify a person from ACC membership or discourage such persons from applying.

Limitations on ACC Charging Authority

The MPSTC's regulations at .07B(4) prohibit ACCs from administratively charging an officer for conduct for which that officer was previously disciplined or sanctioned. This provision would prevent ACCs from addressing new evidence presented by a complainant regarding already sanctioned conduct. This would not be in the public interest. Moreover, the phrase "previously disciplined or sanctioned" is undefined and is so broad that it is unclear whether any type of law enforcement agency internal sanction or reprobation may prevent the full review of the underlying conduct. This would not contribute to community trust of police and would undermine the complaint-based process established under State law.

Sincerely yours,

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Bishop Paul L. Walker, Sr.
Montgomery County Police Accountability Board Chair