



Testimony for the Baltimore City Council Rules and Legislative Oversight Committee

Council Bill 22-0234 An Ordinance Concerning Police Accountability

Wednesday, May 18, 2022

During the 2021 legislative session, the General Assembly passed the Maryland Police Accountability Act of 2021, which requires each jurisdiction in Maryland to establish a Police Accountability Board, tasked with reviewing complaints from the public and appointing members to the Administrative Charging Committee and internal police department trial boards, among other responsibilities.

The expressed aim of this law was to create new systems of accountability, transparency, and discipline for law enforcement officers in the state. The bill presented to the council, Council Bill 22-0234, outlines Baltimore City's iteration of the Police Accountability Boards (PAB) described in the MPIA. However, the bill lacks the provisions necessary to create accountability and transparency. In order to honor the intent of the MPIA and create a PAB that is truly representative of the Baltimore City residents, the ACLU of Maryland recommends the following amendments.

- 1. Ensure PAB membership is representative of the city and prioritizes residents most directly impacted by corrupt policing. Eliminate arbitrary exclusions that bar certain individuals from board membership.**

In terms of membership criteria, the emphasis should be on requiring members 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. Additionally, in order to represent the landscape of policing in the city, membership should prioritize community residents most directly impacted by corrupt policing.

We take particular issue with the requirements that PAB members be legal residents or citizens, and the disqualification of those who have served time for certain prior convictions. Police officers are responsible for serving *ALL* residents in the community, regardless of their immigration status or previous encounters with the criminal justice system. These restrictions exclude a large portion of residents from being able to fully participate in the community oversight process. The exclusion of certain individuals based on immigration status and past criminal

history is arbitrary and challenges the legitimacy of a supposedly representative body.

Similarly, youth interactions with the police are significant. The requirement that members be at least 21 years old is unnecessary if they meet the broader qualifications. Once again, this requirement is arbitrary. We would suggest the age restriction be lowered to at least 18 years of age, if not 16.

The PAB, which is meant to provide a form of institutional accountability to the public, should be truly representative of the public. Those individuals excluded from board membership are not excluded from law enforcement interaction. As such, they should not be barred from participating in the oversight process.

Additionally, it is antithetical to the principle of community oversight to allow former law enforcement officers and family members of law enforcement officers to serve on the PAB. They should be excluded from PAB membership.

2. The PAB chair should be elected solely by the PAB membership itself as has been done in other jurisdictions.

The responsibilities of the chair are significant and include sitting on the Administrative Charging Committee and deciding when the board meets. The council bill states that the mayor will be responsible for appointing the chair and PAB members will be allowed to elect a vice-chair. We recommend that, in an effort to promote accountability and democratic practices within the board, they be elected by the board members themselves.

3. Allow Public access to the PAB's recommendations presented to the City.

One of the major goals of the MPIA was to create trust between community members and law enforcement. While the PAB is charged with sharing its findings and recommendations with the Mayor and Council, we recommend that, in the spirit of transparency, recommendations be made available to the broader public, once finalized. This could be done either through an annual report or quarterly summaries of finalized investigations made available online.

4. Independent legal counsel must be hired to assist the PAB.

A municipal attorney's dual representation of the municipality and the municipality's civilian oversight agency signals a clear conflict of interest. We have seen how a lack of access to independent counsel has hampered oversight efforts in Baltimore City in the past.

Since its inception, the city's Civilian Review Board has had to obtain legal counsel support from the city solicitor's office, the same legal counsel used to defend BPD against allegations of misconduct. This made it extremely difficult for the CRB to

ensure their investigations are adequate and their findings responsibly available to the public. The public witnessed this play out in the summer of 2018 when the city solicitor's office tried to force the Civilian Review Board to sign a confidentiality agreement out of concern that their findings would be public and damaging to BPD. The GTTF report and the DOJ consent decree make it clear that this type of inherently limited legal support made it needlessly difficult for the CRB to hold police accountable, inform the public, and focus on their responsibilities. Without access to independent legal support, these issues are bound to continue under the new oversight body.

An effective oversight board simply cannot be represented by the same counsel that represents the Baltimore Police Department. The Police Accountability Board must have access to independent counsel in order to avoid conflicts of interest encountered by the Civilian Review Board.

5. Compensate board members appropriately so they can effectively fulfill the role.

Per the MPIA and CB 22-0234, the Police Accountability Board's mandate is robust and will require considerable time and effort from board members. In order to fulfill their responsibilities, members will likely have to meet more often than the required quarterly meetings. Without compensation, only those with the financial means to give their time will be able to participate. This excludes much of Baltimore's populace who live paycheck to paycheck and often work multiple jobs. In order for the PAB to be a truly representative body, these barriers to entry must be eliminated through adequate compensation.

6. Remove language related to the Administrative Charging Committee.

The membership and structure is already described within HB 670 and is unnecessary.

The addition of these amendments will reflect some of the critical features of a board that will advance the goals of accountability, transparency and trust within the community. With the July 1st deadline approaching, it is imperative that the council takes these community backed recommendations seriously. Considering the overwhelming lack of trust in law enforcement and the routine failure of law enforcement accountability mechanisms in the city, the need for a robust Police Accountability Board cannot be understated.

The aforementioned amendments present a viable and promising path forward for law enforcement oversight. Moreover, they are supported by community members and individuals directly impacted by rampant police misconduct. We respectfully request that these amendments are included in the final bill.