



**Testimony for the Baltimore City Council Rules and Legislative Oversight
Committee**

Council Bill 22-0234 An Ordinance Concerning Police Accountability

Monday, June 27, 2022

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 Maryland Police Accountability Act of 2021 (MPAA). We are pleased to see that the Council has accepted many of the community-backed recommendations proposed by activists and impacted individuals. However, this bill still lacks many of the provisions necessary to create accountability and transparency. In order to honor the intent of the MPAA 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 provisions that allow former law enforcement officers to serve on the board.**

We appreciate the inclusion of a number of amendments supported by advocates. In eliminating arbitrary barriers to membership, the Counsel has enabled the PAB to serve as a truly representative body. However, in order to accurately represent the landscape of policing in the city, membership must specifically prioritize community residents most directly impacted by corrupt policing. The creation of trust between law enforcement and the community is incumbent upon the inclusion of those who have witnessed, first hand, the endemic misconduct and lack of accountability within Baltimore City's law enforcement agencies. Additionally, knowledge from individuals with such experiences would be an invaluable asset to the board. The PAB, which is meant to provide a form of external institutional accountability to the public, should be truly representative of the public and their experiences in overpoliced areas.

Additionally, we remain steadfast in our opposition to the inclusion of former police officers on the board. It is antithetical to the principle of community oversight to allow former law enforcement officers and family members of current law enforcement officers to serve on the PAB. As noted by advocates in the recent public hearing on the bill, even the inclusion of a provision that stipulates the former officer must have retired in good standing or with no "sustained" allegations of

serious misconduct is not sufficient. Due to longstanding issues with police accountability, less than 5% of police misconduct complaints have actually been sustained, such labels may not actually be reflective of the former officer's conduct during their employment.¹ Additionally, while we understand the desire to include a variety of points of view on the board, the PAB will have ample ability to receive such insight during their meetings with heads of law enforcement. In order to protect the integrity of the board, former law enforcement officers should be excluded from PAB membership.

We also recommend refining language that bars certain individuals from continuing to serve on the board after a conviction for a felony or a crime relevant to their credibility prior to the completion of their penalty and sentence. As written, it is unclear what crimes would be considered relevant to the member's credibility. The removal of a member is serious and, as such, the grounds for removal should be precise.

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

As it stands, the bill is silent on the issue of independent legal counsel. Council members have suggested pursuing this provision through a charter amendment or state legislation. We have no preference on the manner in which this essential provision is implemented. However, in the interim, we recommend that a Memorandum of Understanding (MOU) be established to allow the PAB to hire independent counsel. 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.

¹ US Department of Justice Investigation of the Baltimore City Police Department (2016), p. 146

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

3. Guarantee compensation for 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.

4. Remove language related to the Administrative Charging Committee.

HB 670 already sets forth guidelines for ACC membership and structure. The membership requirements in the proposed bill are far too prescriptive, restricting membership to a small portion of the population with incredibly specific qualifications. Current membership qualifications would bar many people with relevant lived *and* professional experience from serving. Such barriers are contrary to public trust and challenge the efficacy and legitimacy of the committee.

The Counsel has made significant headway in their effort to establish an empowered Police Accountability Board. We appreciate the Council's willingness to work with advocates. With the July 1st deadline approaching, it is imperative that the council takes these additional community backed recommendations. 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. The ACLU of Maryland respectfully requests that these amendments are included in the final bill.