



Committee: PS
Committee Review: At a future date
Staff: Robert H. Drummer, Senior Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #PoliceAccountabilityBoard

AGENDA ITEM #15
January 18, 2022
Public Hearing

SUBJECT

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

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

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- To receive testimony – no vote expected

DESCRIPTION/ISSUE

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

SUMMARY OF KEY DISCUSSION POINTS

- How many members should the PAB have, how should they be appointed, what qualifications should the PAB and ACC members have, how should the staff be provided, and what should be the compensation for the PAB and the ACC.

This report contains:

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Economic Impact Statement	© 28
Racial Equity and Social Justice Impact Statement	© 30
Testimony	
Heidi Rhodes	© 38
Ilhan Cagri	© 41

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M E M O R A N D U M

January 13, 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: Public Hearing 2 -To receive testimony – No vote expected

Bill 49-21, Police - Police Accountability Board – Administrative Charging Committee – Established, with Lead Sponsor Council President Alborno on behalf of the County Executive, was introduced on December 14, 2021. A public hearing was held on January 11 with 5 speakers. A second public hearing is tentatively scheduled for January 18 at 7:30 pm. A Public Safety Committee worksession is tentatively scheduled for January 24 at 9:30 am.¹

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 ©11. 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 agreements between the Executive and the Fraternal Order of Police and the Executive and MCGEO covering deputy sheriffs expire on June 30, 2023. 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

¹#PoliceAccountabilityBoard

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 officer employed by the County Police Department or the County Sheriff's Department. This State law expressly preempts the County from altering the new disciplinary system.³

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, a civilian selected by the PAB, and a police officer of equal rank to the officer being charged. 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 would create a 5-member PAB nominated by the Executive and confirmed by the Council. The members of the PAB and the ACC must be County residents 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.

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

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 HB 670 includes other significant provisions concerning police officers that is not directly relevant to the new State-wide disciplinary system.

adjusted for changes in the consumer price index.⁴ 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.

OLO concluded that Bill 49-21 would have an insignificant impact on economic conditions in the County (©28). 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 ©30. 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 (©38), and Ilhan Cagri, representing Muslim Voices Coalition (©41), each opposed the Bill because they believe the Bill would require all of the civilian members of the PAB and the ACC to have policing experience.⁵ 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.

This packet contains:	<u>Circle #</u>
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⁴ These salaries are consistent with the salaries provided for members of the County Board of Appeals.

⁵ 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.

Expedited Bill No. 49-21
Concerning: Police – Police
Accountability Board – Administrative
Charging Committee - Established
Revised: 12-08-21 Draft No. 4
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

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

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:

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

2 **ARTICLE IV. POLICE DISCIPLINE**

3 **35-23. Definitions.**

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

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

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

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

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

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

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

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

25 Police Accountability Board or Board means the Police Accountability Board
 26 for the County established in Section 35-24 pursuant to Section 3-102 of the
 27 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 voting members of the Board, including the Chair, subject to confirmation by the Council.

(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.

(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.

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

(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;

(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;

(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, 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.

- (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 one time each month or as 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.

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.

Approved:

Gabriel Albornoz, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Selena Mendy Singleton, Esq., Clerk of the Council

Date

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:	To be requested.
ECONOMIC IMPACT:	To be requested.
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.

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

3 (2) A VIOLATION OF A CRIMINAL STATUTE; AND

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

6 ~~(H)~~ (H) “POLICE OFFICER” HAS THE MEANING STATED IN § 3-201 OF THIS
7 TITLE.

8 ~~(I)~~ (I) “SERIOUS PHYSICAL INJURY” HAS THE MEANING STATED IN §
9 3-201 OF THE CRIMINAL LAW ARTICLE.

10 ~~(J)~~ (J) “SUPERIOR GOVERNMENTAL AUTHORITY” MEANS THE
11 GOVERNING BODY THAT OVERSEES A LAW ENFORCEMENT AGENCY.

12 ~~(K)~~ (K) “UNFOUNDED” MEANS THAT THE ALLEGATIONS AGAINST A
13 POLICE OFFICER ARE NOT SUPPORTED BY FACT.

14 3-102.

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

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

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

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

25 ~~(1) NOTIFY THE INDEPENDENT INVESTIGATIVE AGENCY OF ANY~~
26 ~~ALLEGED OR POTENTIAL SHOOTING INVOLVING A POLICE OFFICER OR ANOTHER~~
27 ~~INCIDENT INVOLVING THE USE OF PHYSICAL FORCE BY A POLICE OFFICER CAUSING~~
28 ~~DEATH OR SERIOUS PHYSICAL INJURY AS SOON AS THE LAW ENFORCEMENT AGENCY~~
29 ~~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.

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

4 1. ESTABLISH THE MEMBERSHIP OF A POLICE
5 ACCOUNTABILITY BOARD;

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

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

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

12 (ii) AN ACTIVE POLICE OFFICER MAY NOT BE A MEMBER OF A
13 POLICE ACCOUNTABILITY BOARD.

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

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

19 (i) THE NAME OF THE POLICE OFFICER ACCUSED OF
20 MISCONDUCT;

21 (ii) A DESCRIPTION OF THE FACTS ON WHICH THE COMPLAINT
22 IS BASED; AND

23 (iii) CONTACT INFORMATION OF THE COMPLAINANT OR A
24 PERSON FILING ON BEHALF OF THE COMPLAINANT FOR INVESTIGATIVE
25 FOLLOW-UP.

26 (2) A COMPLAINT NEED NOT:

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

29 ~~(ii) BE NOTARIZED OR SWORN TO UNDER THE PENALTY OF~~
30 ~~PERJURY.~~

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

4 ~~3-104.~~ 3-103.

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

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

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

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

14 (III) CONTACT INFORMATION OF THE COMPLAINANT OR A
15 PERSON FILING ON BEHALF OF THE COMPLAINANT FOR INVESTIGATIVE
16 FOLLOW-UP.

17 (2) A COMPLAINT NEED NOT:

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

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

22 ~~3-105.~~ 3-104.

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

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

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

~~(H) 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;~~

~~(HH) 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;~~

~~(H) 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;

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

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

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

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

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

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

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

17 (E) AN ADMINISTRATIVE CHARGING COMMITTEE SHALL:

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

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

23 (I) ADMINISTRATIVELY CHARGED; OR

24 (II) NOT ADMINISTRATIVELY CHARGED;

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

28 (4) REVIEW ANY BODY CAMERA FOOTAGE THAT MAY BE RELEVANT TO
29 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.

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

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

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

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

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

17 (I) PROVIDED A COPY OF THE INVESTIGATORY RECORD;

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

19 AND

20 (III) NOTIFIED OF THE DISCIPLINARY ACTION BEING
21 RECOMMENDED.

22 ~~3-107.~~ 3-106.

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

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

29 (B) A TRIAL BOARD SHALL BE COMPOSED OF:

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

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

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

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

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

15 (1) A VICTIM'S IDENTITY;

16 (2) THE PERSONAL PRIVACY OF AN INDIVIDUAL;

17 (3) A CHILD WITNESS;

18 (4) MEDICAL RECORDS;

19 (5) THE IDENTITY OF A CONFIDENTIAL SOURCE;

20 (6) AN INVESTIGATIVE TECHNIQUE OR PROCEDURE; OR

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

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

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

26 ~~(1) TESTIFY;~~

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

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

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

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

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

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

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

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

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

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

20 ~~3-108.~~ 3-107.

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

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

27 (3) A POLICE OFFICER WHO IS SUSPENDED WITHOUT PAY UNDER
28 THIS SUBSECTION IS ENTITLED TO RECEIVE BACK PAY IF AN ADMINISTRATIVE
29 CHARGING COMMITTEE DETERMINES NOT TO ADMINISTRATIVELY CHARGE THE
30 POLICE OFFICER IN CONNECTION WITH THE MATTER ON WHICH THE SUSPENSION IS
31 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.

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

3 (1) RECEIVES A PROBATION BEFORE JUDGMENT ~~FOR:~~ FOR

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

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

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

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

9 2. MISDEMEANOR SECOND DEGREE ASSAULT; OR

10 ~~(4)~~ 3. A MISDEMEANOR INVOLVING DISHONESTY, FRAUD,
11 THEFT, OR MISREPRESENTATION.

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

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

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

27 (II) IF A POLICE OFFICER IS REQUIRED TO SUBMIT TO A
28 POLYGRAPH EXAMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE
29 RESULTS OF THE POLYGRAPH EXAMINATION ARE NOT ADMISSIBLE OR
30 DISCOVERABLE IN A CRIMINAL OR CIVIL PROCEEDING AGAINST THE POLICE
31 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 POLICE — POLICE ACCOUNTABILITY BOARD — BILL 49-21: 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.

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- **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.

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- ***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

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- 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)

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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

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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 of 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.

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- 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 Lens 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

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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 McElhiney 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

**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:

Lack of Community Input

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.

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