

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 972

(Senator Carter)

Judicial Proceedings

**Baltimore City - Community Oversight and Accountability Commission of
Baltimore City**

This bill repeals the Civilian Review Board of Baltimore City and establishes the Community Oversight and Accountability Commission of Baltimore City. The bill establishes the membership, duties, powers, jurisdiction, and staff for the commission and mandates an appropriation in the annual city budget to fund the commission. In addition, the bill modifies the Law Enforcement Officers' Bill of Rights (LEOBR), sets forth requirements for law enforcement agencies, and establishes a criminal offense and related penalties for specified actions relating to the work of the commission.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for the Judiciary. Potential increase in general fund and special fund expenditures from increased litigation and damages awarded as a result of the bill; affected State law enforcement agencies can otherwise implement the bill with existing resources. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Baltimore City expenditures increase by a net of \$9.5 million in FY 2021 and by a net of \$12.8 million annually thereafter due to the mandated appropriation for the commission and the repeal of the review board. Affected local law enforcement agencies can implement the bill with existing resources. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Community Oversight and Accountability Commission of Baltimore City

Establishment

The commission is established as a permanent, statutory agency in Baltimore City to (1) conduct investigations into incidents of alleged police misconduct that occur in the city in a fair and timely manner; (2) identify and address patterns of police misconduct; and (3) make recommendations for improving the policies and operations of law enforcement units to reduce incidents of police misconduct.

A member of the commission may not be a current employee of a municipal, county, State, or federal law enforcement agency, and specified members must be a resident of Baltimore City.

The commission's offices may not be located in the same building or structure as the offices or facilities of a law enforcement unit or the offices of a unit of Baltimore City government.

Appropriation

The annual city budget must include an appropriation for funding for the commission that is not less than 2.5% of the appropriation included in the budget for the Baltimore Police Department (BPD).

Staff

The commission must employ an executive director and staff sufficient to carry out the bill's provisions. The executive director must be hired by the commission. The executive director and individuals employed by the executive director may be terminated from employment with the commission, as specified.

The commission must also employ an attorney to advise and represent the commission in investigations, enforce and defend against subpoenas, and formulate the rules and procedures for the administration of the commission.

Individuals employed by the commission:

- must receive training on issues within the commission's jurisdiction;

- if employed to conduct investigations, may not have been employed by a municipal, county, state, or federal law enforcement agency within five years before becoming employed by the commission; and
- may not simultaneously be employed by any other governmental unit or agency.

Jurisdiction

The jurisdiction of the commission extends to misconduct involving abusive language, false arrest, false imprisonment, harassment, use of excessive force, coercion, improper search and seizure, unlawful denial of access to counsel, and patterns and practices of misconduct.

Duties and Powers

The commission has numerous duties and powers regarding the investigation of alleged police misconduct and must:

- receive, register, and review all complaints within its jurisdiction made against police officers;
- conduct investigations relating to any incident within its jurisdiction, as specified;
- provide a copy of any complaint made against a police officer to the law enforcement unit that employs the police officer;
- make recommendations to the chief of a law enforcement unit relating to any disciplinary or other remedial action against a police officer employed by the law enforcement unit whom the commission finds to have committed misconduct within its jurisdiction;
- make recommendations to the chief of a law enforcement unit relating to the law enforcement unit's policies, practices, programs, and training to eliminate misconduct; and
- address and engage with the personnel of a law enforcement unit and members of the community to provide information regarding the commission's mission, policies, and ongoing operations.

The commission may:

- subject to limitations under State and federal law, access any information or documents in the possession or under the control of a law enforcement unit or a unit of city government relating to a matter within the commission's jurisdiction or mandate, as specified;

- conduct an investigation into any matter within its jurisdiction concurrent to any active criminal investigation or proceeding relating to the matter under investigation by the commission; and
- refer the results or information from any investigation conducted under the bill's provisions to an appropriate law enforcement or prosecutorial agency for review and prosecution.

The commission has the power to sue and to be sued in its own name, enter into contracts, hire and set wages for commission staff, adopt, and carry-out procedures for the discipline of commission employees, and to adopt reasonable and proper regulations to carry out the bill's provisions.

Complaint

A complaint must be made within 366 days after the alleged misconduct of a police officer. A person may file a complaint alleging misconduct of a police officer at specified locations and entities. Specified entities that receive a complaint must retain a copy of the complaint and forward it to the commission within 48 hours of receipt. The Secretary of the commission must assign a specified number to each complaint, send a copy to each member of the commission within 48 hours, and maintain a record of each complaint.

The complaint must include specified information, and the procedures developed for complaints must allow for (1) anonymous complaints and (2) complaints to be received using a variety of communication methods, including in person, by mail, by telephone, and by Internet.

Investigations and Recommendations

The bill establishes requirements relating to investigations by the commission and authorizes the commission to conduct hearings, administer oaths and affirmations, issue process to compel the attendance of witnesses and the production of evidence, and require a person to testify and produce evidence, as specified. The commission is authorized to investigate, simultaneously with the Internal Investigative Division (IID), each complaint it determines appropriate and report its findings to IID.

Within 30 days after completing an investigation, the commission must issue a final summary report determining if a complaint is sustained, is not sustained, or is unfounded. If a complaint is sustained, the commission must recommend disciplinary or remedial action against the police officer. A copy of the final report must be sent to the person who made the complaint, IID, and the chief of the law enforcement unit that employs the police officer. The commission may review all disciplinary records and

complaints made against a police officer if a final summary report of the commission determines that a complaint made against the officer is sustained.

The commission must be the custodian of all records of investigations, as specified.

Policy Recommendations

If the commission issues a recommendation to a law enforcement unit regarding a policy, program, or practice of the unit, the chief must respond to the commission's recommendation within 60 days, as specified.

Reporting Requirements and Posting Information on Website

The commission must make all final summary reports, as well as recommendations regarding policies, programs, or practices of law enforcement units, publicly available on a website maintained by the commission. The commission must redact information from final summary reports to the extent required by State law.

The commission also must prepare and publish on its website and submit to the Baltimore City Council, the Mayor, and the chief of each law enforcement unit, biannual statistical reports and an annual statistical report regarding complaints processed under the bill. In addition, the commission must develop and implement a public education and information program to inform the public about matters within the jurisdiction of the commission.

The commission may not make investigative records or reports containing personally identifying information publicly available.

Criminal Offenses

A person may not (1) retaliate against, punish, intimidate, discourage, threaten, or penalize another for making complaints, providing testimony, or cooperating with the commission, as specified; (2) knowingly refuse to comply with a subpoena issued by the commission; (3) knowingly interfere with or obstruct an investigation conducted by the commission; or (4) knowingly make a false statement, report, or complaint to the commission or a representative of the commission. A violator is guilty of a misdemeanor and, on conviction, subject to maximum penalties of imprisonment for six months and/or a \$500 fine.

Requirements for Law Enforcement Units and Other Government Employees/Officials

A law enforcement unit must (1) maintain posters in all law enforcement stations and elsewhere throughout the city to explain the procedure for filing a complaint with the

commission and (2) explain the commission's complaint procedures to all police officers, as specified.

A police officer, an employee of a law enforcement unit, a public official, or a government employee must cooperate with requests made by the commission in relation to an investigation conducted pursuant to the bill. Failure to do so subjects the individual to specified discipline procedures.

Rights not Abrogated

The procedures established under the bill's provisions relating to the commission may not be construed to (1) abrogate any constitutional, statutory, or common law right of a police officer against whom a complaint is filed or the complaints, investigators, or witnesses who participate in the complaint procedure or (2) affect or change the methods or procedures for suspension or dismissal of police officers.

A police officer may not be penalized or affected adversely in any way as a result of the procedures established under the bill's provisions relating to the commission without having been first afforded proper written notice of the charges lodged against the officer and the right to a hearing before the Police Trial Board in accordance with due process of law.

Law Enforcement Officers' Bill of Rights

For purposes of LEOBR, in Baltimore City, the investigating officer for an investigation or interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal, may be an investigator of the commission.

A law enforcement officer may not have *any* record of a formal complaint made against the law enforcement officer expunged. In addition, evidence of a formal complaint against a law enforcement officer may be admissible in an administrative or judicial proceeding.

Definitions

"Law enforcement unit" means:

- BPD;
- the Baltimore City School Police;
- the Baltimore City Sheriff's Office;
- the Baltimore Environmental Police;

- the police force of the Baltimore City Community College;
- the police force of Morgan State University; or
- the police department established by the Johns Hopkins University.

“Police officer” means a member of a law enforcement unit who is authorized to make arrests or a member a law enforcement unit who is authorized to make arrests in Baltimore City, while on duty or while the officer is off duty but performing activities that are within the scope of the officer’s official duties.

Current Law:

Civilian Review Board of Baltimore City

Chapter 197 of 1999 established the Civilian Review Board of Baltimore City as a permanent, independent agency in Baltimore City that is authorized to process complaints lodged by members of the public who allege abusive language, false arrest, false imprisonment, harassment, or excessive force by members of BPD. The board may also review police department’s policies and make recommendations to the police commissioner. The board may issue subpoenas to compel the production of records. The following police agencies fall under the jurisdiction of the board: BPD; the Baltimore City School Police; the Housing Authority Police of Baltimore City; the Baltimore City Sheriff’s Department; the Baltimore City Watershed Police Force; the police force of the Baltimore City Community College; and the police force of Morgan State University.

Law Enforcement Officers’ Bill of Rights

LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies but does not extend to any correctional officers in the State. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. LEOBR requirements are much more restrictive and time consuming than general State personnel requirements under Title 11 of the State Personnel and Pensions Article. Specifically, LEOBR delineates who can do the investigation, what management must disclose to the employee, and when and where the meeting can take place; it also limits the duration of the meeting.

Background: Although BPD is a State agency, the State does not control the appointment or removal of the police commissioner and is not responsible for providing funding for the

operations of the police department. However, the State retains the ability to amend the law relating to the department in order to implement policy changes.

State Expenditures: General fund expenditures increase minimally for the Judiciary. In addition, special fund and general fund expenditures may increase as a result of increased litigation and payments of claims filed under the Maryland Tort Claims Act (MTCA) from the State Insurance Trust Fund (SITF). The extent to which this occurs cannot be reliably determined at this time and depends on actual case volume and the value of claims.

Judiciary

The bill authorizes service of subpoenas by the commission and establishes a criminal offense and penalties. Although a reliable estimate of the number of subpoenas that will be issued or the number of criminal cases that will result from the bill cannot be determined, it is unlikely that the requirement will increase expenditures for the Judiciary more than minimally.

Claims Against the State

The Treasurer's Office, which administers SITF, advises that the bill may result in an increase in MTCA claims and associated expenses. According to the Treasurer's Office, the most likely scenario under which a claim may be filed is if more people file notices of claims against the State due to findings by the commission that sustain complaints of police misconduct. An increase in the number of claims may result in increased payments and higher court verdict amounts for appropriate claims.

MTCA limits State liability to \$400,000 to a single claimant for injuries arising from a single incident. In actions involving malice or gross negligence or actions outside of the scope of the public duties of the State employee, the State employee is not shielded by the State's color of authority or sovereign immunity and may be held personally liable. General fund expenditures may increase for State agencies that experience increased SITF assessments as a result of the bill.

Affected State Law Enforcement Agencies

It is assumed that Baltimore City Community College and Morgan State University can otherwise implement the bill with existing resources.

Local Expenditures: The bill requires that the annual city budget include an appropriation for funding for the commission that is not less than 2.5% of the appropriation included in the budget for BPD. The fiscal 2020 Baltimore City appropriation for BPD is approximately \$536 million; thus, Baltimore City expenditures increase by an estimated \$10.1 million in fiscal 2021 (due to the bill's October 1, 2020 effective date) and by an

estimated \$13.4 million annually thereafter to fund the commission. This estimate assumes that the appropriation for the commission remains constant over time. It is assumed that this level of appropriation for the commission is more than sufficient to hire the required staff and to conduct the work of the commission.

Based on the fiscal 2021 budget of the Civilian Review Board of Baltimore City, expenditures of \$479,250 (due to the bill's October 1, 2020 effective date) and \$639,000 annually thereafter are no longer incurred due to the repeal of the board. (This assumes that in the absence of the bill, the board's costs remain constant over time.)

In addition, the bill may result in an increase in claims against the city. The Local Government Torts Claim Act (LGTCA) is the local government counterpart to MTCA. LGTCA limits the liability of a local government to \$400,000 per individual claim and \$800,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions (including intentional and constitutional torts).

It is assumed that affected local law enforcement agencies can implement the bill with existing resources.

Additional Information

Prior Introductions: SB 843 of 2019, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Baltimore City; Maryland Commission on Civil Rights; Maryland State Treasurer's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Morgan State University; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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mr/lgc

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