

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 843

(Senator Carter, *et al.*)

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 establishes the Community Oversight and Accountability Commission of Baltimore City Advisory Board, establishes the membership and purpose of the board, sets forth requirements for law enforcement agencies, and establishes a criminal offense and related penalties for specified actions relating to the commission.

Fiscal Summary

State Effect: Minimal increase in general fund (and other) expenditures and significant operational effects for State law enforcement agencies. Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Baltimore City expenditures increase by \$18.7 million in FY 2020 and by \$24.9 million annually thereafter due to the mandated appropriation for the commission and the repeal of the review board. Local law enforcement agencies in Baltimore City may also incur minimal costs. 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.

Appropriation

The annual city budget must include an appropriation for funding for the commission that is not less than 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 nominated by the city council and confirmed by the mayor. The executive director must be an attorney with specified abilities, experience, commitment, knowledge, and history. The executive director and individuals employed by the executive director may be terminated from employment with the commission, as specified.

Specified individuals employed by the commission:

- must receive training on issues within the commission's jurisdiction;
- may not have been employed by a municipal, county, state, or federal law enforcement agency within 10 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 any misconduct committed by a police officer, including misconduct involving abusive language, false arrest, false imprisonment, harassment, use of excessive force, or violation of any official rule, procedure, policy, order, or requirement of law. The bill requires that the commission have sole investigative authority over all matters within its jurisdiction.

Duties and Powers

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

- receive and register all complaints made against police officers;
- conduct investigations relating to specified incidents;
- investigate misconduct committed by a police officer, even when no complaint has been made to the commission, if the commission has reasonable suspicion to believe that misconduct has occurred;
- review documents, testimony, or other information relating to any lawsuit, 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, including misconduct involving the violation of any rule, procedure, policy, order, or requirement of law;
- 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;

- 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;
- review documents, testimony, or other information relating to any criminal proceeding in which a police officer is alleged to have engaged in misconduct;
- reopen any closed commission investigation, under specified circumstances;
- 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.

In addition, the commission must develop and implement procedures allowing a person to make a complaint alleging misconduct of a police officer to the commission. The procedures 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.

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 regulations to carry out the bill's provisions.

The commission has the power to issue subpoenas. If a person fails to comply with a subpoena from the commission, the failure may be reported to the circuit court for Baltimore City for hearing and appropriate relief. A person may have an attorney present during any contact with the commission.

Investigations and Recommendations

The bill establishes requirements relating to investigations by the commission. Generally, the commission must complete an investigation of alleged or suspected misconduct and issue a final summary report based on the commission's findings within 90 days after the earlier of receiving a complaint or initiating an investigation. If the commission is unable to do so, specified notification requirements apply.

Within 30 days after completing an investigation, the commission must issue a final summary report determining if a complaint is sustained, is not sustained, is unfounded or was resolved through mediation. 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, the subject of the complaint,

counsel for the police officer who is the subject of the investigation, and the chief of the law enforcement unit that employs the police officer.

For a complaint that does not involve an allegation that a police officer was involved in the use of excessive force against a person resulting in injury or death, the commission may, in its discretion, refer the complaint for mediation between the police officer and the complainant, as specified.

Appeal Rights after Disciplinary Recommendation

If the chief of the law enforcement unit that employs the police officer notifies the commission that the chief intends to take no action or intends to take action that is less severe than the action that the commission has recommended, within 30 days after receiving notice from the chief, the commission may file a complaint with the Office of Administrative Hearings (OAH) seeking to compel the chief to implement the recommended discipline or remedial action.

Within 60 days after a complaint is made by the commission, OAH must schedule and conduct a hearing at which witness testimony and other evidence may be provided. Within 90 days after the conclusion of the last hearing on the matter, OAH must issue a finding of facts and a decision, as specified.

A party that is aggrieved by the decision of OAH may appeal the decision to the circuit court.

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 quarterly statistical reports and an annual statistical report regarding complaints processed under the bill.

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

Community Oversight and Accountability Commission of Baltimore City Advisory Board

The bill establishes an advisory board related to the commission. The stated purpose of the advisory board is to provide advice and recommendations to the commission and otherwise act as authorized.

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, is subject to imprisonment for at least 30 days and no more than six months and/or a fine of at least \$1,000 and no more than \$5,000. The court may not suspend any part of the mandatory minimum sentence of 30 days.

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; (2) explain the commission's complaint procedures to all police officers, as specified; and (3) ensure that any collective bargaining agreement is consistent with the bill's provisions.

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.

Definitions

“Law enforcement unit” means any police department, bureau, or agency established by State statute with its headquarters located in Baltimore City, an entity operating in Baltimore City that employs a special police officer, or:

- BPD;
- the Baltimore City School Police;

- the Housing Authority of Baltimore City Police;
- the Baltimore City Sheriff's Department;
- the Baltimore City Watershed Police Force;
- the police force of the Baltimore City Community College; or
- the police force of Morgan State University.

“Police officer” means a member of a law enforcement unit who is authorized to make arrests; a member of any State, county, or municipal police department who is authorized to make arrests, while acting in an official capacity in Baltimore City; or a special police officer, while acting in an official capacity in Baltimore City.

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

The 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.

Special Police Officer

Under the Public Safety Article, the Governor may appoint and deputize an individual as a special police officer. Such a commission is granted arrest powers, but the scope of each commission is limited to the property cited in the commission. A special police officer, unless on detective duty, must wear a uniform that gives notice that the special police officer is a special police officer, rather than a law enforcement officer.

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 and State expenditures (multiple fund types) increase minimally for other State agencies with law enforcement units or who employ special police officers subject to the bill's provisions.

Judiciary

The Judiciary employs special police officers within Baltimore City who are subject to the bill's provisions; therefore, training is necessary for those affected employees to ensure compliance. Training costs are likely minimal.

In addition, 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.

State Law Enforcement Agencies

In January 2019, Governor Hogan announced a violent crime joint operation center in Baltimore City that would target gangs and in which 200 officers from 16 agencies would operate and assist. Although the specific agencies with officers operating within the center are unknown, all such officers would be subject to the bill's provisions. Under current law, officers employed by State law enforcement agencies are subject to LEOBR and internal agency policies; however, under the bill, any agency with officers operating within Baltimore City would be subject to the bill's provisions. In addition, several agencies with law enforcement units are headquartered in Baltimore City or regularly operate within the city.

Although State expenditures (multiple fund types) for agencies with affected law enforcement units likely increase minimally as a result of the bill, affected State law

enforcement agencies likely incur significant operational impacts due to the requirements that they:

- place and maintain posters in all law enforcement unit stations and elsewhere throughout the city to explain the procedure for filing a complaint with the commission;
- explain the commission's complaint procedures to all police officers in a general order to be included in the manual of rules and procedures of the law enforcement unit and incorporated in the training program for new police officers; and
- ensure that any collective bargaining agreement between the law enforcement unit and the police officers employed in the law enforcement unit is consistent with the provisions of the bill.

Office of Administrative Hearings

OAH advises that the bill's requirements can be handled with existing budgeted resources.

Local Expenditures: The bill requires that the annual city budget include an appropriation for funding for the commission that is not less than 5% of the appropriation included in the budget for BPD. The fiscal 2019 Baltimore City appropriation for BPD is approximately \$510 million; thus, Baltimore City expenditures increase by an estimated \$19.1 million in fiscal 2020 (due to the bill's October 1, 2019 effective date) and by an estimated \$25.5 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 staff and to conduct the work of the commission. For contextual purposes, Baltimore City advises that the annual budget for BPD's Crime Laboratory is approximately \$18 million.

Based on the fiscal 2018 budget of the Civilian Review Board of Baltimore City, expenditures of \$463,414 (due to the bill's October 1, 2019 effective date) and \$617,885 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.)

Affected local law enforcement agencies may also incur costs and operational effects similar to that described above for affected State law enforcement agencies.

The bill authorizes an appeal of a decision by OAH to the circuit court of Baltimore City. Although a reliable estimate of the number of cases that will be appealed to the circuit court cannot be determined, it is unlikely that such cases will have more than a minimal impact on circuit court operations or expenditures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery and Worcester counties; Maryland Association of Counties; City of Hagerstown; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Baltimore City Community College; Morgan State University; Department of General Services; Maryland Department of Health; Department of Labor, Licensing, and Regulation; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Department of State Police; Office of Administrative Hearings; *The Baltimore Sun*; Department of Legislative Services

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