



## Testimony for the House Judiciary Committee

March 25, 2021

RE: Maryland Police Accountability Act of 2021 (SB 627, SB 626, SB 178, and SB 786)

To Chairman Clippinger, Vice-Chair Atterbeary, and Committee members,

The Maryland Coalition for Justice and Police Accountability respectfully writes to express the following concerns and recommendations regarding SB 627, SB 178, SB 626, and SB 786. We understand that both the House and Senate police reform packages must be conformed and offer additional feedback on HB 670 below. Thank you for your time and attention.

### 1. LEOBR repeal and replace—Support meaningful community oversight

#### House Bill Concerns:

- *Administrative Charging Committees*
  - *We contend that HB 670 creates an additional barrier to discipline with administrative charging committees.*
  - The committees are composed of 3 individuals handpicked by Government entities, one civilian appointed by the police accountability board, and the police accountability board's chair.
  - These boards are responsible for:
    - (1) reviewing the findings of a law enforcement agency's investigation;
    - (2) deciding as to whether or not to administratively charge the police officer;
    - (3) if the police officer is charged, recommend specific discipline;
    - (4) issue a written opinion that describes in detail its findings, determinations, and recommendations; and
    - (5) forward the written opinion to the chief of the law enforcement agency.
- *Trial Boards*
  - *The bill maintains trial boards which we oppose.*
  - The boards are composed of one administrative law judge, one police officer, and one citizen appointed by a police accountability board. If the officer rejects the chief's discipline, the officer is entitled to an appeal before a trial board, the board's decision is final.
- *Police Accountability Boards*

- HB 670 also mandates the establishment of police accountability boards in each local jurisdiction, the membership of the board is selected by the local legislative body. *These boards do not have the power to conduct investigations or impose discipline.* They merely review complaints, appoint civilians to the charging committee and trial board, and meet quarterly with the chief.

#### Senate Bill Concerns:

- **Hearing Boards**
  - SB 627 restructures trial boards into hearing boards composed of one sworn officer and two civilians. These boards are responsible for determining the findings of fact and recommending discipline. The hearing boards are the final decision maker on whether the officer can be punished.
- **Community oversight:** *The Judicial Proceedings Committee removed a section of the bill that would have allowed jurisdictions to create community oversight entities that can adjudicate and impose discipline.*
  - Proponents argue that two civilians on a three-person hearing board addresses this concern. There are two issues with that claim. First, the civilians are being plugged into a process where they had no hand in developing. While this can count as civilian participation in a process structured by law enforcement, that is different from civilian oversight. Additionally, the civilians only have a role when there is a trial board. This means that the civilians are only involved when an officer decides not to accept the discipline from the chief. An oversight body would allow for civilians to take up other roles in the disciplinary process that the community has a hand in determining.
- **Expungement:** *Officer's records should not be eligible for expungement, especially after only three years.*
  - Police officers are sanctioned by the state to take people's life and liberty at their discretion. There is substantial evidence that police have abused this power. This would inhibit the ability to observe patterns in the allegations that would help identify deficiencies in the internal affairs investigations.
- **Prohibition on using misconduct allegations in administrative/judicial proceedings:** *SB 627 doesn't allow the complaint file to be used in a judicial or administrative proceeding.*
  - Whether or not any charge, sustained or not, should be allowed into evidence is a question that can and should be decided by the existing rules of evidence. They have very stringent restrictions on even questioning prior bad acts and even more restrictions on admitting actual evidence of prior bad acts. Those rules are fair, apply to all, and are totally controlled by the judge. *There should be no special rules for police officers.*
- **Disclosure of personal assets:** *§ 3-103 (c) brings back the LEOBR provision that states that officers cannot be required to disclose income or assets, etc. which we oppose.*
  - One of the aspects of what made the Gun Trace Task Force so harmful is the fact that the officers involved were making money off of their criminal activity. Requiring officers to disclose their assets allows the department to detect that kind of criminal activity before it can extend over many years.

Explanation:

One of the main objectives for repealing LEOBR is *to end special rights for officers that make it more difficult to discipline a police officer* than any other public employee, both because of LEOBR's procedural protections and because it includes more substantive protections. As a coalition, our goal was *to create a process that would make it easier to impose discipline*, more in line with how it is done for other civil servants. As currently drafted, neither HB 670 or SB 627 establish a streamlined disciplinary system that focuses on the substantive question of guilt or innocence, without unnecessary procedural barriers that prevent or delay discipline.

Both bills fail to enable the possibility of real external community oversight boards with the ability to investigate misconduct, adjudicate discipline, and have community control over police departments. Community participation in internal policing boards is not the same as being accountable to the public. **We recommend authorizing local jurisdictions to give their police accountability boards the power to investigate and impose discipline.**

## 2. Reform the Maryland Public Information Act—Support the SENATE

**Senate Bill Concerns:**

- SB 178 *allows but does not mandate* access to records of all administrative investigations of police misconduct except for technical infractions and ends the current prohibition on releasing any of these records under the Maryland Public Information Act. Therefore, a department may redact information that should not be released, such as information that violates an officer's or witness's privacy or negatively impacts an ongoing investigation.

**House Bill Concerns:**

- HB 670 allows discretionary disclosure of all administrative investigations of police misconduct except for technical infractions *but creates potential barriers to public disclosure of records.*
- The bill also gives the State Public Information Act Compliance Board new powers to review and resolve a custodian complaint that an applicant's request is frivolous, vexatious or in bad faith. *The board's decision is not reviewable.*

**Explanation:**

- We recommend the House adopt the Senate version of the bill.
- Both SB 178 and HB 670 carve out records of "technical infractions" from being disclosed. This means a minor rule violation by an individual solely related to the enforcement of administrative rules that: (1) does not involve an interaction between a member of the public and the individual; (2) does not relate to the individual's investigative, enforcement, training, supervision, or reporting responsibilities; and (3) is not otherwise a matter of public concern.
- Due to what is likely a drafting error in HB 670, the State Public Information Act Compliance Boards power does not appear to be reviewable because the provision that authorizes judicial review, Gen. Prov. § 4-1A-10, only authorizes appeals by a "complainant or custodian" instead of the "applicant." In the MPIA provision, the Complainant and Custodian are the same person, yet, neither is the applicant. As a result, there will be no statutory provision authorizing the "applicant" to appeal the Board's decision in this regard.
- The "vexatious" standard is very problematic. Though it is not defined in the bill, the amendment's language is focused on the volume of requests or the volume ("scope") of records requested. But the Maryland Public Information Act, quite correctly, has no current limit on the scope of records that can be requested simply because the number of government records

is so voluminous. The entire purpose of the MPIA is to provide transparency over what the government is doing, even when the records relating to that are voluminous.

- HB 670 also adds a new provision to Gen. Prov. § 4-351(d) requiring a custodian to deny inspection of an entire internal affairs file instead of requiring that specific information be redacted because (d) says that "a custodian *shall* deny inspection of a record described in subsection (a)(4) of this section." This also requires redaction of ALL medical information, even if the medical information does not relate to the person in interest (the officer under investigation), and even if the medical information is necessary to understand the conclusions that the department is reaching in its investigation. Existing law already allows for a balancing of privacy interests with the public need to know.

### 3. Statewide limit on use of force—Support the HOUSE

#### Senate Bill Concerns:

- Creates a new definition of “excessive force” that makes the bill unconstitutional, because it allows officers to use force merely to “gain compliance” or “control a situation,” which goes against the U.S. Supreme Court’s ruling in *Tennessee v. Garner*.
  - This standard allows officers to use force *more often*, not less.
- Only requires officers to not *intentionally* use excessive force, which means officers are not held accountable for using excessive force because of negligence.
- Duties to intervene and provide medical treatment are watered down and less strict.
- Requirements for agencies through the Training and Standards Commission are more difficult to enforce.

#### House Bill Recap:

- Raises the legal standard to authorize force only when it is *necessary* and *proportional*, after exhausting reasonable alternatives.
- Provides a civil right of action for people against whom unlawful force is used
- Includes a clear definition of “lethal force”
- Establishes a duty to intervene
- Establishes a duty to promptly provide or obtain medical treatment for a person injured in a use of force incident
- Provides new training requirements around the proper level and use of force, de-escalation tactics, and other reasonable alternatives to force
- Requires officers to fully document use of force incidents, and supervisors to review all video recordings of use of force incidents
- Authorizes the Training and Standards Commission to suspend or revoke certification of officers who violate the use of force statute
- Requires the Training and Standards Commission to hold agencies accountable for violating the use of force statute, and to work with the Comptroller and Governor’s Office of Crime Prevention to withhold state grant funding from agencies who violate the statute

#### Recommendation:

We want the Senate to agree to the use of force statute in the House bill, and include the data collection and reporting requirements that are currently in the Senate bill.

#### 4. Return Local Control to Baltimore City

##### Senate Bill:

- Establishes an Advisory Board to review specific implications and outline implementation of the transition of control of the Baltimore Police Department.
- Requires an interim report on progress of the aforementioned in 2021 and a final report in 2022.
- Provides for transfer of control following a charter amendment ballot question in the 2022 or 2024 election.

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##### Recommendations:

- The Baltimore City House Delegation approved an amendment to the House bill which would amend the bill to eliminate the Advisory Board and seek to initiate the transfer of control immediately. This amendment has not been considered by the Judiciary committee.
  - We do not take a position regarding the amendment. We simply implore the General Assembly to pass a bill, this session, that will sufficiently create at least a specific pathway to transfer control **back to Baltimore City.**
- We request that the Senate Bill is amended to require the final report to be completed by June 1, 2022.
- We are also aware of the request to add an additional member of the City Council to join the Advisory Board. We take no position on this provision. **We do however, want to ensure that there is adequate civilian representation on the advisory board.**

Respectfully,

Maryland Coalition for Justice and Police Accountability

*\*See the full list of coalition membership attached.*

Advocates for Children and Youth

ACLU of Maryland

ACLU of Maryland, Montgomery County Chapter

Amnesty International

Arts Education in Maryland Schools Alliance (AEMS)

Baltimore Action Legal Team  
Baltimore Bern Unit  
Baltimore City Civilian Review Board  
Baltimore City Democratic Socialists of America  
Baltimore for Border Justice  
Be More Unified  
Council on American-Islamic Relations (CAIR) Office in Maryland  
CASA  
Caucus of African-Americans Leaders  
Citizens Policing Project  
Coalition for Justice for Anton Black  
Coalition of Concerned Mothers  
Coalition of People Opposed Violence and Extremism  
Common Cause Maryland  
Community Actively Seeking (C.A.S.T.)  
Community Justice  
Disability Rights Maryland  
Do the Most Good  
Drug Policy Alliance  
Equity Matters  
For Kathy's Sake  
FreeState Justice  
Greater Baltimore Democratic Socialists of America - Steering Committee  
Greenbelt People Power  
Hispanic National Law Enforcement Association  
Homeless Persons Representation Project  
Innocence Project  
InterFaith Action for Human Rights  
Jews United For Justice  
Job Opportunities Task Force  
Justice for Tyrone West Coalition  
Justice Policy Institute  
Kevin L. Cooper Foundation  
Law Enforcement Action Partnership  
Leaders of a Beautiful Struggle  
League of Women Voters Maryland  
LGBTQ Dignity Project  
Life After Release  
Making Changes  
Mama Sisterhood of Prince George's County  
March for Our Lives Maryland  
Maryland Alliance for Justice Reform  
Maryland Center on Economic Policy  
Maryland Consumer Rights Coalition

Maryland Defenders Union  
Maryland Justice Project  
Maryland Office of the Public Defender  
Maryland Poor People's Campaign  
Maryland Prisoners' Rights Coalition  
Maryland Restorative Justice Initiative  
Maryland State Conference of NAACP Branches  
Marylanders to Prevent Gun Violence  
Moms Demand Action  
Montgomery County Civil Rights Coalition  
Montgomery County Democratic Socialists of America  
Mothers on the Move  
NARAL Pro-Choice Maryland  
NAACP Legal Defense and Educational Fund  
National Coalition for Drug Legalization  
Nigerian American Lawyers Association - Washington DC Chapter  
Organizing Black  
Our Maryland  
Our Prince George's  
Our Revolution Maryland  
Out For Justice  
Planned Parenthood of Maryland  
Power Inside  
Prevent Gun Violence Ministry, River Road Unitarian Universalist Congregation  
Prince George's County Branch of Democratic Socialists of America  
Prince George's People's Coalition  
Prisons to Professionals  
Progressive Maryland  
Public Justice Center  
Racial Justice NOW!  
Rebuild, Overcome, and Rise (ROAR) Center at UMB  
Reproductive Justice Inside  
Sanctuary DMV  
SEIU 1199  
Showing up for Racial Justice Annapolis and Anne Arundel County (SURJ3A)  
Showing Up for Racial Justice, Baltimore  
Showing Up for Racial Justice, Montgomery County  
Sierra Club Maryland Chapter  
Silver Spring Justice Coalition  
Takoma Park Mobilization  
The JustUs Initiative  
Wicomico County NAACP Branch 7028  
Women's Law Center  
Young People for Progress

