



Testimony on HB 670-Police Reform and Accountability Act of 2021

UNFAVORABLE UNLESS AMENDED

Maryland Coalition for Justice and Police Accountability

February 9, 2021

Dear Honorable Chairman Clippinger, Vice Chair Atterbeary and Members of the House Judiciary Committee:

While we support the general intent and direction of HB 670, and applaud the Speaker for opening the door to reimagining what police accountability might look like by repealing the LEOBR, The Maryland Coalition for Justice and Police Accountability (MCJPA) cannot support **HB 670- Police Reform and Accountability Act of 2021 as drafted**. MCJPA is a statewide coalition of over 90 organizations united to achieve meaningful police reform in Maryland - and includes individuals and family members who have been impacted by police violence, civil rights activists, religious leaders, legal experts, advocacy groups, and more. We understand that HB 670 seeks, as it relates to our five policing priorities for this legislative session, to restore local control of the Baltimore Police Department, institute statewide police use of force standard, repeal the Law Enforcement Officer's Bill of Rights, and replace it with a new framework. Unfortunately, as to each of these priorities, there are important flaws in the bill that we believe must be changed in order for us to support it.

Use of Force

In seeking a statutory state use of force standard, we are seeking to change the circumstances under which police can use force, particularly deadly force, on the residents of this state. But the standard proposed in this bill appears to be an attempt to merely codify the existing constitutional standard. That does not change anything, and is completely unnecessary, because the constitutional limits on police use of force exist regardless of state law. This bill maintains the "objectively reasonable" test from *Graham v. Connor* and *Garner v. Tennessee*. This standard is based on the 4th amendment right against unreasonable searches and seizures. Unfortunately, in the over 30 years since *Graham* and *Garner*, this standard has not been sufficient to prevent the police violence we experience in our society nor to consistently hold certain officers accountable for the violence they perpetrate. The current standard has shown to be inadequate, therefore, it is more appropriate to raise the standard to only authorize police officers to use force when it is *necessary*, as a last resort, as California recently did, for example.

Law Enforcement Officer's Bill of Rights (LEOBR)

We applaud the Speaker for beginning with a complete repeal of the LEOBR, which allows us to reimagine what a fair, and accountable system for police discipline might look like, contrary to what we have now. Unfortunately, the new system proposed in this bill is too incomplete, retains one of LEOBR's worst features (the requirement of trial boards before officers can be disciplined), adds yet an additional barrier and procedural impediment to actually disciplining an officer found to have committed serious misconduct in an internal affairs investigation, and does not allow for genuine civilian accountability in the disciplinary process.

SB 670 does not propose a comprehensive process that will govern police disciplinary procedures statewide. Instead, it allows each jurisdiction to make up their own process, including through collective bargaining, as long as it does not conflict with the minimal provisions in this bill. That would allow for disciplinary processes

that make it even MORE difficult to actually discipline officers than we have now. Moreover, because the bill defines “police officer” on p.19, line 28, using the definition from Public Safety § 3-201, rather than copying the definition from Public Safety § 3-101, it gives probationary police officers due process rights that they are not granted under current law. Furthermore, although the bill mandates that the disciplinary process be “open and transparent,” simply saying that does not make it so. Absent a change to the Maryland Public Information Act, to make the records regarding the disciplinary process actually open to disclosure, the process will, by law, remain closed and secret, as it is now.

The bill is also flawed in retaining, on p.20. Lines 6-12, one of the worst aspects of the current LEOBR, the prohibition on a chief disciplining an officer found to have committed misconduct unless and until there is a mini-trial, with full evidentiary hearings, with fellow officers as the judges, no matter how egregious the conduct or how clear the evidence, unless they are convicted of a crime. Due process does not require that discipline be conducted in this way, and that is not how it is done for any other public employee (other than correctional officers, who have their own “bill of rights” similar to LEOBR).

Even worse, SB 670 imposes a new, additional, procedural and substantive hurdle to actually disciplining an officer found to have committed misconduct in the form of “administrative charging committees” required on p.20, lines 4-5, and described on p. 21, line 17 - p. 23. Line 13. There is no guarantee in the bill that the committees would be subject to the Open Meetings Act or any other transparency mandate. An officer found to have committed the specified types of serious misconduct could not be administratively charged or disciplined unless and until the committee approved of the charge. There is virtually zero public demand that we add more unnecessary, time consuming steps to charge officers for their bad acts. We need less gatekeepers, not more.

To the extent the goal of this board is to ensure that officers are not improperly escaping accountability due to shoddy investigations, or delayed ones that cannot be prosecuted, etc., the work of the charging committees, if they are to be created, should be limited to reviewing charges that are NOT sustained by the internal investigatory process. Even then, we are not sure that a five-person committee, even if full-time, which does not appear contemplated by this bill, could substantively review all of the relevant IA investigations contemplated by the bill, but at least then it would not be an impediment to accountability.

With respect to civilian oversight, although the bill does mandate that civilians constitute $\frac{1}{3}$ of the membership of the trial boards that the bill mandates, that is not sufficient or meaningful civilian control over the disciplinary process. The civilian members will always be subject to the majority vote of the police members. If the intent is to allow for meaningful civilian participation in the oversight and accountability function, then the law should permit local jurisdictions to transfer that function to an external oversight board where someone other than fellow police officers can have the actual authority to investigate, charge, and discipline.

Finally, while the bill seeks to mandate the creation in each county of something like the current CRB’s that exist in Baltimore and PG, we do not believe that boards that simply review and comment have been effective in actually altering how police are held accountable. We do not need more boards that do not have the power to actually do anything.

Local Control

We appreciate that the bill attempts to give the residents of Baltimore full control of their police department by eliminating provisions in state law that have blocked the City Council from having the power to pass legislation regarding the BPD. Baltimore is the only jurisdiction in the state that lacks this power. Unfortunately, the bill

does not completely fix the problem, because the City Solicitor has, in the past, relied not just on the provisions altered in this bill, but has also relied on provisions in the City Charter, enacted by the General Assembly in 2009. Specifically, the City Solicitor has relied on City Charter, Art. II, ¶ 27, which defines the City's home rule power. That section says, in part, "no ordinance of the City or act of any municipal officer, other than an act of the Mayor pursuant to Article IV of this Charter, shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner." That language needs to be deleted as well.

The Maryland Coalition for Justice and Police Accountability strongly urges an unfavorable report on HB 670 unless it is amended to address the concerns above.

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
Central Atlantic Conference of the United Church of Christ
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 of 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
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
PG Change Makers
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