

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 441
(Senator Carter)
Judicial Proceedings

Baltimore City - Civilian Review Board

This bill alters the powers and duties of the Baltimore City Civilian Review Board by (1) expanding the jurisdiction of the board to extend to all misconduct by police officers and all complaints made by members of the public regarding misconduct by police officers; (2) repealing the timeframes in which a complaint must be filed; (3) requiring the board to hire staff to carry out its functions and prohibiting an employee or member of the Baltimore City government who is not a member of the board from controlling a hiring decision; and (4) requiring the board to make public any record not otherwise prohibited from disclosure under State law. In addition, the board is authorized to (1) function as the police accountability board for Baltimore City; (2) investigate complaints simultaneously with and report its findings and recommendations to a specified administrative charging committee; and (3) sue and be sued and to hire or contract for legal representation. The annual budget for Baltimore City must include an appropriation to fund the board that is not less than 2% of the total budget of the Baltimore City Police Department (BPD). **The bill takes effect on the taking effect of Chapter 59 of 2021; that Act takes effect July 1, 2022.**

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances. Even though BPD is currently a State agency, funding for BPD is the responsibility of Baltimore City.

Local Effect: Baltimore City expenditures increase by an estimated \$11.1 million annually beginning in FY 2023. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The administrative charging committee (rather than the head of the appropriate law enforcement unit) has final decision-making responsibility for the appropriate disciplinary action in each case, but the administrative charging committee may not take final action until after reviewing a specified recommendation of the board. The requirement for the board to expunge all records of a complaint that is not sustained or in which the police officer, when requested by the police officer, is exonerated is repealed.

The board may use funds appropriated by Baltimore City for the board to employ staff and investigators, hire or contract for legal counsel, and any other expenditure approved by a quorum of the board.

Current Law:

Civilian Review Board: The Baltimore City Civilian Review Board is 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 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.

An individual who claims to have been subjected to or witnessed an act of abusive language, false arrest, false imprisonment, harassment, or excessive force, or injury allegedly resulting from excessive force caused by a police officer, may file a complaint at the Office of the Internal Investigative Division, the Legal Aid Bureau, the Maryland Human Relations Commission, the Baltimore Community Relations Commission, or any of the police district stations in Baltimore City.

In general, a complaint must be made within one year of the action giving rise to the complaint. Chapter 598 of 2017 requires the complaint to be reduced to writing on a form authorized by the board, signed and sworn to, under penalty of perjury, by the complainant.

Police Discipline: Chapter 59 of 2021, which takes effect July 1, 2022, repeals the Law Enforcement Officers' Bill of Rights and establishes provisions relating to a statewide accountability and discipline process for police officers.

Police Accountability Boards: Pursuant to Chapter 59, each county must have a police accountability board to (1) hold 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; (4) on a quarterly basis, review outcomes of disciplinary matters considered by charging committees; and (5) by December 31 each year, submit a report to the governing body of the county that identifies any trends in the disciplinary process of police officers in the county and makes recommendations on changes to policy that would improve police accountability in the county.

The local governing body must (1) establish the membership of and the budget and staff for a police accountability board; (2) appoint a chair for a police accountability board, as specified; and (3) establish the procedures for recordkeeping by a police accountability board. An active police officer may not be a member, and to the extent practicable, the membership must reflect the racial, gender, and cultural diversity of the county.

Administrative Charging Committees: Pursuant to Chapter 59, each county must have one administrative charging committee to serve countywide law enforcement agencies and local law enforcement agencies in the county, and there must be at least one statewide administrative charging committee to serve statewide and bi-county law enforcement agencies. An administrative charging committee must (1) review the findings of a law enforcement agency's investigation; (2) make a determination as to whether or not to administratively charge the police officer who is the subject of the investigation; (3) if the police officer is charged, recommend discipline in accordance with the law enforcement agency's disciplinary matrix, as specified; (4) review any body camera footage that may be relevant to 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; (6) issue a written opinion that describes in detail its findings, determinations, and recommendations; and (7) forward the written opinion to the chief of the law enforcement agency, the police officer, and the complainant. An administrative charging committee is authorized to request specified information and make specified determinations.

Inspection of Police Discipline Records: Chapter 62 of 2021 established that, except for a record of a technical infraction, a record relating to an administrative or criminal investigation of misconduct by a law enforcement officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a personnel record for purposes of the Public Information Act (PIA). Thus, such records are not subject to mandatory denial of inspection under PIA; instead, they are subject to discretionary denial as provided under PIA. However, a custodian must allow inspection of such records by the U.S. Attorney, the Attorney General, the State Prosecutor, or the

State's Attorney for the jurisdiction relevant to the record. In addition, a custodian must redact the portions of a record that reflects medical information of the person in interest, personal contact information of the person in interest or a witness, or information relating to the family of the person in interest. A custodian may redact the portions of a record to the extent that the record reflects witness information. A custodian must notify the person in interest when the record is inspected but may not disclose the identity of the requestor to the person in interest. "Technical infraction" 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.

Local Expenditures: The bill requires that the annual Baltimore City budget include an appropriation to fund the board that is not less than 2% of the BPD budget. The proposed fiscal 2023 budget for BPD is approximately \$555.0 million. Based on that proposed budget, the bill requires the Baltimore City budget to include an annual appropriation of \$11.1 million for the board.

Baltimore City advises that the board does not currently have a separate budget; the board is staffed by an employee that has other duties, and reimbursements for board member expenses is funded through the Mayor's Office. Accordingly, this analysis assumes that Baltimore City expenditures increase by the total required under the bill – an estimated \$11.1 million annually – to fund the board. This estimate assumes that BPD's budget (and, therefore, the required appropriation for the board) remains constant over time; costs increase further to the extent BPD's budget increases over time.

The bill authorizes the board to use the funds appropriated by Baltimore City to employ staff and investigators, to hire or contract for legal counsel, and for any other expenditure approved by a quorum of the board. It is assumed that the level of funding required by the bill is more than sufficient to hire the necessary staff and conduct the required duties of the board as altered by the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 991 (Delegate Smith) - Judiciary.

Information Source(s): Maryland Commission on Civil Rights; Baltimore City; Department of Public Safety and Correctional Services; Department of Legislative Services

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