



**Testimony for the Senate Judicial Proceedings Committee
February 11, 2021**

SB 786 – Baltimore City - Control of Police Department of Baltimore City

FAVORABLE WITH AMENDMENTS

The ACLU of Maryland supports SB 786, which gives the residents of Baltimore City the same control over their police force that every other local jurisdiction in the state of Maryland enjoys, by repealing its nominal status as a state agency which prevents the Baltimore City Council (and thus the residents of Baltimore) from exercising any control over the Department. Further, the bill creates an advisory board to study the issues related to the transfer of power.

For law enforcement agencies across our state to be effective, they must enjoy the confidence and support of those they serve. Policing as a two-way street is embodied in the principle of community policing, which is a goal of the consent decree, a priority of the new Police Commissioner, and a philosophy many progressive departments have adopted. Regrettably, in Baltimore City, police-community relations are damaged and have been fractured for far too long. This loss of confidence is validated by charges of police misconduct and outright corruption.¹

This body is well aware of the challenges Baltimore City, and the country, face with discriminatory policing, structural and systemic inequity, and the tensions between law enforcement and communities of color. Decades of racially biased policing, deaths in custody, and over-criminalization of communities of color have left us with schisms between the public and the police.

One issue contributing to this schism is that the Baltimore City government does not have the authority to make and implement policy changes pertaining to BPD. As a result, the citizens of Baltimore do not have a mechanism to provide meaningful oversight for the department. This lack of oversight has contributed, in significant part, to the current distrust and ineffectiveness of the BPD. This distrust hurts public safety because residents are less likely to report a crime to law enforcement and unwilling to help in the investigation of crimes.

This bill allows for critical oversight of the BPD at a time of radical change within the department. One of the goals of the consent decree is to provide for increased civilian oversight.² This change makes the department accountable directly to the residents of

¹ Prudente, Tim. "A look at recent Baltimore Police scandals" The Baltimore Sun, Oct. 11, 2018 <https://www.baltimoresun.com/news/maryland/crime/bs-md-ci-police-scandal-timeline-20180516-story.html> (Last accessed February 9, 2021)(Providing an overview of 16 high profile media stories about the BPD over the 3 years from Freddie Gray to the time of the publication.)

² City of Baltimore Consent Decree Summary <http://consentdecree.baltimorecity.gov/sites/default/files/City%20of%20Baltimore%20Consent%20Decree%20Summary%20%284.19.2017%29.pdf> (Last accessed February 9, 2021)

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Baltimore. Further, it allows the residents to demand greater accountability in oversight through the City Council.

Baltimore City is the only locality in Maryland without authority to govern its police department. Every other jurisdiction in the state enjoys the powers requested under this bill. As such, Baltimore residents have to travel to Annapolis annually to advocate for change within their local department. This is an ineffective and inequitable legislative process.

The Maryland General Assembly is not the appropriate body to provide the oversight necessary for the proper execution of the consent decree. As a practical matter, the 90-day legislative session is an ineffective apparatus to legislate policy over the BPD. Legislators simply do not have the bandwidth to focus on the complex issues of the BPD during the legislative session while faced with a broad universe of statewide concerns. The Baltimore City Council has the time, resources, and focus to give the BPD the attentiveness it requires. And despite its status as a nominal state agency, it is the City that is entirely responsible for the BPD's budget, and for paying judgments against its officers.

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In previous years, concerns have been raised about the effect of transferring control on the City's potential legal liability for BPD officer misconduct. Before addressing why this concern has no basis in law, it is important to point out that even if were true that the City's liability exposure would change, that would not be a legitimate reason to deny the residents of Baltimore local control over their police department. In making this argument (which again, is incorrect), proponents are asserting that it is more important that the City pay less money to people who are victims of police misconduct *by a court of law* than they are judicially determined to be entitled to (because that is by definition what we're talking about since the BPD's status as a City or State agency has no bearing on the question of whether or not an officer committed misconduct, but only on the potential limits to the City's liability for the officer's wrongful actions).

On the merits of whether the City's liability will change, despite the Public Local Law declaring the BPD to be an agency of the state, the legislature has also specifically declared the BPD to be a *LOCAL* governmental entity for tort claims (i.e. civil legal claims) made against it and its officers (this happened in 1997). Md. Code, Cts. & Jud. Proc. § 5-301(d)(21) (declaring the BPD to be a local government entity for purposes of the Local Government Tort Claims Act ["LGTC"]). So, victims of police misconduct who sue the BPD under state law are already subject to the \$400,000 cap in the LGTCA, Md. Code, Cts. & Jud. Proc. § 5-303(a)(1).

Concerning federal constitutional claims, it is already crystal clear that BPD is treated as a municipal agency, and not a state agency, and so changing the status under state law does not change anything with respect to those federal claims. *E.g. Chin v. City of Baltimore*, 241 F. Supp. 2d 546, 547-48 (2003) (collecting cases).

Also, it has been suggested that if the BPD's status as a nominal state agency changes, the BPD will lose the sovereign immunity from damages claims based on state law. While this is true in a technical sense, it is also totally meaningless, because the effect

of the sovereign immunity is not to shield the City from liability, but simply to change whom the plaintiff sues for damages. This is because the BPD is still legally obligated to pay tort damages judgments against its employees acting within the scope of their employment when they act without malice, Md. Code, Cts. & Jud. Proc. §§ 5-303(b)(1), 5-302(b), and, like every other police department in Maryland, is contractually obligated to indemnify employees found to have acted with malice within the scope of their employment (because otherwise, no one would take a job as a police officer with the risk of personal liability). In short, the BPD's liability for damages will not change with this bill.

This bill is one of the core recommendations of the Civilian Oversight Task Force created under the BPD Consent Decree.³

Baltimore City Police Force History⁴

The BPD's status as a state agency dates to 1860 when it was moved to state control due to the department's corrupt efforts on behalf of the No-Nothing Party that then controlled the Baltimore City government.⁵ It was taken over by the federal government in 1861 following its unwillingness to intervene in a riot attacking Union troops. The federal government returned the police department to state control in 1862, where it has remained since. From 1900 to 1920, the Board of Police Commissioners was appointed by the Governor. After 1920, a single Police Commissioner of Baltimore City was chosen and also served on the Governor's Advisory Council. The Baltimore City Police Department remained under solely State governance until 1978 when the Mayor began to appoint the Police Commissioner, subject to confirmation by the City Council (Chapter 920, Acts of 1976).

Amendments

The ACLU recommends the following amendments to the legislation:

1. Amend to add a member of the general public who is directly impacted by, and/or who are relatives of, those impacted by police misconduct, appointed by the Mayor.
2. Amend to add community members, appointed by the Mayor.
3. Amend to require submission of the advisory board's final report to the Governor on May 1, 2022.
4. Amend to allow ratification of a charter amendment transferring control of the BPD by the voters of Baltimore City at the 2022 or 2024 general election.
5. Amend to allow for the date of transfer of control of BPD to be set by the aforementioned charter amendment.

The ACLU of Maryland urges a favorable report on SB 786.

³ The Community Oversight Task Force's Recommendations For Strengthening Police Accountability and Police-Community Relations in Baltimore City, 12, 48-49, June 30, 2018, <https://consentdecree.baltimorecity.gov/sites/default/files/117%20COTF%20Report.pdf>.

⁴ History of Maryland Law Enforcement <https://mdsp.maryland.gov/pages/historyofmarylandlawenforcement.aspx> (Last accessed February 9, 2021)

⁵ Lewis, H. Walker, The Baltimore Police Case of 1860, 26 Md. Law Rev. 215 (1966).