



Testimony for the Senate Judicial Proceedings Committee

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SB 285 - County Police Accountability Boards – Investigation of

Complaints of Police Misconduct

FAVORABLE

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The ACLU of Maryland supports SB 285, which would explicitly authorize a local governing body of a county, including Baltimore City, by local law, to empower its police accountability board to exercise investigatory and subpoena powers. Only with this clarification can the Maryland Police Accountability Act of 2021 be implemented as intended and give communities truly meaningful oversight of police misconduct.

For decades, many jurisdictions in Maryland have advocated for community oversight of the police disciplinary process in response to the rampant police violence and corruption in their communities, which includes the authority to conduct independent investigations. However, the Law Enforcement Officers Bill of Rights impeded Maryland jurisdictions from establishing adequate community oversight due to provisions in the law that expressly prohibited investigations conducted by civilians from resulting in discipline (Pub. Safety §3-104(b)). This is why the efforts to repeal the law in 2021 received immense support from community members across the state.

Passed by General Assembly in 2021, the Maryland Police Accountability Act (MPAA) repealed the Law Enforcement Officer's Bill of Rights, replaced it with a new disciplinary framework, and mandated each county, including Baltimore City, to create a Police Accountability Board and Administrative Charging Committee. This landmark piece of legislation set up a basic framework for greater accountability, transparency, and community oversight in the police disciplinary process. Critical features of the board were left up to local jurisdictions, allowing them to establish the membership and budget and outline additional powers and procedures. However, due to confusion around the enabling legislation, local bodies erred on the side of caution and delayed empowering their PABs with the authority to conduct concurrent investigations into police misconduct complaints and issue subpoenas. SB 285

simply seeks to clarify that local governing bodies have the authority to grant their PAB's investigatory and subpoena powers.

Independent investigation of police misconduct is critical to meaningful accountability

Distrust in police is fueled by prevailing public opinion that police departments do not sufficiently hold officers accountable for misconduct. For instance, according to a national poll conducted by the Pew Research Center, 86 percent of Black people and 65 percent of white people surveyed said that police departments do a poor or only fair job of holding officers accountable for misconduct.¹ Both the lived experience of police violence victims in Maryland and data from recent reports serve as substantive proof for these claims.

According to the Graham Report released in 2021, the Prince George's County Police Department routinely failed to adequately respond to internal and external complaints of racial harassment, discrimination, and misuse of force.² Additionally, a 2016 Department of Justice (DOJ) investigation into the Baltimore Police Department (BPD) revealed that BPD not only discouraged internal and external complaints but, even for serious misconduct allegations, complaints were routinely deemed "not sustained" for no reason. Of the 1,382 allegations of excessive force that BPD tracked from 2010 through 2015, only 31 allegations, or 2.2 percent, were sustained. According to the DOJ assessment, procedures to investigate these claims were both inconvenient to the public and wholly inadequate, falling below the department's own policies and law enforcement standards. Adequate discipline was persistently rare.³

For members of the public to trust the integrity of investigations into police misconduct complaints, PABs must be able to conduct investigations of their own to provide accurate assessments of complaints and their outcomes.

Giving PABs investigatory authority over some or all complaints is not inconsistent with police agencies also having that authority

¹ Pew Research Center. (2020, July 9). Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct. Pew Research Center - U.S. Politics & Policy. Retrieved from <https://www.pewresearch.org/politics/2020/07/09/majority-of-public-favors-giving-civilians-the-power-to-sue-police-officers-for-misconduct/>

² Graham, M. E. (2020, August 28). Expert Report of Michael E. Graham in Hispanic National Law Enforcement Association NCR et al. v. Prince George's County et al.. Washington Lawyers' Committee for Civil Rights and Urban Affairs. Retrieved from <https://www.washlaw.org/wp-content/uploads/2021/02/HNLEA-v-PGC-Aug-28-Graham-Report-Unsealed.pdf>

³ U.S. Department of Justice Civil Rights Division. (2016, August 10). INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT. U.S. Department of Justice. Retrieved from <https://www.justice.gov/crt/file/883296/download>

The Baltimore City Civilian Review Board (CRB), created by a Public Local Law of the General Assembly, allows the CRB to conduct independent investigations of specific types of civilian complaints against officers in seven law enforcement agencies. Even though the agencies' own internal affairs units conduct parallel investigations, the CRB decides whether to investigate a complaint themselves or review the investigation of the internal affairs department. While the CRB has been limited in scope and authority prior to the MPAA, the independent investigations performed by the CRB staff have proven just how critical it is to have the option of conducting independent, civilian-led investigations into complaints. Beyond the increased trust and cooperation complainants show with CRB investigators, CRB and Public Integrity Bureau disagreed in 26% of concurrent investigations.⁴

The MPAA does not expressly prohibit PABs from having the power to investigate complaints independently

No provision in the MPAA prohibits local bodies from giving their boards these powers either in place of internal affairs or in parallel with them. Additionally, the MPAA does not have a preemption clause that would indicate the legislature's intention to bar the implementation of specific police accountability mechanisms, thereby precluding any local innovations or experimentation.

By affording the PABs with an opportunity to conduct independent investigations, PABs could provide a greater likelihood that investigations will be meaningful and that the public will trust their outcomes. For the forgoing reasons, the ACLU of Maryland urges a favorable vote on SB 285.

⁴ Baltimore City Office of Civil Rights. (2018, July). Baltimore City Civilian Review Board: Annual Report July 2017 to July 2018. City of Baltimore: Office of Equity and Civil Rights. Retrieved from <https://civilrights.baltimorecity.gov/sites/default/files/CRB%20ANNUAL%20REPORT%20AUG%202018%20PUBLIC%20COPY.pdf>

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