

**SB 606\_UNFAV.pdf**

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Position: UNF



**Testimony for the Senate Judicial Proceedings Committee  
February 21, 2024**

**SB 606 Police Discipline - Order to Show Cause**

**OPPOSE**

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The ACLU of Maryland urges an unfavorable report on SB 606, which seeks to authorize a police officer who is being investigated for misconduct to interrupt those investigative proceedings by filing a claim in the state circuit court that certain rights are being violated. In so doing, the proponents seek to bring back an unnecessary and harmful provision of the Law Enforcement Officers Bill of Rights (LEOBR).

In 2021, the Maryland General Assembly repealed the LEOBR and thus removed most of the special rights that police officers previously had in connection with the disciplinary process, including a waiting period before they had to cooperate with internal investigations, and limits on who could conduct them. But almost all of those special procedural rights that applied prior to a trial board hearing have now been repealed. And those that remain, such as a requirement that Administrative Charging Committees (ACCs) approve disciplinary charges, or a strict 1 year time limit on bringing charges, or review by ACCs, are generally straightforward and easy to apply.

But for those few remaining procedural rights, as well as the substantive protections for whistleblowing, political activity, and secondary employment that could offer substantive defenses to discipline, officers should be treated the same as other public employees, who have no similar right to interrupt administrative investigations with interlocutory appeals prior to a final judgment. *See, e.g., Manger v. Fraternal Order of Police, Mont. Co. Lodge No. 35, Inc.*, 239 Md. App. 282, 293 (Ct. Spec. App. 2018) (characterizing order to show cause process as “a powerful and unusual exception [to the usual rule requiring an appeal only after a final judgment]—when else can a party seek an interlocutory, preemptive, *in limine* ruling from a *superior* tribunal before his rights are even violated?”); *Mass Transit Admin. v. Hayden*, 141 Md. App. 100, 111 (Ct. Spec. App. 2001) (calling the show cause order process in LEOBR “unusual.”); *Cochran v. Anderson*, 73 Md. App. 604, 613 (Ct. Spec. App. 1988) (calling show cause order process “a very special provision.”). Rather, the officer can raise these provisions as a defense to any disciplinary charge if it is ultimately brought. And if the defense is rejected, it can be raised on appeal to the circuit court of any discipline imposed, just as is true for other public employees. In

short, there is no reason to depart from the usual rule applicable in all other judicial and administrative cases that disallows piecemeal appeals prior to a final judgment except in extraordinary cases. Such as rule promotes the efficient resolution of cases, because it ensures that issues are not unnecessarily addressed by appellate courts when they are not ultimately necessary to the resolution of the case, and it ensures that appellate courts have a full factual record when they resolve appeals.

If this bill is adopted, it could allow police officers to effectively prevent employing departments from being able to discipline them. An officer could file a show cause proceeding in the circuit court, claiming that a right had been violated, and the resolution of that claim would interrupt the investigation and adjudication of that charge, and could easily (and generally would) run out the new 1 year time limit for completing the investigation in Pub. Safety § 3-113(c), making it impossible for the officer to be charged, even if the court ruled no violation of the officer's rights had occurred. SB 606 would thus be a way for guilty officers to escape discipline and accountability.

Even if the courts determined that the one year deadline should be suspended during the pendency of the show cause proceeding and any appeals, the delay would often make any disciplinary proceeding more difficult by delaying interviewing witnesses, and delaying any necessary evidentiary hearing in a trial board proceeding. The more time passes, the more memories fade, and the more testimony becomes unreliable. Just like other public employees (and just as is generally true in our court system), officers can and should be required to raise any defenses in the administrative proceeding, and appeal any erroneous judgments that they think have occurred. Giving them a special right to interrupt the investigation, and delay the administrative proceeding, is unnecessary and unwarranted.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 606.

**SB606\_JoannaSilver\_UNFAV.pdf**

Uploaded by: Joanna Silver

Position: UNF

February 21, 2024



Joanna Silver  
Silver Spring, Maryland

**TESTIMONY ON SB0606 - POSITION: UNFAVORABLE**  
**POLICE DISCIPLINE - ORDER TO SHOW CAUSE**

**To:** Chair Will Smith, Vice Chair Jeff Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Joanna Silver, on behalf of Jews United for Justice

**My name is Joanna Silver. I live in District 18 and I am submitting this testimony in opposition to SB0606 on behalf of Jews United for Justice (JUF).** JUF organizes more than 6,000 Maryland Jews and allies in support of efforts to advance social, racial, and economic justice.

In Leviticus 19:16, we are commanded to “not stand idly by while [our] neighbors' blood is shed.” Police misconduct, violence, and murder of our neighbors, especially those who are Black or brown must be addressed, which is why the police disciplinary process must be swift. Law enforcement officers, who are granted enormous power over the lives of Maryland residents, must be held accountable for any misconduct and must be stripped of this power where appropriate.

We oppose SB606 because it would allow law enforcement officers to disrupt, delay, and derail the disciplinary process that was carefully and thoughtfully established by the Maryland General Assembly in the Maryland Police Accountability Act of 2021 (MPAA). The bill does this by allowing an officer to file a show-cause complaint in circuit court at any time after the initiation of an investigation; it will delay and possibly deny justice, undermining the ability of our community to hold police accountable for harm.

The MPAA’s disciplinary system has been in force since July 2022, and none of the parade of horrors described by the proponents of last year’s version of this bill have come to pass. In fact, the MPAA’s disciplinary structure seems to be working, and it is certainly premature to make structural changes without much more research and input from all stakeholders.

Contrary to claims by proponents of last year’s bill, SB606 will not promote judicial economy. Instead, it will complicate the disciplinary system in a way that is contrary to the process established in the MPAA,

by giving officers two bites at the appeal apple and by returning Maryland to the Law Enforcement Officers Bill of Rights (LEOBR) system that failed to deliver transparency and accountability. The MPAA intentionally was structured so that an accused officer must go through the entire administrative process before appealing their decision to a court. There is no reason to change that now.

In addition, the MPAA was structured to avoid the delays that so often occurred under LEOBR. It set a one year and one day deadline for Administrative Charging Committees to issue their decisions. If SB0606 is passed, either that carefully chosen timeline would be significantly extended, or it would not be tolled at all and an officer could evade the disciplinary process completely simply by tying up their case in court for more than one year and one day.

In sum, this bill will delay justice and possibly deny it altogether. **For this reason we urge an unfavorable report on SB0606.**

**JAS Testimony UNFAVORABLE on SB 606.pdf**

Uploaded by: John Spillane

Position: UNF

**Testimony UNFAVORABLE on SB 606**

Police Discipline - Order to Show Cause

Senate Judicial Proceedings Committee

February 21, 2024

Dear Honorable Chair and Members of the Committee,

My name is John Spillane and I live in Hyattsville. I urge an unfavorable report on SB 606. This bill would authorize any police officer who is being investigated for police misconduct to apply to the circuit court for an order that directs the law enforcement agency to show cause, at any time BEFORE a hearing board holds a hearing.

Proponents of this bill claim the purpose is to protect officers who are denied their rights relating to police accountability and discipline; however, those special rights no longer exist.

In 2021, the Maryland General Assembly repealed the Law Enforcement Officers Bill of Rights and thus removed the special rights officers were previously entitled to during an internal police disciplinary process. Rights such as a formal waiting period before they had to cooperate with internal inquiries into police conduct and the provision that only fellow officers could investigate them were removed and a new process set up.



What this bill will actually do is provide officers an opportunity to disrupt this new process and challenge decisions of the administrative charging committee on procedural grounds right away — without going through the hearing board. Because a disposition by the administrative charging committee must be completed within one year and one day after the filing of a complaint, what this bill will ultimately do is significantly delay or even deny justice to victims of police misconduct.

The Maryland Police Accountability Act already clarifies that officers may be disciplined only for cause. And if an officer wants to challenge the hearing board, the Act specifies that the employee may appeal the decision within 30 days after the date of a decision issued by the hearing board.

We must not forget record of years of lack of police accountability and discipline that speaks to why the Maryland General Assembly passed the Maryland Police Accountability Act and repealed the Law Enforcement Officers Bill of Rights. In light of this history, I urge an unfavorable report on SB 606.

John A. Spillane

6110 43rd St.

Hyattsville, MD

**SSJC Opposition to SB 606\_HB 15 (Show Cause).pdf**

Uploaded by: Robert Landau

Position: UNF



**Testimony in Opposition to SB 606 (Police Discipline - Order to Show Cause)  
February 21, 2024**

Silver Spring Justice Coalition (SSJC) represents community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by police and empowering those communities most affected by policing.

The MPAA's civilian disciplinary system has been in force since July 2022, and to our knowledge none of the parade of horrors described by last year's proponents of the same bill have come to pass. In fact, the MPAA's disciplinary structure seems to be working, and it is certainly premature to make structural changes without much more research and input from all stakeholders. Specifically, to our knowledge:

- No ACC has sought to impose discipline against an officer more than one year and one day after a civilian complaint has been filed against that officer.
- There have been no cases of a law enforcement agency claiming that a civilian complaint does not qualify for an ACC determination solely because the agency would have or had begun its own investigation of the officer's same conduct that was the subject of the civilian complaint.

In short, the specific fears and concerns last year's proponents used to justify the need for this bill have simply not materialized.

We examined the arguments presented in last year's testimony on the same bill, and we have the following comments and concerns:

- The proponents of last year's bill claimed that the bill promotes judicial economy. In fact, the bill complicates the disciplinary system in a way that is contrary to the process established in the MPAA, by giving officers two bites at the appeal apple. As with the MPAA's disciplinary process, in the overwhelming majority of administrative disciplinary procedures around the country, the accused must go through the entire administrative process before appealing their decision to a court. There is no need to create an additional statutory off-ramp for a system that has only been in place for two years and that appears by all measures to be working.

- The bill would jeopardize the disciplinary process because an officer seeking a show cause order could easily prolong the disciplinary process beyond the statutory deadline of one year and one day, which would prevent the ACC from issuing its disciplinary decision the prescribed deadline. It is unclear whether a circuit court judge could toll the one year and one day deadline for the ACC's decision. As it is, the Montgomery County Police Department takes, on average, over 200 days to issue a decision on a complaint. Even a speedy show cause process could void the ACC's duties if they must wait for the outcome of the show cause order. The bill will delay justice and in many cases deny it.

If the bill were enacted, not only could the officer seek a show cause order, but the officer could appeal that circuit court judge's decision, further delaying the disciplinary process set forth in the MPAA.

- Further delaying a final decision may result in the erosion of witness recollections, increases the risk that critical information could be lost, increases costs if the officer is on leave with pay, and most importantly delays justice for the complainant.
- At last year's hearing FOP President Boatwright described a situation where an officer was suspended without pay. He suggested the problem could have been prevented by this bill's show cause order. We disagree. Whether an officer is rightly or wrongly suspended without pay by a police chief or sheriff because of a felony indictment is not an issue that involves the ACC and trial board processes. Therefore, a show cause order should not interfere with their processes. The ACC and trial board decisions are based solely on whether the officer violated applicable policies that warrant administrative discipline. Mr. Boatwright's story has nothing to do with the bill, and it certainly does not justify the need for this bill.

We urge an unfavorable report.

Submitted by: Robert Landau  
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Gaithersburg, MD

# **MCPA-MSA\_ SB 606-Police Discipline-Show Cause-Lett**

Uploaded by: Andrea Mansfield

Position: INFO



# Maryland Chiefs of Police Association

## Maryland Sheriffs' Association



### MEMORANDUM

TO: The Honorable William Smith, Jr., Chair and  
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee  
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee  
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 21, 2024

RE: **SB 606 – Police Discipline – Order to Show Cause**

POSITION: **Letter of Information**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) are providing this letter of information to the Judiciary Committee concerning SB 606.

The MCPA and MSA strongly support due process for officers and deputies; however, believe this information about the potential delays and impact on the police disciplinary reforms under the Police Accountability Act of 2021 should be seriously considered in evaluating SB 606.

Under the proposed Md. Code, Public Safety Article, §3-113.1, a police officer who is the subject of a disciplinary complaint or administrative investigation would be exempt from the usual “exhaustion of administrative remedies” legal doctrine and could go to Circuit Court and challenge unspecified aspects of an incipient investigative or disciplinary process “at any time before a hearing is held...” under the Police Accountability Act.

Prior court cases demonstrate that the disruptive effects of allowing initiation of preliminary “show cause” court challenges to police discipline suggest that investigation and processing of police misconduct complaints may typically be delayed by up to one or two years. (e.g. Gindlesperger v. Popkin, 426 Md. 1, 43 A.3d 347 (2012), pre-hearing comparative discipline discovery dispute, two year delay caused by Circuit Court show cause and appellate review).

Further, disciplinary matters have begun working their way through the administrative charging committee and trial board process. Making changes that would restore certain provisions of the prior disciplinary process seem premature when we do not yet have a great deal of experience under the new disciplinary process.

**sb606.pdf**

Uploaded by: Linda Miller

Position: INFO



**MARYLAND JUDICIAL CONFERENCE  
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Matthew J. Fader  
Chief Justice

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 606  
Police Discipline – Order to Show Cause  
**DATE:** January 25, 2024  
(2/21)

**COMMENT PAPER**

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The Judiciary respects the separation of powers doctrine and acknowledges that the legislature is the policy-making branch. As such, the Judiciary has no position on the policy aims of this legislation and defers to the legislative branch on such matters.

We write to make the Committee aware of an inherent statutory conflict. Public Safety § 3-106(k) allows appeals of trial board decisions to be taken in the circuit court for the county where the incident giving rise to the disciplinary proceeding occurred. However, this bill would require officers of statewide or bi-county agencies to file these particularized show causes in the Circuit Court for Anne Arundel County only. That provision, on page 2, lines 3-5, causes conflict and is the drafting issue about which we note in our comment paper.

cc. Hon. William Folden  
Judicial Council  
Legislative Committee  
Kelley O'Connor