

MCPA-MSA_ SB532-Police Discipline-Show Cause - OPP

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Position: UNF



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

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

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

DATE: February 07, 2025

RE: **SB 532 – Police Discipline – Order to Show Cause**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE** SB 532.

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 532.

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.

For these reasons, MCPA and MSA urge an **UNFAVORABLE** report on SB 532.

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SB532_UNFAV_ACLUMD.pdf

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Position: UNF



**Testimony for the Senate Judiciary Proceedings Committee
February 7, 2025**

SB 532 Police Discipline – Order to Show Cause

UNFAVORABLE

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The ACLU of Maryland urges an unfavorable report on SB 532, 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 the Maryland Police Accountability Act of 2021 (MPAA), 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 those special procedural rights, which applied prior to a trial board hearing, have now been repealed. And those that remain are generally straightforward, such as the requirement that Administrative Charging Committees (ACCs) approve disciplinary charges, or the one-year time limit on bringing charges or review by ACCs.

As to these 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 all other public employees, who have no right to interrupt administrative investigations with interlocutory appeals prior to a final judgment, as this legislation would provide. *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 LEOBR's 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, an officer can raise any relevant provision in the MPAA as a defense to any disciplinary charge if it is ultimately brought. And if the defense is rejected, it can be raised on a circuit court appeal 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 a 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 one-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 532 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 likely 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 532.

2-7-25 SB 532 Police Discipline Order to Show Cau

Uploaded by: Nancy Soreng

Position: UNF



TESTIMONY TO THE JUDICIAL PROCEEDINGS COMMITTEE

SB 532 – Police Discipline – Order to Show Cause

POSITION: Oppose

BY: Linda Kohn, President

DATE: February 7, 2025

The League of Women Voters supports a criminal justice system that is just, effective, equitable, transparent, and that fosters public trust at all stages.

SB 532 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 contending that certain rights are being violated.

The bill calls for a procedure that is antithetical to the process established in the [Maryland Police Accountability Act \(MPAA\) of 2021](#). In the MPAA's disciplinary protocol, the accused must go through the entire administrative process before appealing their decision to a court and cannot interrupt the process to complain to a court that one or more of their rights has been violated. It is unclear why an exception should be made in this instance.

We urge an **unfavorable report on SB 532**.

Testimony opposing SB0532 - Police Discipline - Or

Uploaded by: Richard KAP Kaplowitz

Position: UNF

SB0532_RichardKaplowitz_UNF

02/07/2025

Richard Keith Kaplowitz
Frederick, MD 21703-7134

TESTIMONY ON SB#0532 - POSITION: UNFAVORABLE
Police Discipline - Order to Show Cause

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee
FROM: Richard Keith Kaplowitz

My name is Richard Kaplowitz. I am a resident of District 3, Frederick County. I am submitting this testimony opposing SB#/0532, Police Discipline - Order to Show Cause

This bill appears to extend a form of qualified immunity to a police officer under investigation in a way that permits delays in a hearing on alleged misconduct by an officer. It slows down any application of justice or resolution for a victim of misconduct. It assumes that if a right is allegedly denied a police officer that no correction of that possible right denial can or will be applied as any case is processed or prosecuted. It places the right of appeal before there is any adjudication of the charges for which an appeal could be filed.

This bill could result in the denial of equal justice under law by giving appeal rights before disposition of any case of police misconduct. It seems to create a new qualified immunity for officers. This has pernicious effects on both victims and the police involved.¹

This bill authorizes a police officer who is denied a certain right to apply to the circuit court at any time before a hearing is held by the hearing board for an order that directs the law enforcement agency to show cause why the right should not be granted. That “any time” could be the day before a hearing allowing an officer to drag out resolution of any charges costing the individual(s) harmed by the conduct being examined to endure further trauma and costs to achieve justice. Any conviction can always be overturned on appeal and the alleged denial of rights can be part of that appeal. This bill puts the appeal before the trial or hearing even begins.

I respectfully urge this committee to return an unfavor able report on SB0532.

¹ <https://eji.org/issues/qualified-immunity/#:~:text=Qualified%20immunity%20shields%20police%20officers,get%20their%20day%20in%20court>.

SSJC Testimony in Opposition to SB 532 - Show Caus

Uploaded by: Robert Landau

Position: UNF



TESTIMONY IN OPPOSITION TO SB 532
Senate Judicial Proceedings Committee, February 7, 2025

Submitted by:

Robert Landau

Silver Spring Justice Coalition

Gaithersburg, MD 20878

My name is Robert Landau, a resident of Gaithersburg, in District 17. I am testifying on behalf of the Silver Spring Justice Coalition in opposition to SB 532.

The Silver Spring Justice Coalition (SSJC) is a coalition of community members, faith groups, and civil and human rights organizations from throughout Montgomery County committed to eliminating harm caused by law enforcement officers, establishing transparency and accountability for officer conduct, and redirecting public funds toward community needs. We have been one of the moving forces in the creation of the PAB, ACC, and trial boards in Montgomery County. In furtherance of our work, we oppose SB 532 because it will confuse and complicate the administrative disciplinary process by which ACCs and trial boards decide whether a law enforcement officer should be disciplined.

Yet again proponents have introduced this bill, and since they first introduced this bill none of the parade of horrors described by proponents have come to pass. In fact, our review of a number of PAB annual reports demonstrate that the MPAA's disciplinary structure is working as intended. It would be unjustified and premature to make structural changes without much more research and input

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from all stakeholders, including ACCs, PABs, and advocates from around the state.

By analogy to the union-management arbitration of discipline cases, an employee cannot interrupt that process to complain to a court that some right of the employee has been violated. It is generally recognized that the arbitrator is well equipped to determine if the discipline is warranted under the totality of circumstances, including taking into account all of the employee's defenses, including whether the rights of the employee have been violated that would negate or alter the arbitration of the proposed discipline or the process that leads to arbitration.

The same is true for the process established under state statute, including the trial board process where law enforcement officers/employees have the freedom to present their defenses without resorting to court, which would delay and frustrate the statutory justice system created by this Legislature.

Giving an officer special access to the courts before the conclusion of the trial board process is the opposite of judicial economy – it wastes the court's time, while the officer tries to derail the statutory process. Show cause orders can become protracted processes, in some cases taking more than a year to resolve. This bill is simply another device seeking to restore aspects of the LEOBR that the Legislature rejected because it failed to deliver transparency and accountability.

If officers and their union representatives think that the discipline imposed by the ACC is unjustified because of a special defense such as whistleblowing protections, it's a simple process for the officer to raise that defense to the trial board. A show cause order is not the appropriate remedy.

We also fear that a show cause order may result in exhausting the one year and one day statute of limitations for the ACC's decision in cases where the officer could seek a show cause order before the ACC issues its decision. If the officer were to seek a show cause order before the law enforcement agency sends its

report to the ACC, it may have the practical effect of stopping the work of the law enforcement agency and the ACC to the point of preventing the ACC from completing its decision-making process within the statute of limitations. A prolonged show-case process could jeopardize access to timely evidence and witness statements, potentially undermining the expeditious process established by the General Assembly.

If enacted, this bill would frustrate the disciplinary process created by the General Assembly and unfairly and wrongly prevent the officer from being subject to a decision by the ACC or a trial board. Surely, that is not what the General Assembly intended when it created this disciplinary process.

We ask that the Committee issue an unfavorable report on this bill.

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Uploaded by: Will Vormelker

Position: INFO

HON. STACY A. MAYER
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HON. RICHARD SANDY
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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 532
Police Discipline – Order to Show Cause
DATE: January 29, 2025
(2/7)

INFORMATIONAL COMMENT PAPER

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.

The Judiciary writes 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 2-4, causes conflict and is the drafting issue about which the Judiciary notes in this comment paper.

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