



Testimony for the House Judiciary Committee

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HB 885 – Public Safety - Police Accountability - Investigation Records Relating to Unfounded and Exonerated Complaints

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The ACLU of Maryland strongly opposes HB 885, which would remove “unfounded” or “exonerated” police misconduct investigation records from an officer’s personnel file after three years following a finding by an Administrative Charging Committee or trial board. The result of this would be the broad limitation of public insight into some of the government’s most important and impactful functions, undermining the broad remedial purpose of the Maryland Public Information Act (MPIA) and drawing a veil of secrecy around both the disputed official conduct and the investigation process itself. Such an automatic denial of public transparency would seriously impair pathways for police accountability, standing directly in the face of progress made by this legislature toward building public trust in law enforcement.

As repeatedly emphasized by Maryland courts, public access to government records under the MPIA should be liberally construed in favor of maximal transparency and ease of access. See *Sheriff Ricky Cox v. Am. C.L. Union of Maryland*, 263 Md. App. 110, 126 (2024) (noting “. . . at its core, the MPIA is a disclosure statute that is meant to ensure that the government is accountable to its citizens, and the disclosure the Act requires is a public service that the Act directs government agencies to provide.” (citing *Glenn v. Md. Dep’t of Health & Mental Hygiene*, 446 Md. 378, 384-85 (2016); *Committee for Transit, Inc. v. Town of Chevy Chase*, 229 Md. App. 540, 145 (2016))).

Such open transparency is a proven cornerstone of democracy, and law enforcement investigations are certainly not exempt from the need for scrutiny. As police officers are public servants tasked with some of the most crucial public duties, their conduct constitutes a public service that must remain within public purview, especially when disputed. This legislature has made steps to increase such transparency with the repeal of the Law Enforcement Officers’ Bill of Rights and the passage

of Anton's Law in 2021. Both of these major legislative advances strengthen public means for accountability by providing greater access to police personnel records, but would be significantly curtailed by the broad foreclosure of "unfounded" or "expunged" investigation records under HB 885.

While some may argue that records of dismissed or un-sustained misconduct allegations pose no continuing relevance to accountability measures, this contention is simply unsupported by the long history of severe harm by police officers in Maryland that has often gone unchecked by internal disciplinary processes. In 2018, the Maryland General Assembly created the Commission to Restore Trust in Policing, which studied the circumstances that allowed members of the Baltimore City Police Department's (BPD's) former Gun Trace Task Force (GTTF) to carry out gross misconduct without consequence. In its final 2020 report, the Commission shared that only a handful of numerous prior citizen complaints were sustained against the eight GTTF members who were later criminally convicted (and even less disciplinary measures were actually imposed).¹

This lack of internal oversight aligns with the findings of the Department of Justice's prior investigation of BPD, as summarized in its 2016 report:

In part because of the above failures in investigating complaints against officers, BPD allows policy violations to go unaddressed, even when they occur in large number or involve serious misconduct. For example, the most common allegations of policy violation that fall under command investigations level is that officers fail to appear in court. The Department's internal affairs database indicates that 6,571 allegations were made that officers failed to appear

¹ As noted by the Commission, by March 1, 2017, BPD had logged more than 100 Internal Affairs complaints and more than 60 use of force incidents between 1997 and 2016 that named one or more of the convicted GTTF members, and most included at least one serious citizen complaint like excessive use of force, theft, false arrest, improper search, discourtesy, and harassment. However, by the time of the indictment, only a few of these complaints had been sustained: "about 43% were described in BPD's electronic Internal Affairs database, IAPro, as 'administratively closed' or simply 'closed.' Another 37% were characterized 'not sustained.' In another 4%, the officer was 'exonerated' or the complaint was determined to be 'unfounded.'" (Maryland Department of Legislative Services. (2020, December 2). *Commission to Restore Trust in Policing Final Report* (pp. 85-86). <https://dls.maryland.gov/pubs/prod/NoPblTabMtg/CmsnRstrTrustPol/Commission-to-Restore-Trust-in-Policing-Final-Report.pdf>.)

in court between January 1, 2010, and March 28, 2016. For 1,698 of these allegations, the Department did not record any disposition at all, although a “completed date” has been entered for all but a handful of these incidents, indicating that the investigation has concluded. Additionally, the Department “administratively closed” 1,142 of the cases. Thus, nearly half of these policy violations—43 percent—resulted in no action being taken against the officer for failing to appear in court. Without the arresting or witnessing officer’s testimony, many of these cases lack adequate evidence to proceed, and are dismissed.²

Such unchecked misconduct has included direct harm against the most vulnerable communities, who can be left without any redress.³

Although legislative reforms such as Anton’s Law have helped provide access to some of the information needed to raise misconduct independent of any flawed internal processes, persistent systemic issues continue to highlight the need for public insight into the overall investigative process itself, as well as the disputed conduct. For example, while HB 885 would establish an Administrative Charging Committee (ACC) finding as one starting point for the three-year waiting period before an “unfounded” or “exonerated” investigation record would be removed, the limited time available for ACC review can yield findings that are not supported by full and proper consideration.⁴

² U.S. Department of Justice, Civil Rights Division. (2016, August 10). *Investigation of the Baltimore Police Department* (pp. 149- 151).
<https://www.justice.gov/archives/opa/file/883366/dl?inline>.

³ In one of several egregious examples, the DOJ uncovered a complainant, who alleged that two BPD officers fondled her when conducting a search and called her a “junkie, whore b*tch.” The woman’s complaint went uninvestigated for so long that by the time the investigator contacted the first witness, the complainant had died. As a result, that complaint was found not sustained. (*Investigation of the Baltimore Police Department*, 2016, p. 143).

⁴ For example, in Baltimore, “Of the roughly 1,000 cases the [Baltimore administrative charging] committee has reviewed, nearly half of them were received within 15 days of their expiration, according to city data.” (Conarck, B. (2024, December 2). *Frustrations With Civilian Oversight of Baltimore Police are Boiling Over*. The Baltimore Banner. <https://www.thebaltimorebanner.com/community/criminal-justice/police-accountability-board-independence-O5ZFCTAPK5EA5DYHS3NNB2DHOM/>)

This has led to many cases being either administratively closed without any determination of whether misconduct occurred, or even dismissed even when

Given the three-year waiting period imposed by HB 885, some may assert that this is sufficient time to pursue any available remedies to address any unchecked misconduct evidenced within an “exonerated” or “unfounded” misconduct investigation record. However, these public records remain significant sources of information well after this three-year mark, as they can reveal patterns of conduct relevant to law enforcement hiring decisions, witness credibility determinations, and factual research into any longstanding pattern or practice of misconduct within a law enforcement agency. Especially considering the high level of public responsibility entrusted to police officers, the barriers imposed by HB 885 would significantly impede needed mechanisms for transparency, ultimately rolling back progress made toward fostering a more accountable policing system in Maryland.

For the foregoing reasons, we oppose HB 885.

misconduct was found to have occurred. See, e.g., *Balt. Police Dep’t v. Brooks*, 247 Md. App. 193 (Ct. Spec. App. 2020) (dismissing charges against officers in 15 cases because charging documents were not signed until more than one year after the incidents came to light, even though the charges were approved within the deadline).