Testimony for the Senate Judicial Proceedings Committee
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SB 202 Police Discipline – Order to Show Cause

UNFAVORABLE

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The ACLU of Maryland urges an unfavorable report on SB 202, 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).

Through the Maryland Police Accountability Act of 2021 (MPAA), the Maryland General Assembly repealed the LEOBR and thus removed most of the special rights that police officers previously had in connection with the disciplinary process, including a waiting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 But almost all those special procedural rights, which applied prior to a trial board hearing, have now been repealed.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 following a time-limited internal investigation of a complaint brought by a member of the public;
- the reinstituted one-year deadline for investigating misconduct that does not involve a member of the public; and
- the recently-implemented pause on internal investigation while a related criminal investigation is underway.

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 ensures that appellate courts have a full factual record when they resolve appeals.

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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. This could (and easily would) run out the time limits for completing the internal investigation provided under Pub. Safety § 3-113, making it impossible for the officer to be charged, even if the court ruled no violation of the officer's rights had occurred. SB 202 would thus be a way for guilty officers to escape discipline and accountability.

Even if the courts determined that the investigative 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 202.