



Testimony for the House Judiciary Committee

March 31, 2026

SB 202 Police Discipline – Order to Show Cause

UNFAVORABLE

The ACLU of Maryland strongly urges an unfavorable report on SB 202 as amended. Similar to the original bill and the repealed provisions of the former Law Enforcement Officers’ Bill of Rights (LEOBR), the current language still serves to needlessly interrupt the disciplinary process by allowing an officer to seek a show cause order in circuit court based on a purported violation of the officer’s rights. The proposed intent behind the current language is to address situations in which officers are experiencing seemingly retaliatory or punitive actions that are not considered “discipline”, and thus not heard by a disciplinary trial board. However, these sorts of matters currently do have legal recourse an officer can partake in, the timing of this recourse is subject to the same judicial delays all legal matters are subject to. Therefore, creating an entirely new, undefined process specifically for law enforcement, in which, there's no pre-existing statute or rule would be preferential and inappropriate. The Maryland Police Accountability Act already allows officers greater rights to seek a trial board over minor discipline than they did under the LEOBR. Maryland must take a fair approach to this issue.

The newly amended language in SB 202 applies to the rights defined in Pub. Safety § 3-110 and authorizes an officer to bring a “show cause” action for alleged violations of those rights “for which the denial is not eligible to be remedied by a trial board.” The following concerns underlie the lack of any clear difference between how this may be applied versus the disruptive application of show cause proceedings under the largely repealed LEOBR. Formerly, under the LEOBR, an application for show cause was allowed to be sought at “At any time prior to the beginning of a hearing by the hearing board” under former Pub. Safety Art. §3-105(b)(2). The original language of this bill and its predecessors, allow an application for show cause “At any time before a hearing is held by the hearing board”

1. **Same officer rights invoked:** The original language would have allowed police to interrupt the disciplinary process with an application to show cause in circuit court based on a purported violation of any right under Title 3, Subtitle 1 of the Public Safety Article. While the current language instead references the broad rights listed in § 3-110 of this subtitle, this effects no substantive change because these are the same rights that would be invoked by any logical application of the original language.

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2. **Same interlocutory application:** Under both the LEOBR and this bill's original language, allowing officers to seek a show cause order any time before a trial board hearing functionally operated as an appeal from a interlocutory decision (i.e., an "interlocutory appeal"), as this allows an officer to seek a preemptive decision about agency action from a higher tribunal during the agency's decision making process instead of waiting to appeal a final decision like all other public employees. As highlighted by the MD Appellate Court in reviewing its application under the LEOBR, this is "a powerful and unusual exception—when else can a party seek an interlocutory, preemptive, *in limine* ruling from a *superior* tribunal before his rights are even violated?" *Manger v. Fraternal Order of Police, Mont. Co. Lodge No. 35, Inc.*, 239 Md. App. 282, 293 (Ct. Spec. App. 2018).

The current amended language instead provides this opportunity for violations of an officer's rights that are "not eligible to be remedied by a trial board." However, this framing still includes the same "pre-hearing" period covered by original language and former LEOBR, as the trial board is an independent adjudicatory body with remedial powers that do not take effect until a trial board hearing is sought after an independent internal affairs investigation and, with complaints involving members of the public, after review and recommendations by a likewise independent Administrative Charging Committees (ACC). This leaves the door wide open to allowing appeals before all evidence has been collected and considered by each independent body, leaving the court without the full factual record needed for proper review.

3. **Same available alternatives:** §3-110 chiefly operates as a list of affirmative defenses based on a violation of a specified protection, which an officer can raise during the disciplinary process and on any subsequent appeal. This includes during an officer's interview and any other interface with internal affairs during investigation; during the ACC's review; with the trial board during a hearing; and on any subsequent appeal to the circuit court.

While case law interpreting the MPAA is still in its infancy, a non-published opinion by the MD Appellate Court published this month signals that officers can still seek a trial board hearing for (1) wholly internal complaints that do not involve the public, and (2) minor disciplinary measures like "letters of reprimand."¹ While actions subject to the MPAA's disciplinary process and protections may not extend beyond those listed in the uniform state disciplinary matrix, filing a mandamus petition remains an option for any violation of an officer's non-discretionary rights.

4. **Same inevitable delay and disruption:** As nothing clearly exempts disciplinary investigations and ACC review from being disrupted the show cause proceedings allowed by this bill, it can still operate to weaken the

disciplinary process by **(1)** taking key time away from pursuing and preserving evidence like witness testimony, and **(2)** opening up a way to avoid being charged, even if no rights were violated, by running out the deadlines for investigation and charges under Pub. Safety § 3-113.

This is not hypothetical – when the deadline to investigate and bring charges is missed for any reason, this often results in cases being administratively closed or even dismissed despite misconduct. For example, in Dep’t v. Brooks, 247 Md. App. 193 (Ct. Spec. App. 2020), charges against officers in 15 cases were dismissed 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. Similarly, the deadline for ACC review was amended to resolve similar issues with time running out before proper review.

With these concerns in mind, there is no justification for affording officers this needless special treatment that was repealed when the Maryland Police Accountability Act eliminated most of the special disciplinary rights officers previously had under the LEOBR. 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 investigations, and delay the administrative proceedings, is unnecessary and unwarranted.

For the foregoing reasons, the ACLU of Maryland urges an unfavorable report on SB 202.