



July 1, 2022

To: Members of the Joint Committee on Administrative, Executive & Legislative Review: Senator Sarah K. Elfreth, Delegate Samuel I. Rosenberg, Senator Malcolm L. Augustine, Senator Jill P. Carter, Senator Robert G. Cassilly, Senator Adelaide C. Eckardt, Senator Antonio L. Hayes, Senator Stephen S. Hershey, Jr., Senator William C. Smith, Jr., Senator Jeffrey D. Waldstreicher, Senator Ronald L. Young, Delegate Jason C. Buckel, Delegate Marvin E. Holmes, Jr., Delegate Jay A. Jacobs, Delegate Brooke E. Lierman, Delegate Susan K. McComas, Delegate Kirill Reznik, Delegate Sheree Sample-Hughes, and Delegate Haven N. Shoemaker, Jr.

Re: Emergency Regulations for the Police Accountability Boards and Administrative Charging Committee

Dear Members of the Joint Committee on Administrative, Executive & Legislative Review,

The Maryland Coalition for Justice and Police Accountability, representing over 100 organizations throughout the state of Maryland, received, via an MPA request, the proposed emergency regulations (Emergency Regulations) written by the Maryland Police Training and Standards Commission (MPTSC or Commission) for the Police Accountability Board (PAB) and Administrative Charging Committee (ACC). Upon review, we still have several objections that we believe are grounds for you to request changes or reject the Emergency Regulations.

While the Emergency Regulations changed several places where the Commission had used the word "shall" to "may," we remain firmly of the view that the original objections of the Attorney General (AG) to the Commission's draft are still valid. Although we have not seen the AG's advice to the Commission, we have been able to glean that the AG found many of the provisions where the verb "may" is now used were offensive to the letter and spirit of HB 670 and were inconsistent with the General Assembly's intent to vest in the local governing body the authority to establish the criteria for appointment and removal of PAB and ACC members.

We ask that you carefully review our concerns detailed below and exercise your authority to instruct the Commission to further revise the Emergency Regulations prior to their approval and submission for public comment.

We also ask that you request an emergency public hearing to consider these and other issues pertaining to the Emergency Regulations.

Sincerely,

Maryland Coalition for Justice and Police Accountability

1. PAB Eligibility and Membership Requirements

We continue to object to the Commission suggesting eligibility and membership requirements for the PAB. The Maryland Police Accountability Act (MPAA) gives the "local governing body" of each county the power to "establish the membership of a police accountability board." This decision by the General Assembly recognizes the importance of allowing local communities to determine their own membership criteria and requirements through their elected officials. Acknowledging that they do not have the power to prescribe PAB and ACC membership requirements, the Commission has revised the regulations to say that local governing bodies MAY impose particular qualifications. This continues to specify specific membership qualifications that the Commission would like to promote. There is no reason to single out their recommendations over any other a local governing body might consider.

A number of counties have already drafted or passed legislation with a range of membership criteria ranging from excluding/banning people with prior convictions from serving to favoring people with academic and professional experience over lived experience as members of a community or identity that is over-policed. Meanwhile, Prince George's County will allow someone who has completed any mandatory supervision and restitution to serve on the PAB or ACC. On the other hand, Montgomery County only requires members to be able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness. The Commission should not overstep its authority or cause confusion by issuing suggested requirements that may not reflect the values of the individual communities as determined by local governing bodies and as specified in the MPAA.

We take particular issue with the requirement that PAB members must be legal residents or citizens. The job of the police is to serve and protect the public safety of ALL residents in the community. Given that fact, these boards, which are meant to provide a form of institutional accountability to the public that the police serve, should be truly representative of that full public, which cannot happen if these exclusionary criteria are used. Many counties in Maryland have large and engaged immigrant communities with a range of immigration statuses other than legal residency or citizenship; there is no reason this particular group should be excluded from participation in PABs. Moreover, these exclusionary rules exacerbate the racial disparities by both banning a higher proportion of Black and brown people but also sending a discouraging message that some people are qualified to have a say in policing and others - ironically those most impacted - do not.

We ask that the Committee direct the Commission to remove the PAB eligibility and membership requirements.

2. ACC Eligibility, Membership, and Screening Requirements

For the same reasons, we object to the eligibility and membership criteria suggested for the ACC as it oversteps the local governing body's role in establishing the membership of an ACC as is expressly delegated by the MPAA. Just as local communities should be entitled to determine who oversees and recommends policies regarding its police disciplinary system, so too should local communities determine those members of their community who are entitled to pass judgment in individual cases of police misconduct.

We have particular concerns with limitations based on criminal history and immigration status. There is no reason why a person with an immigration status short of a legal permanent resident

is not qualified to make a decision regarding police discipline. Nor should involvement in the criminal legal system render a person ineligible for service. People who have paid their debt to society should be able to reintegrate into our communities with their full rights restored. A civilian system that represents the full diversity of a community should include those civilians who have been directly impacted by policing. Nonetheless, through a public hearing process, individual jurisdictions should be left to determine whether and to what degree any criminal legal involvement might make an individual incapable of fulfilling their duties.

Moreover, the inclusion of nebulous terms used to define "good moral character" such as "honesty," "ethical," "candid," "trustworthy," "diligent," and "fair"... is not just unhelpful but is harmful. These words can easily be weaponized to exclude community members who fall outside of the traditional norms of those who have power within our government and police departments; they are fodder for the perpetuation of racism, classism, and the marginalization of the most vulnerable members of Maryland's diverse communities and should have no place in these regulations. The focus should be on ensuring that members are able to demonstrate through professional or lived experience the ability to balance effective oversight, perform objective analysis of an investigation report, and practice procedural fairness, language that is included in Montgomery County's enabling legislation.

Finally, members of an individual jurisdiction's governing body are perfectly capable of engaging in whatever practices they deem necessary to gain the information they need to screen their applicants. Requiring criminal background checks and social media account reviews is a gross overstep by the Commission. It is both unnecessary and contrary to the express language of the MPAA for the Commission to tell local jurisdictions how to run their appointment practices.

3. PAB and ACC Confidentiality Requirements

We continue to object to the broad confidentiality requirements imposed on members of both boards; they are unnecessary and go well beyond the scope of the enabling legislation. The statutory provisions creating the PABs contain no confidentiality requirement at all, and members of other public boards and commissions are not typically required to sign confidentiality agreements. This overbroad requirement appears to and could easily be misconstrued to apply regardless of the source of the PAB's information. While it may be reasonable to limit the PAB from disclosing information it received from reviewing documents sent to it from the ACC while the case is before the ACC, anything beyond that is neither justified nor consistent with the PAB's mandate under the MPAA. Furthermore, any attempt to completely muzzle the PAB defeats its purpose of providing independent oversight of complaints of police misconduct. The PAB should be able to register any disagreements with the investigation or outcome of any of the complaints they review. The Maryland Public Information Act (MPIA) already prohibits the disclosure of certain information, which is sufficient to ensure that PAB members will maintain the confidentiality of information that needs to be protected under the law. No special confidentiality provision is necessary, particularly not one this overbroad.

Similarly, the ACC confidentiality agreement requirement expands on the statutory provision in MPAA, sec. 3-104(h). Here again, the regulation goes too far. Furthermore, the PAB and ACC are independent boards and, as such, are considered the custodians of their records under the MPIA and can make their own discretionary decisions.

4. ACC Member Self-reporting Requirements

Consistent with our objections to the membership criteria in the Emergency Regulations, we also object to requiring members to self-report criminal legal system involvement. Each county has its own definitions of "conflicts of interest" and processes for dealing with such conflicts; those are sufficient to govern any possible issues that may arise with an individual member. We are concerned that the Emergency Regulation's self-reporting requirements may be used as a political weapon to remove individuals who are not in the political mainstream. The Emergency Regulation's requirements for self-reporting are unnecessary and inconsistent with the statutory framework that vests in the local governing body the power to establish the ACC membership.

5. ACC Member Removal Requirements

Similarly, insisting that the governing body retain the authority to remove a member at any time, without any due process at all, and to require immediate termination for failing to maintain the confidentiality of "all ACC matters" interferes with the authority of the governing body to establish the ACC's membership. Local jurisdictions must be permitted to determine how and whether they want to limit their governing body's ability to remove members of their boards. The Emergency Regulations make no accommodations for inadvertent errors by the ACC member or anyone else involved in the decision-making process. If a jurisdiction would like to require some standards or due process in their enabling legislation, or if a local jurisdiction believes that violating a confidentiality agreement does not warrant immediate termination, this Commission should not interfere in those types of local decisions.

6. Prohibition on ACC Charging Power Where Discipline Was Already Imposed

The prohibition, in Emergency Regulation, section .07(B)(4), against charging an officer for conduct arising from an incident for which the officer has previously been disciplined or sanctioned violates the letter of the MPAA. No such constraint on the ACC's power is contained in the MPAA, and the proposed rule is inconsistent with common investigatory practice. If new evidence arises showing that an officer's conduct was more severe than was originally understood or that the officer violated policies other than those already addressed by a law enforcement agency investigation, or even the ACC itself, that new information must be brought to the ACC for an additional disciplinary decision. Without such protection for the ACC, any failure by the law enforcement agency benefits the officer to the detriment of the public – which is clearly inconsistent with the MPAA's purpose and intent.

7. The Emergency Regulations Should Impose Internal Deadlines

There are several places where the MPAA requires the provision of information or empowers a board to review information without imposing deadlines on the law enforcement agency (LEA) needed to ensure that the information is transmitted in a timely manner to the boards.

For example, the MPAA establishes a one-year and one-day deadline from the filing of a complaint of misconduct to the completion of the ACC's review and disciplinary recommendation. However, there are no deadlines by which the LEA must give the ACC its investigative findings. Similarly, the MPAA empowers the ACC to request additional information and investigation after receiving a report from an LEA but fails to provide any timing requirements for the LEA to respond.

These failures are aggravated by the Emergency Regulation's requirement that the ACC schedule its completion of its process within 30 days of an LEA's completion of its investigation while failing to incorporate the MPAA's express permission for additional time if the ACC requests more information from the LEA. In addition, while the PAB is empowered to review all cases that come before the ACC, there is nothing in the MPAA that entitles the PAB to receive the information to review by any date certain. Finally, while the Emergency Regulations expressly permit settlement negotiations, they do not impose any internal deadlines by which those negotiations must be completed and the proposed discipline presented to the ACC in order to allow the ACC to comply with its one-year and one-day deadline.

8. The Emergency Regulations Should Include the ACC's Powers Specified in the MPAA

Emergency Regulations, sec. .07(A)(2) correctly specifies that the ACC "may request additional information and investigation by the law enforcement agency that conducted the initial investigation." However, the Emergency Regulations are incomplete and misleading because they fail to include the full provision from the MPAA:

(F)(1) Request information or action from the law enforcement agency that conducted the investigation, including requiring additional investigation **and issuance of a subpoenas.**

Since the Commission saw fit to include some of the ACC's powers, we urge the Committee to request the Commission to include the above provision.

9. Complainant Mediation Program

Emergency Regulation, sec. .06(A) provides that, pursuant to Public Safety Article, sec. 3-207(d), a complainant may agree to use a mediation process that is outside the ACC process established in the MPAA.¹ However, there are no regulations in COMAR issued by the Commission to effectuate the provisions of 3-207(d). Therefore we contend that this mediation process should not be available until the Commission enacts the regulations required to establish the program and offers clear guidelines on how it will work within the new disciplinary process.² Moreover, we are gravely concerned that LEAs could use the mediation process to coerce complainants to bypass the ACC process in contravention of the entire MPAA program, as there are no guardrails built into the mediation process and no way for the ACC to review the decision or for the PAB to obtain information about the facts or outcome.

For this program to complement the new disciplinary process, we recommend that the Commission modify its proposal to require the following:

- a) Complaints eligible for mediation are limited to B(1) conduct that has a minimal negative impact on the department's operations or professional image of the agency.³

¹ Emergency Regulations, sec. .06(B) "Complaints Not Eligible for Mediation" makes no sense.

² We are not inherently opposed to a mediation process, but it must have numerous safeguards and tracking protections, established by the regulatory process, including a public notice and comment period.

³ *Mediation PSTC model policy & procedure (pg 11)*

https://mdle.net/pdf/Mediation_PSTC_Model_Policy_&_Procedure-April_2017.pdf

- b) The mediation process must be completed within 60 days from the date the complaint was filed with the LEA or PAB, unless the ACC provides an express written extension for the mediation process.
- c) If the mediation process fails to resolve the complaint to the satisfaction of the complainant, the complaint must be referred to the ACC within 3 days from the date the mediation process is concluded.
- d) Failure of the LEA to submit the complaint, together with any investigation done by the LEA, by the 60-day deadline shall preclude the LEA from participating in any future mediation.
- e) The LEA that agrees to the mediation process must provide the complainant with a written notice, to be acknowledged and signed by the complainant stating that the complainant has not been pressured or coerced in any way by any employee or representative of the LEA to utilize the mediation process.
- f) The LEA shall notify the PAB and ACC within 5 days of the complainant's acceptance of mediation, and such notification shall include a copy of the signed notice confirming that the complainant has not been pressured or coerced to use the mediation process. of no pressure or coercion.

Maryland Coalition for Justice and Police Accountability Coalition Members:

ACLU of Maryland
 ACLU of Maryland, Montgomery County Chapter
 Amnesty International
 Arts Education in Maryland Schools Alliance (AEMS)
 Baltimore Action Legal Team
 Baltimore Bern Unit
 Baltimore City Civilian Review Board
 Baltimore City Democratic Socialists of America
 Baltimore for Border Justice
 Be More Unified
 Council on American-Islamic Relations (CAIR) Office in Maryland
 CASA
 Caucus of African-Americans Leaders
 Citizens Policing Project
 Coalition for Justice for Anton Black
 Coalition of Concerned Mothers
 Coalition of People Opposed Violence and Extremism
 Common Cause Maryland
 Community Actively Seeking (C.A.S.T.)
 Community Justice
 Disability Rights Maryland
 Do the Most Good
 Drug Policy Alliance
 Equity Matters
 For Kathy's Sake
 FreeState Justice
 Greater Baltimore Democratic Socialists of America - Steering Committee
 Greenbelt People Power

Hispanic National Law Enforcement Association
Homeless Persons Representation Project
Innocence Project
InterFaith Action for Human Rights
Jews United For Justice
Job Opportunities Task Force
Justice for Tyrone West Coalition
Justice Policy Institute
Kevin L. Cooper Foundation
Law Enforcement Action Partnership
Leaders of a Beautiful Struggle
League of Women Voters Maryland
LGBTQ Dignity Project
Life After Release
Making Changes
Mama Sisterhood of Prince George's County
March for Our Lives Maryland
Maryland Alliance for Justice Reform
Maryland Center on Economic Policy
Maryland Consumer Rights Coalition
Maryland Defenders Union
Maryland Justice Project
Maryland Office of the Public Defender
Maryland Poor People's Campaign
Maryland Prisoners' Rights Coalition
Maryland Restorative Justice Initiative
Maryland State Conference of NAACP Branches
Marylanders to Prevent Gun Violence
Moms Demand Action
Montgomery County Civil Rights Coalition
Montgomery County Democratic Socialists of America
Mothers on the Move
NARAL Pro-Choice Maryland
NAACP Legal Defense and Educational Fund
National Coalition for Drug Legalization
Nigerian American Lawyers Association - Washington DC
Chapter Organizing Black
Our Maryland
Our Prince George's
Our Revolution Maryland
Out For Justice
Planned Parenthood of Maryland
Power Inside
Prevent Gun Violence Ministry, River Road Unitarian Universalist
Congregation Prince George's County Branch of Democratic Socialists of
America
Prince George's People's Coalition
Prisons to Professionals
Progressive Maryland
Public Justice Center
Racial Justice NOW!
Rebuild, Overcome, and Rise (ROAR) Center at UMB
Reproductive Justice Inside

Sanctuary DMV
SEIU 1199
Showing up for Racial Justice Annapolis and Anne Arundel County
(SURJ3A) Showing Up for Racial Justice, Baltimore
Showing Up for Racial Justice, Montgomery County
Sierra Club Maryland Chapter
Silver Spring Justice Coalition
Takoma Park Mobilization
The JustUs Initiative
Wicomico County NAACP Branch 7028
Women's Law Center
Young People for Progress