

Sayers, Margery

From: patf.hoco@gmail.com
Sent: Friday, December 3, 2021 3:56 PM
To: Ball, Calvin; CouncilMail; Walsh, Elizabeth; Jones, Opel; Rigby, Christiana; Jung, Deb; Yungmann, David
Cc: 'Jacqueline Akinpelu'; 'bill cozzo'; 'Jim Gormley'; 'Faye Page'; 'Ted Stewart'; 'Hiruy Hadgu'; Arthurs, Maureen; Blum, Matthew
Subject: Proposed HoCo Police Accountability Board (Bill #83-2021)
Attachments: Authority to include PATF-HC Recommendations for PAB.docx

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

The Police Accountability Task Force of Howard County (PATF-HoCo) has raised some serious concerns related to the pending legislation (Bill # 83-2021) submitted by the County Executive to create a Police Accountability Board pursuant to the requirements of the Maryland Police Accountability Act of 2021. These concerns are shared by a broad coalition of community organizations active in our County.

In its email dated November 8, 2021, PATF-HoCo communicated its concerns to County Leadership, provided a number of key recommendations, and called for the Administration to engage with PATF-HoCo to review these recommendations and amend the proposed legislation to address our concerns.

We are pleased that Dr. Ball has responded by introducing amendments that incorporate one or two our recommendations. Nevertheless, there are many key recommendations that have still not yet been addressed which would greatly enhance the ability of the PAB to enhance police accountability in our County. **In the circumstances, we continue to call for Bill #83-2021 to be tabled at the County Council legislative session on December 6, 2021.** We seek the opportunity for meaningful engagement with County Leadership to ensure that the HoCo Police Accountability Board is “best in class,” meets the needs of our community and enhances police accountability in our County.

In response to numerous questions raised by County Council members at the legislative working session on November 17, 2021, we have prepared a paper which discusses the legislative authority of the County Executive and the County Council to adopt the recommendations provided by PATF-HoCo. PATF-HoCo believes that the County Executive, and/or the County Council have full authority to adopt PATF-HoCo’s recommended amendments to Bill # 83-2021 to address our Community’s concerns.

Sincerely,
PATF-HoCo
By James Gormley

Police Accountability Task Force of Howard County
Recommendations for Amendment of HoCo Bill 83-2021
Relating to the Establishment of a Police Accountability Board
12/3/21

Introduction

This paper is submitted by **the Police Accountability Task Force of Howard County (PATF-HoCo)** and discusses the legislative authority of the County Executive and the County Council to adopt the recommendations provided by PATF-HoCo relating to the establishment of the HoCo Police Accountability Board (PAB), as mandated by the Maryland Police Accountability Act of 2021 (MPAA).

PATF-HoCo's recommendations were provided in detail in its email of November 8, 2021. A summary of those recommendations is now attached as Exhibit A.

PATF-HoCo believes that the County Executive, and/or the County Council have full authority to adopt PATF-HoCo's recommended amendments to Bill # 83-2021 to address our Community's concerns.

We submit the following for your consideration.

The MPAA provides a clear requirement and authority for each "local governing body" to adopt legislative provisions to establish the PAB membership, budget and staff, and to appoint a PAB Chair with relevant experience

1. The MPAA does this by adding a new Subtitle to the Public Safety Article of the Annotated Code of Maryland entitled Subtitle 1. "Police Accountability and Discipline." 3-102 (B) (1) of that Subtitle provides:

(b) (1) (i) Subject to subparagraph (ii) of this paragraph, the local governing body shall:

- 1. establish the membership of a Police Accountability Board;*
- 2. establish the budget and staff for a police accountability board;*
- 3. appoint a chair of the Police Accountability Board who has relevant experience to the position; and*
- 4. establish the procedures for record keeping by a Police Accountability Board.*

(ii) An active police officer may not be a member of a police accountability board

Police Accountability Task Force of Howard County
Recommendations for Amendment of HoCo Bill 83-2021
Relating to the Establishment of a Police Accountability Board
12/3/21

2. The MPAA does not otherwise provide any other details or mandatory requirements relating to the above items, except as otherwise noted, thus leaving the “local governing body” to fill in such details.
3. For this purpose, the “local governing body” is clearly delineated by both the Howard County Charter (Article 4, section 404) and the Howard County Code (Title 6, Subtitle 3, Sec. 6.300 (a), which both provide that citizen boards are to be *appointed by the County Executive with confirmation by the County Council*.

The “local governing body” may, in executing the MPAA mandate to establish a PAB, adopt specific provisions as it deems necessary and appropriate relating to PAB constitution, selection process, membership and qualifications, and duties and responsibilities

4. Title 6, Subtitle 3 of the HoCo Code also contains detailed provisions addressing membership, appointment, terms, vacancies, compensation, officers, legal assistance, removal, absences, resignations, suspensions, meetings, rules of procedure and general duties and responsibilities for Boards and Commissions covered by this subtitle.
 - However, it is also clear from the provisions of Title 6, Subtitle 3 that the County may **separately provide** for any or all of the above items. As such, County leadership is clearly authorized to adopt the specific recommendations made by PATF-HoCo relating to the PAB selection process and requirements for Board membership, and to the PAB’s duties and responsibilities. Title 6, Subtitle 3, Sec. 6.306 provides:

*The provisions of this subtitle relating to membership, appointment, terms, vacancies, compensation, officers, legal assistance, removal, absences, resignations, suspensions, meetings, rules of procedure, and general duties and responsibilities of Boards and Commissions shall apply to all Boards and Commissions listed in this subtitle, **unless specific provisions are otherwise listed.** [emphasis added]*

Police Accountability Task Force of Howard County
Recommendations for Amendment of HoCo Bill 83-2021
Relating to the Establishment of a Police Accountability Board
12/3/21

**The PAB may be granted a right of access to the books and records of
HoCo Law Enforcement Agencies' books and records
for purposes related to the exercise of the PAB's duties**

5. With respect to the PATF-HoCo recommendations relating to the PAB's right to access Agency books and records (including BWC Recordings), such a right of access is inherent in and necessary to the execution of the duties and obligations of the PAB.

- Under Subtitle 1, section 3-102 (A) of the MPAA, duties of the MPAA shall include, amongst other items:

hold quarterly meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the county government to improve matters of policing;

....

On or before December 31 each year, submit a report to the governing body of the county that:

- 1. identifies any trends in the disciplinary process of police officers in the county; and*
- 2. makes recommendations on changes to policy that would improve police accountability in the county*

6. The Howard County Charter expressly authorizes the grant of such right of access to the PAB. Article IX, section 910 provides:

The Council, the Executive, the Personnel Board, the County Board of Appeals, the County Auditor and such other officers or agencies of the County as may be so empowered by ordinance of the Council or otherwise by law shall have the power to administer oaths, to compel the attendance of witnesses and to require the production of records and other materials in connection with any investigation, inquiry or hearing authorized by this Charter or by law.

7. It is also clear that the County Executive has authority to grant such access to the PAB. Title 6, Subtitle 3 – Boards and Commissions, Sec. 6.311 provides:

Police Accountability Task Force of Howard County
Recommendations for Amendment of HoCo Bill 83-2021
Relating to the Establishment of a Police Accountability Board
12/3/21

The County Executive shall provide each Board or Commission with additional services, facilities and staff as are necessary or appropriate for the proper performance of its duties and responsibilities and as provided in the Howard County budget.

PATF-HoCo’s recommendation that the PAB Chair should have an “advise and recommend” role relating to potential release of BCW recordings of “Critical Incidents” is expressly contemplated and authorized by the Howard County Charter

8. Section 404 of the Howard County Charter provides that Citizen Boards appointed by the County Executive (with confirmation by the County Council) may “conduct studies and reviews, **advise and recommend**, and assume other functions as defined by law.” [emphasis added]

The PAB may be authorized to retain independent legal counsel and to receive a budget for this purpose

9. Section 405 of the Howard County Charter provides:

*(b) ...**Except as otherwise provided in this Charter** [emphasis added], no office, department, board, commission, agency or branch of the County government which receives County funds shall have any authority or power to employ or retain any legal counsel other than the County Solicitor....*

...

*(d)... Nothing in this Charter shall be construed as preventing the Executive from engaging the services for a temporary period of any attorney or attorneys **for legal work of an extraordinary nature when the work to be done is of such character or magnitude as to require legal services in addition to those provided by the Office of Law.***
[emphasis added]

10. The PAB will inevitably be required on occasion to seek independent legal advice (so that a conflict of interest can be avoided), rather than receive legal advice from the

Police Accountability Task Force of Howard County
Recommendations for Amendment of HoCo Bill 83-2021
Relating to the Establishment of a Police Accountability Board
12/3/21

County Solicitor while that office simultaneously provides legal advice to the Police Department on the same matter or issue involving oversight by the PAB of that Department.

**It is within the Power of County Leadership
to provide an indemnity from liability for PAB Board members
acting within the scope of their official duties**

11. It is clear that PAB members can (and in the view of the PATF-HoCo should) receive the benefit of an indemnity from liability for acts/omissions within the scope of their responsibilities, pursuant to the *Local Government Tort Claims Act*, and pursuant to *Title 23, section 23.304 Of the Howard County Code*. The PAB legislation should contain an irrevocable legislative approval from the County Executive for such an indemnity, if the situation is otherwise covered by these statutory provisions.

Police Accountability Task Force of Howard County
Recommendations for Amendment of HoCo Bill 83-2021
Relating to the Establishment of a Police Accountability Board
12/3/21

Attachment A

Summary of PATF-HoCo Recommendations

7. **Police Accountability Board Composition**

- The PAB Board should be composed of a Chair-person and six (6) voting PAB members, reflecting to the extent practicable the racial, gender, **sexual orientation**, cultural and **social-economic** diversity of the Howard County Community. [emphasis added to highlight PATF-HoCo's changes from the existing proposed language in 83-2021]
- Law enforcement should have no role in appointing PAB Board members, but rather law enforcement should be required to appoint two (2) liaisons **in an advisory capacity only** to the Board (as non-board members).
- PAB Board members should be County residents, at least 25 years of age, and **have a committed interest and demonstrated active involvement in Howard County community service**. [emphasis added to highlight PATF-HoCo's changes from the existing proposed language in 83-2021]
- The PAB Board Chair should also have direct familiarity with the criminal justice system through demonstrated experience gained from non-policing activities advocating for, or protecting civil rights.

2. **Process for Selection of PAB Board Members**

- In order to fully engage the community, the following selection process should be adopted:
 - The County Executive solicits qualified applicants from the community who want to serve on the Board and/or as the PAB Board Chair; a period of 30 days is established for community members to submit applications.
 - Community organizations may also submit nominations for consideration by the County Executive.
 - The County Executive shall select and submit to the County Council for approval, six (6) qualified applicants to serve on the Board as a PAB member and one (1) qualified applicant to serve as Board Chairperson.
 - The initial appointments, as determined by the County Executive, shall have staggered terms as follows: 2 appointees shall have a term of 1 year; 2

Police Accountability Task Force of Howard County
Recommendations for Amendment of HoCo Bill 83-2021
Relating to the Establishment of a Police Accountability Board
12/3/21

appointees shall have a term of 2 years; and 3 appointees, one of which shall be the Board Chairperson, shall have a term of 3 years.

- Before the County Council votes on the proposed PAB Board members, there shall be a designated period for the community to submit written testimony about the proposed candidates.
- The same process should be followed in subsequent years for filling newly vacated seats on the board. Newly appointed Board members will serve either... (1) for the remainder of the term if they are replacing an existing member before the end of his/her term; or (2) for three years if they are replacing an existing member at the end of his/her term.

3. PAB Board Budget and Staff

- Include PAB budget for independent legal counsel.
- Provide indemnity for PAB Board members in the exercise of their official duties.
- Provide training resources for PAB Board members.

4. PAB/BWC Program-Related Provisions

- In order to fulfill the duties and responsibilities of the PAB and to drive accountability and improvements in policing:
 - Any member of the PAB shall have the right to access, review and copy each law enforcement agency's books and records which relate to complaints, investigations and discipline concerning officer misconduct.
 - Any member of the PAB shall have the right to inspect any BWC recording that is (i) relevant to any officer-involved shooting or other use of force incident, or (ii) relevant to any encounter resulting in a civilian complaint (a "Critical Incident BWC Recording").
 - For any Critical Incident BWC Recording that is subject to a request for public release under the MPIA, the Head of the relevant Law Enforcement Agency must, prior to making any claim of an applicable exception to release of the BWC Recording under the MPIA, receive written advice and consultation in writing from the Chairperson of the PAB concerning the nature and extent of the public interest relating to the question of release of the BWC Recording. Such written advice and consultation shall be provided by the Chairperson within five (5) working days of receipt of the request.