



STAFF REPORT ON PROPOSED LEGISLATION

To: Mayor Gavin Buckley

From: David Jarrell, City Manager

Date: March 11, 2022

Subject: R-15-22, Anne Arundel County Coalition for Police Accountability
Recommendations

This resolution expresses the support of the City Council for recommendations developed by the Anne Arundel County Coalition for Police Accountability, urging the County Council to adopt the six specific recommendations as amendments to HB 16-22.

The attached Office of Law Memorandum addresses the Office's review of the legal sufficiency of this recommendations from the Coalition for Police Accountability and their specific concerns about them.

Attachment: City of Annapolis Office of Law Memorandum dated March 10, 2022 and March 11, 2022 (supplemented)

Prepared by David Jarrell, City Manager




**CITY OF ANNAPOLIS
OFFICE OF LAW**

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City Attorney**

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MEMORANDUM

TO: Ald. Rob Savidge
Ald. DaJuan Gay

FROM: D. Michael Lyles, City Attorney 
Kerry Berger, Assistant City Attorney

DATE: March 10, 2022
March 11, 2022 (**supplemented**)

RE: Resolution Request titled "Anne Arundel County Coalition for Police Accountability Recommendations"

The Office of Law has reviewed the draft Resolution in the referenced matter for legal sufficiency and our concerns are itemized below.

Recommendation 1 in the second "whereas" clause:

This recommendation is legally insufficient because the State law does not allow the Police Accountability Board to have those powers, as they are reserved for the Administrative Charging Committee. In other words, the County is not authorized to add powers or detract powers from any of the state mandated entities.

It is important to remember that the Administrative Charging Committee is comprised of five members as required by Maryland law: 1) the chair of the Police Accountability Board or the chair's designee; 2) two civilian members appointed by the Police Accountability Board; and 3) two civilian members appointed by the County Executive. The Police Accountability Board essentially chooses the individuals who will control subpoena and investigative powers as the majority of the Administrative Charging Committee is comprised by the Police Accountability Board's appointments.

Recommendation 2 in the second "whereas" clause:

An amendment similar to Recommendation 2(a) went before the County Council on 3/7/22 and passed. The amendment states "Each member of the County Council shall have a reasonable opportunity to recommend to the County Executive a resident of that Council member's district for potential appointment to the [Police Accountability] Board."

Regarding Recommendation 2(b), the County Council passed an amendment that removed ex-officio members from the Police Accountability Board due to its members coming from specific entities, so it appears unlikely that the County Council will pass an amendment requiring its voting membership to be comprised of individuals from specific entities.

Recommendation 3 in the second “whereas” clause:

An amendment similar to this recommendation went before the County Council on 3/7/22 and passed. The amended legislation states:

3-7A-103(A)(3): To the extent practicable, the voting membership of the Police Accountability Board shall reflect the racial, gender, gender-identity, sexual orientation, and cultural diversity of the County.

3-7A-103(A)(4): To the extent practicable, the voting membership of the Police Accountability Board shall include representation from the populations, identities, geographic areas, and communities that historically experienced or currently experience a higher frequency of interactions with law enforcement.

Recommendation 4 in the second “whereas” clause:

The portions of Recommendation 4 referring to the provision of adequate funding to conduct investigations and pay for full time investigators is legally problematic for the same reasons as Recommendation 1.

Recommendation 5 in the second “whereas” clause:

Amendments similar to Recommendation 5 are already before the County Council, and some have not yet been voted on, but this office has no legal concerns with the spirit of this recommendation.

It should be noted that an amendment did go before the County Council on 3/7/22 that required the Executive Director to be an attorney that provides counsel to the Police Accountability Board and to supervise staff and manage contractual services as needed “for the investigation of complaints.” This amendment failed, but there is a later amendment that just requires that the Executive Director be an attorney in good standing.

Recommendation 6 in the second “whereas” clause:

This office has no legal concerns with this recommendation.

MARCH 11, 2022 SUPPLEMENT

In an email following the issuance of this memo, Ald. Savidge asked whether House Bill 670 prohibits the County’s Police Accountability Board from having the power to investigate or issue subpoenas as it is his understanding that State law sets a floor (and not a ceiling) on a provision that does not specifically preclude or restrict certain actions.

The Office of Law responds as follows: If State legislation does not explicitly prohibit or restrict something, that does not automatically mean it is setting the floor and that local jurisdictions can tailor their own legislation on the same topic. One has to look at the legislative intent to determine whether what the local jurisdiction is trying to do is permissible.

Here, the Maryland legislature explicitly assigned investigatory and subpoena powers to the Administrative Charging Committees, which is composed of a majority of members appointed by the Police Accountability Boards. *See Md. Code Ann., Public Safety Article, §3-104(a) and (f)*. If the legislature intended to allow the Police Accountability Boards to have subpoena or investigatory powers, House Bill 670 would have included language to that effect as part of the Police Accountability Boards' responsibilities, as it did with the Administrative Charging Committees.

More importantly, House Bill 670 specifically states that “[a] complaint of police misconduct filed with a police accountability board **shall be forwarded to the appropriate law enforcement agency** within 3 days after receipt by the board.” *Md. Code Ann., Public Safety Article, §3-102(d)*. (**emphasis added**). House Bill 670 then requires that upon completion of an investigation, it is the law enforcement agency that must forward the investigatory files to the appropriate Administrative Charging Committee for review. *See Md. Code Ann., Public Safety Article, §3-104*. Again, if the legislature intended for the Police Accountability Boards to have investigatory powers (to include subpoena powers), then the language of House Bill 670 would have given such authority to the Police Accountability Boards and would not have mandated that the complaint be forwarded to the law enforcement agency for investigation.

The legislature created two separate entities for a reason - one is advisory and provides oversight (Police Accountability Board) and the other is investigatory and provides discipline (Administrative Charging Committee). There would not have been a need to create the Administrative Charging Committees if the legislative intent was to allow the Police Accountability Boards to have investigatory authority.