



Maryland Coalition for Justice and Police Accountability

# Ensure Independent Investigatory Power for Police Accountability Boards

**BILLS SB 285 & HB TBD**

## BACKGROUND

During the 2021 session, the General Assembly passed HB 670, the Maryland Police Accountability Act. Among other provisions, the bill mandated all of Maryland's 23 counties and Baltimore City to form new community police oversight bodies called Police Accountability Boards (PABs). The purpose of these boards is to provide independent, community-controlled oversight into police misconduct. These boards are charged with receiving complaints of misconduct, reviewing outcomes of disciplinary matters considered by the newly created Administrative Charging Committees (ACC), appointing members to ACCs, and submitting a report with trends and recommendations.

A large part of implementation was left up to local jurisdictions, allowing them to outline additional powers and procedures. Among these should be independent investigatory and subpoena powers, which are an essential part of how PABs can fulfill their mandate. However, language in HB 670 on this issue was unclear and local jurisdictions hesitated to authorize these powers to their PABs.

That is why in 2023 we will be supporting a bill to clarify the law and explicitly allow local jurisdictions to provide their PABs with independent investigatory and subpoena powers.

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## PABS CANNOT FULFILL THEIR MANDATE WITHOUT INDEPENDENT INVESTIGATORY POWERS

The main function of Police Accountability Boards is to assess the quality of internal investigations into police misconduct. However, without investigatory and subpoena powers, PABs are largely hamstrung in their ability to fulfill that role. In the majority of localities, PABs will receive investigatory files after the police have completed them, and cannot conduct further investigation into the handling of complaints. Under this process, PABs will be forced to assess these investigations at face value. But, police investigations and subsequent discipline are routinely inadequate. Furthermore, current law does not mandate police investigate every complaint that is filed.

According to the Graham report released in 2021, the Prince George's County Police Department routinely failed to adequately respond to internal and external complaints of racial harassment, discrimination, and misuse of force.<sup>1</sup> Additionally, a 2016 Department of Justice (DOJ) investigation into the Baltimore Police Department (BPD) revealed that BPD not only discouraged internal and external complaints, even for serious misconduct allegations, complaints were routinely deemed "not sustained" for no reason.

Of the 1,382 allegations of excessive force that BPD tracked from 2010 through 2015, only 31 allegations, or 2.2 percent, were sustained. According to the DOJ assessment, procedures to investigate these claims were

both inconvenient to the public and wholly inadequate, falling below the department's own policies and law enforcement standards. Adequate discipline was persistently rare.<sup>2</sup>

That is why Police Accountability Boards must be explicitly allowed to conduct investigations of their own to provide accurate assessments of complaints and their outcomes, and to accurately assess the quality of investigations.

## **PABS MUST BE ALLOWED TO CONDUCT INVESTIGATIONS CONCURRENT WITH LAW ENFORCEMENT INVESTIGATIONS**

In Prince George's County, after hearing concerns from community members and advocates, the county council provided the PAB with post-determination investigatory powers. That means the PAB would be allowed to conduct investigations and subpoena witnesses after the newly established Administrative Charging Committee had made their disciplinary recommendation. While this is a step in the right direction, this process still limits the board's ability to serve as an active oversight body. It will also create

significant delays in the PAB's assessment of internal investigation quality because internal investigations and ACC determinations are already a long and protracted process. That is why PABs must be able to investigate complaints as they come in.

## **LOCAL JURISDICTIONS DID NOT HAVE A CLEAR UNDERSTANDING OF THEIR ABILITY TO AUTHORIZE PABS WITH THESE POWERS**

In many jurisdictions, councils engaged in prolonged deliberation of this issue and were often unclear on whether HB 670 *actually* allowed them to provide PABs with independent investigatory and subpoena powers. Many jurisdictions understood the importance of these powers. But they erred on the side of caution, choosing to leave such provisions out of local PAB implementation bills.

**That is why the General Assembly must make it clear that the provision of these powers is permitted under HB 670 and that local jurisdictions can choose to both authorize them for PABs and provide necessary funding for them.**

