

Open Work Session

October 5, 2021

Maryland Police Accountability Act of 2021-Police Discipline and Law

Mr. Paul Wilber, County Attorney, and Mr. Andrew Illuminati, Esq, came before Council. Mr. Wilber said, at the last State Legislative Session, they passed a Police Accountability Act, which requires quite a bit of adjustment in police discipline. He said, essentially, three Boards will have to be set up and staffed by the County, which will be in charge of a good bit of discipline for all police agencies in the County. He said Mr. Illuminati has been working up the details and is going to give Council a brief overview of what is coming. He said it has to be setup by July 1, 2022, so they have some time, but it will involve Council.

Mr. Illuminati said the Maryland Police Accountability Act was just one portion of six laws passed during the last Legislative Session to address police reform in a broader context. He said Council was provided with a PowerPoint presentation that has dates of when these various laws went into effect and a brief overview. He said, for example, there is one addressing canines, and Sheriff Lewis has had a multitude of dogs over the years. He said some retire and get replaced, and before this law went into effect, under Senate Bill 156, the County had no obligation to the dog outside of any contract that was made when the dog retired. He said now, effective this year, the County has up to a \$2,500 a year obligation to the dog after it is retired, and up to \$10,000 over the life of the dog. He said, every time another dog comes on, there is an additional \$10,000 price tag that the County needs to contribute to be able to fund this dog. He clarified, this does not address police accountability, but was another law that passed over the course of the year that will be another unfunded mandate on the County by the Legislature. He said, additionally, effective last week, there is data collection reporting, so each year now the Sheriff's Office as well as all law enforcement is going to have to report to the Governor's Office of Crime Prevention and Patrol regarding use of force incidents that resulted in any monetary settlement or judgment against the agency in the previous calendar year. He clarified, there are different things that have to be reported, but this is new, and House Bill 1243 is an additional requirement on law enforcement.

Additionally, last week, on October 1 when the vast majority of laws went into effect, there was a requirement regarding search warrants and the inspection of records regarding police misconduct. He said this expands what is public record, what is covered by inspection of public records, and search warrants are now part of that. He said, ultimately, every law enforcement agency keeps a copy of the search warrant because, at the end of the day, the search warrant is located in chambers. He said, after the warrants exude, there is usually a 15-day period of time that the warrant has to be returned with the inventory to the judge's chambers. He said, traditionally, law enforcement makes a copy of that warrant and provides it to the State through the courts of discovery through any criminal prosecution if one comes, but, at the end of the day, there may be an obligation through public information to either get this information from the State's Attorney if law enforcement did not make a copy, or ultimately requesting the State's Attorney to follow through with the judge's chambers if that was to be filed. He clarified, that is something that happens on a very rare occasion, but maybe something that could become problematic if these records are not kept properly. He said, additionally, as of October 1, surplus military equipment in investigation of deaths caused by law enforcement requires that the law enforcement agency may not receive surplus funds by certain types of military equipment, which is not something that really goes on, so he does not see that as a big impact in Wicomico County.

Mr. Illuminati said there is another Senate Bill requiring body worn cameras through July 1, 2025. He said the Sheriff's Office is already operating with body cameras on the vast majority of their individuals, but, the current operation of body cameras is that it records 30 seconds beforehand, and now there has

to be at least 60 seconds before the officer activates the record button that is preserved. He said that will not be that much of a monetary impact on the County, and they will be able to update their software to go from 30 seconds to 60 seconds.

Mr. Illuminati said House Bill 670 is the Law Enforcement Accountability Board, and the County is going to need the biggest requirement of resources for it, and it has a couple of different components to it. He said it has funding for officers to repay their loans if they sought college education, and there is a new pool set up for scholarships for officers. He said also this very large Bill amended the economic and non-economic damages from a tort claim, and it also released the Law Enforcement Officers Bill of Rights, which is found in the Public Safety Article of the Maryland Code, and that was effectively repealed come July 1, 2022, and there was a sort of triumvirate of boards that were put in their place. He said there is a Police Accountability Board, there is the Administrative Charging Committee, and then there is the actual Trial Board. He said these are mandates that are coming from the Legislature, and there may be some amendments to these and there may be changes into when it goes into enactment, but, until the Legislative Session closes, they have to act like this is coming into effect July 1, 2022. He said the Police Accountability Board serves the largest of all of them, which is where there is the most opportunity for the Acting County Executive and this Body to put people on the Board who want to be on it. He said there is a wide discretion as to how big this Board could be, and he has been working closely with the Acting County Executive as well as the Sheriff's Department to make sure the Accountability Board has proper membership; for example, one thing is whether the person has to be a member of Wicomico County to serve on the Police Accountability Board, so there are a lot of holes within House Bill 670 that leave great discretion and proper great discretion to the local governments to determine what certain compositions look like. He said this Accountability Board will meet quarterly to review the work that has been done to improve police matters. He said they can appoint civilian members to the Charging Committee and the Trial Board, and then they ultimately have to oversee and report on what has been happening over the course of the quarter and at the end of the year cumulatively. He said there is to be Chair of the Police Accountability Board, and that person has to be somebody who has relevant experience, which is a loosely defined term. He clarified, no active law enforcement member can serve on any of these current boards, but there is not a prohibition on retired law enforcement members. He said, if they have to have somebody who has relevant experience in this position, he thinks they are going to have to look towards an individual with law enforcement background.

Mr. Illuminati said next is the Administrative Charging Committee. He said, with the removal of the Law Enforcement Officers Bill of Rights, the Chair of the County's Public Police Accountability Board or another member if that person is unavailable in designating two civilian members appointed by the Police Accountability Board and two civilian members selected by the Chief Executive of the County constitute the Charging Board. He explained, when an individual makes a complaint, it first goes to the Police Accountability Board and then gets farmed to the Charging Committee of the law enforcement agency from where the complaint came. He said the Charging Committee has a number of tasks; they can have the law enforcement agency investigate and review those findings, they can determine whether or not there is a basis for the complaint that was filed, and they ultimately make a referral and find that the charge is or is not warranted. He said, if the charge is warranted, there is a matrix compiled by the Maryland Police Training Commission/Maryland State Police, and they have to look at what type of offense it is alleged to be, whether there was a finding, and what the recommendation is. He said, ultimately, the recommendation they make is in line with the matrix, so they do not have complete carte blanche, but that gets forwarded to the Chief of the law enforcement agency from where the complaint came. He said, at that point in time, the Chief can make the recommendation to the charged officer and the officer can either accept the discipline or elect to go before the Trial Board. He said with

it not being from a public standpoint but internal is how the Trial Board Composition works under the current law in effect now except, at that point, the Trial Board Composition looks differently and the Charging Committee is different. He said, if the officer accepts the punishment, the Trial Board does not come into play, but if the officer does not accept the punishment, the Trial Board comes into play. He said this is where it can get a little difficult because the law articulates that the Trial Board is composed of three individuals – an active or retired administrative law judge, or retired district or circuit court judge appointed by the Chief Executive. He clarified, it is not required that the person be from Wicomico County or the Lower Shore, but finding someone from the Lower Shore would be ideal, and is something he has been working to do since this passed, and, unfortunately, they have not been very successful. He said there are companies that allow retired judges to do mediation matters, and he is sure this might be something they allow their judges to participate in, but that becomes expensive quickly versus if they can find a retired individual to be on-call as needed. He said the biggest unknown about this is how often this is going to happen - weekly, monthly, or on a very rare occasion. He said, talking with the Sheriff's Office, a lot of the complaints filed last year were non-meritorious and were just complaints that came in, but then when they began to make calls it sort of dissipated and was not something the person ultimately wanted to follow through on. He said the current complaints are not sworn under oath, but these new complaints are potentially going to be under oath, so it prohibits people from just coming in and filing complaints without merit and then without having potential repercussions.

Mr. Illuminati said, going back to the Trial Board, if the officer elects a Trial Board, it is a retired judge, a civilian who is not a member of the Charging Committee but is appointed by the Police Accountability Board he talked about earlier, and then an officer of equal rank of the officer accused of misconduct. He said that is where it just becomes vague as to how the Board is going to operate and who will present it, so these things may be found out during the course of the next Legislative Session and it may be at the complete discretion of the County on how this will be governed.

Mr. Illuminati concluded, this is where the current law stands; it is complex and is something that in a lot of ways was rushed through. He clarified, not that it did not need to be addressed, but, as Council can see, there is a lot of ambiguity within it, which is never easy because all they can do is look at what is written and apply it the best they can. He said he has been working with the Acting County Executive and the Sheriff's Office to facilitate that, and talking to neighboring counties to see how it is going to be implemented in those regards, and additionally working with other local law enforcements within Wicomico County. He said they are fortunate enough to have a number of trained agencies they have been working with because, ultimately, how the County acts will determine how the municipalities act.

Mr. Dodd asked if this is an unfunded mandate, to which Mr. Wilber responded, yes.

Mr. Davis asked if the County has to fund every canine for \$10,000, to which Mr. Illuminati responded, yes, it is \$2,500 a year or \$10,000 over the life of a dog. He said, if a dog was to get sick really early and the decision was to keep spending the surgery and the medical, after the dog is retired, \$10,000 is the cap, and at that point the owner would be responsible. He clarified, there could be a year where there is no medical liability and no one comes forward seeking an injunction, or there could be a year where every dog needs \$10,000. He said he is not aware right now but he will continue to work with the Sheriff's Office on how many dogs retired since October of last year. He said the Legislature allowed the opportunity for the County to establish a fund that citizens or companies could contribute to, and Sheriff Lewis is great at raising money, so they will be working together to unburden the taxpayers and find as many goodhearted individuals who can contribute to that fund as much as possible.

Mr. Davis asked if they are no longer allowed to get any more army surplus equipment, to which Mr. Illuminati responded, there are certain tools that are now off limits. He said he does not have the specifics in front of him, but he believes body armor is still covered, but if there is a tank for sale, the County cannot buy a tank. Mr. Davis asked what will happen with the one they have, to which Mr. Wilber responded, that is to be determined.

Mr. Davis asked if the college tuition is through the County or is it State funded, to which Mr. Illuminati responded, that is State funded and is a specific fund the officers can apply for.

Mr. Davis asked if the Accountability Board is just for the Sheriff's Office or is it for the whole County, to which Mr. Illuminati responded, the whole County. Mr. Davis asked if they need to talk to all the municipalities including the State Police, to which Mr. Illuminati responded, no. He explained, there is a carve-out for any multi-jurisdiction police force, so the jurisdiction for all of this is Anne Arundel County. He said he interprets that to be that DNR and Maryland State Police would all go to Anne Arundel County. He clarified, that is just what is in the County, so they are not working with Maryland State Police at this time to implement the Police Accountability Board.

Mr. Holloway asked how they will handle Delmar, to which Mr. Illuminati responded, that is an interesting proposition. He said, if an event happens in Delaware, Maryland probably does not have a right to the Police Accountability Board, but, if it happens in Maryland, it is probably covered under this law. Mr. Holloway asked, what if it happens in Maryland but it is a Delaware officer, to which Mr. Illuminati responded, these are the types of questions they are trying to figure out.

Mr. Cannon said he somewhat agrees that this is terribly reckless Legislation from the State of Maryland. He said they have a citizen committee literally superseding County authority, Administration, and the judiciary process, as he interprets this. He said he is not surprised about the fact that it got through the State, but he wishes it had not happened. Mr. Wilber responded, if it goes to the Trial Board level for an officer, that officer has the right of appeal to the Circuit Court, so he thinks the Circuit Courts could become very busy with these cases. Mr. Cannon said he feels very uncomfortable that it is left up to citizens to have that power, and they have subpoena power as well, and it is a citizen. Mr. Davis said, believe it or not, there are a lot of counties that already have this on the Western Shore.

Mr. Cannon asked, if an officer is suspended without pay, is that something the officer has to accept while the committee itself determines his or her fate, to which Mr. Illuminati responded, it is complicated. He said this is not for criminal charges, and if there was something that rose to that level, that would be the State's Attorney's prerogative to investigate or to farm out if there was a conflict. He said, when an individual is charged criminally and put on administrative leave, the law addresses that, if their case is null processed, dismissed, or not guilty, they get their back pay. He said, specifically to what Mr. Cannon asked, he does not know if the Sheriff's Office would suspend somebody if it was a very basic lowest level complaint, so the officer may be able to continue in their authority. He said, depending on what this matrix says and depending on additional Legislation, there may be additional answers to that in the future.

Mr. Cannon asked if the disciplinary measures are determined by the Committee or by the officer's superiors, to which Mr. Illuminati responded, disciplinary measures are going to be in a matrix that is determined by the Maryland Police Training Commission, and it will be applicable depending on the level of offense. He said, depending on the charge that is filed and depending on what the Charging Committee finds, there will be a matrix, and that charge will be somewhere within the matrix, and that

is what they can recommend. He said that is what they recommend to the Chief, and the Chief can go above that recommendation, but the Chief cannot go below that recommendation, and it is ultimately the officer's decision to accept the recommendation or to go through the Trial Board Process.

Mr. Cannon said he is all for there being some type of recourse if citizens or an individual feel they have been unrightfully wronged by an officer. He clarified, he defends officers 100 percent, and he can understand why some people would like some type of recourse, but this, to him, is a knee-jerk reaction and quite an overstep on part of the State of Maryland.

Mrs. Acle asked if the three different Boards are paid positions, as this seems like a pretty big commitment, to which Mr. Wilber responded, that is one thing they are working through. He said, given the level of expertise some of the members are required to have, they may have to pay them. He said they know across the Bay that some of these positions are paid handsomely.

Mrs. Acle asked what the Council's role is in this because it does not really say what they need to do, to which Mr. Wilber responded, there will be a budget aspect to all of this, and they are trying to figure all of that out and will be back to the Council on that. He said there will be some selection of individuals, but, as Mr. Illuminati said, one of the Boards has two members selected by the Executive and does not provide a role for the Council. Mrs. Acle asked if the other Boards will be appointed by the Executive and confirmed by the Council, to which Mr. Wilber responded, yes, any other type of appointment would fall into that. He said the law is specific about who can serve and how they are appointed.

Mr. Dodd asked if there is a deadline for appointments, to which Mr. Wilber responded, they need to have all of this in place by July 1, 2022. He said counties across the Bay are further down the road with this, so they are trying not to reinvent the wheel but perhaps learn from what they have been through.

Mrs. Hurley asked if the Boards have to be codified in the County Code and will Legislation have to come before Council to establish them, to which Mr. Wilber responded, that is something they are determining.



Larry W. Dodd, President, District 3



Joe Holloway, Vice President, District 5



John T. Cannon, At-Large



William R. McCain, At-Large




Ernest F. Davis, District 1



Nicole Acle, District 2



Josh Hastings, District 4



Laura Hurley, Council Administrator