

Open Work Session
Law Enforcement Review Board Legislation
April 5, 2022

Mr. Andrew Illuminati, Esquire, and Mr. Paul Wilber, County Attorney, came before Council.

Mr. Dodd asked, based on some of the recommendations Council got, is it possible for the attorneys to let them know as they go through this whether they can deviate from any of their recommendations, to which Mr. Cannon responded, certainly, and that is a good idea.

Mr. Illuminati said he will pick up where he left off at the last meeting, which is the flowchart of how everything operates, which is not designed for Wicomico County in particular, but is how State law operates. He explained, a civilian can file a complaint of police misconduct with either the Wicomico County Police Accountability Board or with the law enforcement agency which employs the officer who is the subject of the misconduct. He said, if it is filed with the Accountability Board, and then within three days the Board has to send it over to the agency which employs the officer subject to the complaint, and the agency then conducts its investigation. He clarified, that is the sole interaction the Accountability Board has with an outside complaint.

Mr. Illuminati said, after the agency conducts its investigation, it sends the investigative file to the Administrative Charging Committee. He said, when they look at who is a member of the Administrative Charging Committee (ACC), the Chair of the Accountability Board sits on the ACC, and two citizens are appointed by the Accountability Board to sit on the ACC, and two citizens are appointed by the County Executive with the approval of the County Council to sit on the Administrative Charging Committee, so that group is made up of five individuals. He said those five individuals then review the investigative findings and make a decision whether to charge. He said they can elect not to charge, in which case the complaint is terminated, or, if they charge, they make a recommendation as to discipline within the matrix that is being established by the State, which he believes is finalized now, so that entire matrix is outside of this County's control. He said the idea is that the same offense in each County will have the same disciplinary range no matter if the officer is charged with misconduct in Garrett County, Baltimore County, or Wicomico County. He said the ACC has a range depending on what charges are filed and presents and makes a recommendation based on that State established matrix. He said, at that time, the law enforcement head presents the offer to the officer. He said the officer can then accept the discipline, at which time the entire process is over, or, if discipline is refused, it can be a settlement negotiation. He clarified, at that time it is not that the head of the law enforcement agency overrides the Charging Committee, the settlement negotiation goes back to the Administrative Charging Committee who can accept the settlement negotiation, at which time the officer then accepts it and the matter is concluded, or the ACC rejects the proposed settlement and sends it back to the head of the law enforcement agency, at which time the officer can either accept the original discipline or can refuse and go to the Trial Board.

Mr. Illuminati said, out of all three of the State mandated boards, the ACC is the one that is the most controlled by State Legislation or regulation. He said, when they look at the Charging Committee, if it is in yellow it is all part of House Bill 670 and if it is in green it is a proposed regulation that will be part of the Maryland Code. He said the process for the proposed regulations started with the Maryland Police Training Commission creating a set of regulations. He said the Training Commission is composed of

Delegates, Senators, and individuals in the law enforcement community. He said Chief Duncan with the Salisbury City Police Department sits on there, Sheriff Lewis sits on there, and Berlin's Chief sits on there, so a lot of individuals from across the State sit on this including a representative from the State's Attorney's Office. He said those individuals who constitute the Committee voted up and down on what the proposed code regulations will be, and that was finalized before the Council last time.

Mr. Illuminati said the eligibility criteria includes they must be 21 years of age, must be a legal citizen of the United States, and must sign an agreement to maintain confidentiality. He clarified, if it is in green, that is a proposed regulation that is going through the review process now, and the review process is that it goes to the Attorney General for legal sufficiency, it then can come back and be advertised to the public and there can then be a comment period from the public, and then it is ultimately printed and adopted as part of COMAR. He said the term conflict of interest is where it is defined in the proposed regulations, self-reporting of the proposed regulations, and how long the terms will be. He said because State law requires staggered terms to avoid having the County Executive delineate exactly who would be serving the lesser term on the first staggered run, COMAR regulations said who is going to serve the staggered terms. He said COMAR proposed regulation determines that no more than three consecutive terms can be served. He said the County Executive shall submit a budget and oversee the staff of the Charging Committee, and the County Executive shall establish the procedures for recordkeeping by the Wicomico County Administrative Charging Committee. He said the duties of the Chairperson are all regulations being proposed by the State, as well as when matters have to be resolved.

Mr. McCain asked who chooses the Chairperson, to which Mr. Illuminati responded, the Police Accountability Board is the individual where the 20 years of service is required. He said the question is, why would those sorts of qualifications be required, so, looking back at House Bill 670, the requirement is that the Governing Body shall appoint a Chair of the Police Accountability Board who has relevant experience to the position, and that is a pretty generic term, but, when they look at what the duties are of the Chair and the Chair is sitting on this ACC, the belief was to have somebody with that background experience. He clarified, the Chair does not have a higher vote than anyone else, but that is sort of where the thought was and something that Caroline County implemented in having that individual with that background experience. He said, when they go back, it says, to the extent practicable, the Chair of the Wicomico County Police Accountability Board shall be a retired sworn law enforcement officer who retired in good standing with at least 20 years of service in Maryland law enforcement or federal law enforcement agency; shall have been the head of a law enforcement agency or in a command position within a law enforcement agency; and shall have had academic credentials that include degree from an accredited college or university with a major in either pre-law, police administration, or criminal justice; or completion of the FBI National Academy, the Northwestern School of Police Staffing and Command, or the Johns Hopkins University Police Executive Leadership Program.

Mr. McCain asked where those specifics came from, to which Mr. Illuminati responded, this came specifically from Caroline County. Mr. McCain said, once again, he is just curious why Caroline County when there are 23 others they could have picked, to which Mr. Illuminati responded, he did not see anyone who addressed it with such specifics, so, in speaking with law enforcement, they liked the idea because, if that person is going to be conducting the quarterly meetings of the Police Accountability Board where there are going to be meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies in the County government to improve matters of policing, the belief of law enforcement was that they need an individual who has been in those positions. He said one

risers to the level of a head of an agency or a command position because that individual has worked their way up through being a rank officer to corporal, to all the way up to where they have earned the trust of command staff to join command staff. He said 20 years is a long period of time, and the requirement is that the person leaves in good standing, so he thinks they are already vetting individuals who already have a rapport with the community and who have already had these relationships with various partners located in the community to address these issues in the past. He said, again, Council can amend this in any way, shape or form, as it is not in green or yellow.

Mr. McCain asked if the other Counties, for the most part, are following the House Bill generic language that says something to the affect that it has to be an experienced law enforcement person, and is that in the House Bill, to which Mr. Illuminati responded, the House Bill specifically says appoint a Chair of the Police Accountability Board who has relevant experience to the position. He said he thinks that is where it does not have to be a retired sworn law enforcement officer, but he guesses if they have an individual who has a masters in policing or criminal justice, that could potentially qualify as relevant experience. He said, as Mr. Hastings pointed out the last time, an elected States Attorney or somebody who has been a States Attorney for a period of time would have that relevant experience, but the term "relevant experience" is not defined. He said he believes Worcester County is going to be adopting something similar to what is proposed in Wicomico County.

Mr. Dodd asked how they can get it defined, to which Mr. Illuminati responded, they could ask the Legislature to define what relevant experience would be. He said he knows at least one Bill in the Legislature cleared the Senate, which is Senate Bill 389 and it is now in the House and it does not expound on defining relevant experience. Mr. Dodd said it could be defined as vague, to which Mr. Illuminati responded, it could be, so this is trying to do its best to what would be relevant experience for an individual to be asked to sit on two different Boards that oversee policing and can sort of jump between both worlds in listening to the public and being able to take their concerns and formulate them so that leadership of the police departments within the County can understand the public's concerns and facilitate that dialogue.

Ms. Acle asked if there are any Counties who are leaving it up to the Committee to select their own Chair, to which Mr. Illuminati responded, the Local Governing Body shall appoint a Chair.

Mr. Illuminati continued, whatever the Council believes the proper relevant experience would be for that position would be in subsection 10, which is where that Chairperson is jumping between the two Boards as the Chair of the Police Accountability Board is also sitting on the Administrative Charging Committee, unless the Chair designates another member of the Accountability Board with the idea being, if the Chair is out, he or she can appoint somebody else to fill in on the Administrative Charging Committee.

Mr. Hastings asked for clarification between the yellow and green highlights in the document, to which Mr. Illuminati responded, the yellow is State law, but the regulations are still going through that review process before it is adopted. He said, as they discussed last time, they may be back in August because some of these may change, but, for the most part, he does not think a lot of this, such as that the Chair shall follow Roberts Rules of Order, is something the Attorney General is going to have issues with.

Mr. Hastings said he saw an email from MACO that there were changes already. He then asked if they have an understanding of how many other current Bills there are in the General Assembly that will

affect the current law. He said he knows multiple Bills were put in and he guesses Mr. Illuminati has a handle on that. Mr. Illuminati said he thinks that is really the answer because, if Committees do not want to take it up, it is not going to go through. He said he thinks Senate Bill 389 seems to have the most support across the two Bodies. He said there was another one that would have allowed every municipality to create their own form of this entire Board, but that one does not really seem to have the steam to get off the ground at this point in time, but it may be out there in the future.

Mr. Davis said they are sitting here discussing this, but they could turn around and revamp the whole document, to which Mr. Illuminati responded, yes is the answer, but he does not believe that will happen this year. He said he thinks what is in 670 is law and that is not changing this year, but the regulations that are proposed at this time could be modified. He said, for example, the definitions of agency head, conflict of interest, good moral character, are something that could be changed. He said, if they went through the review process and there were enough comments against it, that is something that could come back. He said, throughout this document at the end of each section it says State law controls, so, to the extent that they are not able to update their code, the State can change it. He said, in between the two before they get back to amend this, the attorney serving as the liaison to the Board, which he imagines will probably be him, will know the current law.

Mr. Davis said they are really just treading water because they do not know what could happen, as any day they could just change the whole Bill. He said they can sit here and set up all of these Boards and the State could come back and change everything, to which Mr. Illuminati responded, that is their power. He said they delegated the County would create a Police Accountability Board, Administrative Charging Committee, and the Trial Board process, but in the next Legislative Session they could add a fourth Board or they could remove a Board, and that is where it falls.

Mr. Holloway asked, if a police officer gets accused of something and it goes through all three Boards and they find him guilty, his option is to go to court, to which Mr. Illuminati responded, correct. He explained, after the Trial Board, the officer can appeal to the Circuit Court. Mr. Wilber added, it is a multistep process, and it can take a while and it can be expensive. Mr. Holloway asked what happens and who makes the determination while this is going on about this officer being put on administrative paid leave or unpaid leave, or do they keep working? He asked if that matters as far as the level of the complaint, to which Mr. Illuminati responded, yes. Mr. Davis asked if that would depend on the agency the officer is working for, to which Mr. Illuminati responded, it is depending on the level of the complaint. He said, if the complaint rises to the level of potential criminal action, again, this is not criminal, this is an administrative process for violating police misconduct in some way. He said an individual who suffers an assault can go this route, but could also potentially try to file criminal charges, or criminal charges may come as a result of this investigation, and then there are provisions within the State law as to what happens to the officer at that point in time.

Mr. Dodd said many times they see in government, when someone gets in trouble, they stay on the payroll, and then they keep appealing and it extends their time on the payroll. He then asked, if something is obvious and there is misconduct at one of those levels, can they lose their pay while this is going on, or do they have to stay on the payroll, to which Mr. Illuminati responded, specifically within HB670, the agency head may suspend the police officer without pay and suspend the police officer's powers on an emergency basis if the officer meets one of three things, such as a misdemeanor committed in the performance of a duty, which can involve fraud, theft, etc. He said there was a trooper

a few years ago who was taking candy bars from the local grocery store, and that is a misdemeanor with possibly a 90-day maximum penalty, yet that could get them suspended without pay and loss of police powers, so that is something that is provided for in the law.

Mr. Dodd asked when the deadline to adopt this is, to which Mr. Illuminati responded, he believes this all has to be in affect by July 1. Mrs. Hurley added, they want to take action by the end of this month. She clarified, they should either approve the Bill, or make amendments to the Bill.

Mr. Cannon asked if they have to take a final vote on this Bill by April 19, to which Mrs. Hurley responded, it is the last week of April, so they could possibly have a special meeting if needed. Mr. Cannon said the 19th is the next meeting date, and the 26th is the following Tuesday. He said, in a perfect world they would pass this on the 19th unless they have a special session to pass this because of the requirements from the State and the timeframe, to which Mrs. Hurley responded, that is correct in order for it to be in affect by July 1.

Mr. Hastings said, in general, to the broader piece, they have had a lot of emails and calls and have been handed other documents as to potential changes. He said he is not sure of the best way for them to work through all of that just to make sure they have a good product at the end of the day that they feel confident about. He then suggested he could work on this and come up with potential amendments and have them ready to send to Council for review, as this is quite a beast of a project in general. He said, of course they know it is still being changed at the General Assembly, so they potentially have to react to that and then pass it by the next meeting, which is quite a lot, so he appreciates what everyone is doing trying to move through this, but also wants to make sure the public's voice is heard and that they have something that makes sense that they can all feel comfortable with, but obviously they are running out of time in order to stay on pace.

Mrs. Hurley said, if it is helpful, she can put together a bullet point list of the concerns that have been expressed from this meeting here tonight and their prior meeting and hand that out to Council and use that as a guide. Mr. Hastings said he has had people come out of the woodwork sending him things who are not involved tonight, but just asked if the Council is considering this, and he would like to put that into one thing where they could all review it piece by piece. Mrs. Hurley asked Mr. Hastings to email that to her and she will add it to her list.

Mr. Cannon said they can put the PowerPoint on the County website as a PDF file and the green and yellow version could also be put online. He said he would suggest, in the interest of the public, that a link be put on the front page so people do not have to cycle through to find it. He said that could be an easy link for the public, and that way everything they are looking at here will be able to be accessed online tomorrow. Mr. Hastings suggested clarifying the colors as well, to which Mr. Cannon agreed. He added, this will allow better feedback from the public as they continue to figure out where they are going to end up with this.

Mr. Cannon said this will certainly be on the meeting agenda for April 19, and, if they choose to maybe have a Work Session before then, they will contact Mr. Illuminati.


There was no further discussion.

Signatures on next page


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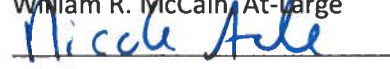
John T. Cannon, President, At-Large




Ernest F. Davis, Vice President, District 1



William R. McCain, At-Large



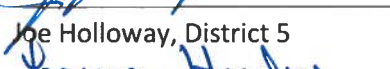
Nicole Acle, District 2



Larry W. Dodd, District 3



Josh Hastings, District 4



Joe Holloway, District 5



Laura Hurley, Council Administrator