

Open Work Session

Legislative Bill No. 2022-04 – An Act to Establish Chapter 46 Law Enforcement Review Board of the Wicomico County Code

April 19, 2022

Mr. Andrew Illuminati, Esquire, and Mr. Paul Wilber, County Attorney, came before Council. Mr. Illuminati said, since the last time he was here discussing this, there was some Legislation in the State House that was going to potentially postpone the enactment period for the Police Accountability Board (PAB) as well as the Administrative Charging Committee (ACC) and the Trial Board. He clarified, that Legislation did not pass, so they are on the original timeline as originally set forth, so everything will go into effect on July 1. He said, additionally, the Council wanted to receive public comments, and citizen comments were compiled, and he does not know if there are any specific citizen comments Council wants to address or if there are any amendments the Council would like to make to the proposed Legislation in light of the public comments. He clarified, there was a Bill that passed, which is Senate Bill 763, that sort of changes some stuff on the Trial Board end but nothing substantial, just timelines, and does not completely alter the entire aspect of how the Trial Board operates.

Mr. Illuminati said, as a refresher, State Law effective July 1 will be that a civilian can file a complaint of officer misconduct with either the Accountability Board or with the law enforcement agency that employs the officer subject to the complaint. He said, if it is filed with the Accountability Board, the Accountability Board has to forward that to the agency that employs the officer subject to the complaint within three days. He said the agency then conducts an investigation and turns its investigative file over to the Administrative Charging Committee, which then reviews the investigative findings and makes decisions on whether to charge. He said, if they elect not to charge, it is over, but, if they elect to charge, there is a Statewide disciplinary matrix and the ACC recommends discipline within that matrix. He said the officer can accept the discipline, at which time it ends, or the officer can refuse. He said COMAR regulations suggest that there will be settlement negotiations as a possibility, and the ACC can accept those settlement negotiations at which time the officer accepts and the matter is concluded. He said the ACC can reject the proposed settlement, and then it goes back to the officer and the officer can either accept or decline. He said, if the officer declines, it goes to the Trial Board. He said, following the Trial Board, the officer may appeal to the Circuit Court. He concluded, that is the process for complaints.

Mr. Illuminati said the Board is composed of nine citizens who the County Executive would appoint and the County Council would approve those nine citizens to serve on the Police Accountability Board. He said the Police Accountability Board appoints two citizens to sit on the Charging Committee, and those two citizens are not subject to approval by the County Council, but the Chair of the Accountability Board also serves on the Charging Committee, and that Chair is selected by the County Council.

Mr. McCain said one of the questions had to do with the Trial Board regarding the criteria of that Chair, to which Mr. Illuminati responded, that was regarding the Accountability Board. He said the State Law only requires that it be an individual who has the relevant experience, which is sort of a difficult term to define given what the Accountability Board and what the Chair specifically will do. Mr. McCain clarified, he thinks there was some intention to make it broad, as they were trying to avoid a real narrow scope and he thinks they wanted it to be broad. Mr. Illuminati said it ultimately comes down to what criteria fits the relevant experience – should it be enumerated as it currently is on page 10, should it be a retired sworn law enforcement officer, should it be somebody with certain academic credentials, or should it

just be subject to the Council saying they think it is relevant experience when the Executive puts a Chair's name forward for approval. He clarified, that is a decision for Council to make. Mr. McCain said he is not a fan of getting too far removed. He said there are so many aspects to this, just to be frank, and he thinks it is a challenge for them as a Council because it is almost item by item and there are some questions, but he thinks the more they stay in line with the original intent, the better.

Mr. Cannon said he agrees with Mr. McCain wholeheartedly because they could really get tied down in the minutiae of that. He said he really does not know where the requirement of 20 years of experience comes from and he does not know how they came up with 20 years, to which Mr. Holloway responded, most retired police officers serve 20 years, so he thinks that is probably where that comes from.

Mr. Cannon said he received an email where it was stressed that the Charging Committee or probably more so with the Trial Board that the members should be required to have some type of exercises through the firearms training simulators. He said he thought that was a pretty good perspective, and that was from someone who is in that industry and has been an officer in the past and made a very good comment saying that he thinks the people who are going to make these judgements should really possibly have firsthand experience of just the timing. He clarified, in other words, there may be an alleged unjustified shooting, and the individuals who would review that should possibly know firsthand just exactly what half of a second might mean if faced as an officer with those type of circumstances, so he does not know if that is anything they might want to implement in here. He clarified, it is harmless, and he does not think it creates a bias one way or another, it is just a more measured approach that may make these individuals better decision makers. He said he would leave it up to the Council if they want to make that type of a change. Mr. McCain responded, that is kind of counterintuitive, though, of what they just said about keeping it broad. He clarified, he sees Mr. Cannon's point, but that is very, very narrow. He said they could come up with a whole list of those, and his point is, if they go down that rabbit hole, he could think of another ten specific items. Mr. Cannon said he thought it was a good point.

Ms. Acle said she has two questions. She said this is a lot, and she is not going to pretend she knows because she has never been a police officer, so she is going to leave that to Mr. Davis to guide them on that, but she would like for it to be a transparent application process whichever route they go. She said she thinks they need to have notification on the County website and a portal to apply for this. She said that is somewhat across the board with all of their Boards and Commissions. She said she thinks there needs to be enough public notice and allowing citizens to engage and apply for positions on this.

Mr. Holloway said he wonders how hard it is going to be to find this number of individuals who want to serve on these Boards. He said it is going to be challenging to find not just qualified people, but people who are willing to do it. He said it is going to be a thankless job.

Mr. Holloway said he saw some of the citizen comments and it said in Anne Arundel County the Police Accountability Board should be adequately funded and staffed, and staffing should not be limited to a director and several fulltime investigators. He said Wicomico is a different sized County, and he knows people like to compare them to Montgomery or Anne Arundel when they want the County to do things, but he does not think the number of complaints will come in that will justify several fulltime investigators. He then asked if there has been any talk about funding these people, to which Mr. Wilber responded, that is part of the puzzle.

Ms. Acle said they are also going to have to have it designated to a Department, so it will be designated to the Law Department, and there is a fee for that. Mr. Wilber said staffing for these Boards is complicated, as that is new people and new positions. He said they hopefully will not have a lot of complaints, but they do not know.

Mr. Holloway said they are liable to have more complaints once they have this set up and running, as that is kind of the way it will work, maybe justifiable, and he does not know, but he hopes not. He then asked where they start, to which Mr. Wilber responded, they start now and build this out of whole cloth.

Mr. Cannon said one comment he had a concern with is where it states that a member who fails to maintain confidentiality shall be removed immediately by the County Executive. He said he can live with that, but his question is that eliminates the Council from any of these roles? He clarified, the Council is involved in making the appointments, so should the Council be involved in the role of removal of members, to which Mr. Illuminati responded, that is a good question, and he saw that throughout. He said, as it applies to the ACC, that is a proposed regulation. He said, as it applies to the PAB, that is something that the Council could have control over, and that is in D2, which is on page 8. He said, for the other County Boards, there is advice and consent, and the individuals serve at the pleasure of the County Executive, so he thinks it maintains that conformity throughout all the Boards that the County has. He said maintaining confidentiality and removal of the person immediately was something that was in the ACC proposed regulation, so it was incorporated here. He said, obviously, if somebody is sharing information which is not yet public, it opens up the possibility for some sort of lawsuit from the individual whose information is being shared before it goes forward, and one of the thoughts is that, by removing that individual as quickly as possible, no additional data that is not meant to be public be released. He said, however that person has access to that data, it is automatically terminated at that point in time. He said, again, what is in D1 and 2, the County Executive has everyone who serves on other Boards serves at his pleasure, even though there is advice and consent from the Council, and those parts are also part of the regulations on the ACC. He said some individuals will overlap, as there will be individuals who serve on the PAB and serve on the Charging Committee. He said, as has been expressed, this is a very difficult document that the Legislators gave them, and to have conformity through each section, when somebody is making an application, they know the terms and conditions for each Board are the same, which he thinks encourages people to apply for multiple Boards and sit on multiple Boards because they go through the same process one way or the other.

Mr. Cannon said there is one section on the Accountability Board where it says that a member can be removed with a written notice from the Local Governing Body and that a majority of the Local Governing Body is required to remove a member. He said that is on the 12th page of the PowerPoint and is referencing the ACC, which is a little different than what had been stated before when referring to the Accountability Board as a whole. He clarified, he is not looking for answers right now, this is just so Mr. Illuminati can make a note to review that.

Mr. Hastings asked if there is an issue with the members serving at the pleasure of the County Executive. He said, not that they want to give themselves more to do, but he kind of feels like that could be a situation where they could have somebody come in as County Executive and then just wipe out the committee because they were not politically aligned. He said he wrote up language that is included in the comments that basically says, if the County Executive decides that removal is necessary prior to the end of the member's term, the County Executive may immediately suspend the member until the

County Council confirms or denies termination with a supermajority vote, and basically giving them 30 days to do so. He said he feels like that might be a way to try to prevent anything like that which could be an issue in the future where they can have a balanced committee.

Mr. Dodd said he would like to dovetail on Mr. Hastings' comment. He said they are hearing from citizens who feel the same way.

Mr. Illuminati asked if the next meeting is going to be an emergency meeting on this, to which Mrs. Hurley responded, it is going to be a Special Legislative Session on April 26 at 5:00 p.m. She said they are under a deadline to get this adopted by the end of April in order for it to be in affect by July 1.

Mr. Illuminati said no one has offered an amendment yet, and he understands there are concerns about certain parts. He then asked what the Law Department can do to help alleviate Council's concerns so that amendments can be drafted, or what action would the Council like them to take?

Mr. McCain said he will circle back to where they started with questions regarding the Chair of the Police Accountability Board. He said he would like to just simply reflect the State's language. He said the Executive and the Council can certainly use in their approval process some of those bullet points as guidelines and goals as far as trying to select individuals, but saying it has to meet all of those criteria could be very challenging. He said he thinks they want it to be broad. He said, as a Council, they have to approve it, and those could be criteria they can look for when they approve people, but saying it has to be those kinds of things is way too narrow.

Mr. Hastings said he thinks they should add on to that to say that it should either be a retired public defender, retired State's Attorney, retired judge, or a retired sworn law enforcement officer who then fits all of the next page. He said he feels like they are not going to have very many applicants as a smaller County comparatively, and then that could be a problem if they have to stick within one small realm, so he would rather keep it very much limited to folks in law enforcement who have dealt with this throughout their lifetime.

Mr. Holloway said they have six more days until the next meeting. He then suggested they could send emails to Mr. Illuminati and Mr. Wilber if they want to change something and share it with the rest of the Council. Mr. McCain said this is a Work Session and they are here, so he would like to hear that now.

Ms. Acle said she would like to circle back to her suggestion about having a transparent application process. She said they received emails about someone with a criminal background and that they should not be eliminated. She then asked if Mr. Illuminati can define criminal history. She asked if that is a registered sex offender, is it a moving violation, what does that mean? Mr. Holloway said there is nonviolent, and he is not interested in going there. Ms. Acle said that was just a suggestion someone put out there, and she is not sure what that means actually.

Mr. Hastings said on page 10, as far as who is able to be a part of this, it says has been convicted of or received probation before judgement for felony or misdemeanor with a sentence in prison for a one year term. He said he does not know if they need to have misdemeanor, or just have a time limit, such as not being convicted within the last five years. He then asked if a traffic stop is a misdemeanor, to which Mr. Illuminati responded, one cannot be imprisoned for a traffic stop. Mr. Hastings said he does not think they want anyone with a felony conviction, assuming they can put limits on it.

Mr. Mitchell said there is a phrase that is used a lot in this type of Legislation that says convicted of a felony or a crime of moral turpitude, which would eliminate traffic and those kinds of things, but lying, cheating, and stealing, even if it is still a misdemeanor, would knock them off. Mr. Hastings said that is a commonly accepted term.

Mr. Cannon asked what Ms. Acle means about transparency in the application process, to which Ms. Acle responded, she would like to see the public notified when there is an opening or when the County Executive is accepting applications. Mr. Wilber asked if she means advertisement, to which Ms. Acle responded, yes, some type of advertisement with a way they can apply. Mr. Cannon asked if it is currently online for other County Boards and Commissions, to which Mrs. Hurley responded, not to her knowledge. She said they would have to contact the Board Chair or the Department assisting the Board.

Mr. Cannon asked if Ms. Acle is talking about Public Hearings, to which Ms. Acle responded, she thinks just having it online where it is visible to the public. Mr. Cannon asked if that is something they would implement in the Bill, to which Mr. Wilber responded, he thinks that is easy to do.

Mr. Cannon asked, what about his suggestion where a constituent suggested making sure they go through the simulator training? He said he assumes that would be the Trial Board who would be held to that type of judgement, to which Mr. Illuminati responded, he actually thinks it would be beneficial for all three because the Accountability Board is making a determination on what should be going on in the County as far as policing polices, and the Charging Committee is going through the process of determining what charges to issue, and then the Trial Board is ultimately seeing judgement on something of that nature. He said that is something that could be added as far as a simulator shooting as part of all the training being offered by the Maryland Police Training Commission for the Committee and the Trial Board but not for the PAB.

Mr. McCain said he does not know that they want to put in there that it is required, but maybe they should suggest it or something to that affect. He clarified, he would not make it a requirement.

Ms. Acle said they need to keep in mind there is an expense for that training and it is timely. She clarified, she is not for or against it.

Mr. Wilber clarified, Mr. McCain is speaking of a recommendation as opposed to a requirement, to which Mr. McCain responded, yes.

Mr. Cannon said it says members must complete required training set by the County Executive, so he guesses it would fall within that criteria, to which Mr. Illuminati responded, it could be part of that process. He said the PAB is the only Board that is not receiving State training at this point in time, and that may change in the future, but they have a very tall task to get the Charging Committee and the Trial Board trained up by the end of July. Mr. Cannon asked if the required training set by the County Executive is part of this Bill, or would that just be training that the County Executive comes up with, to which Mr. Illuminati responded, training that the County Executive comes up with. He said the thought was that the Eastern Shore Criminal Justice Academy can put together a four-hour course that specifically addresses the PAB's duties. He said simulator shooting could be part of that, or it could be part of this Bill to require it, recommend it, or just be part of what the Executive puts together as part of the training. Mr. Cannon said he knows they are going to be amending this as they go along, but he thinks that probably should be amended into this later on once they get a good feel for it.

Mr. Dodd asked if there is any way to rewrite that to say that they are looking for a standard course instead of something that a County Executive could come up with because it was mentioned that they are hoping that the Criminal Justice Academy will come up with something, but it would be nice to have it in writing. Mr. Illuminati responded, it could read that the required training shall be set by the County Executive in consultation with the Eastern Shore Criminal Justice Academy. Mr. Dodd suggested maybe adding "based on standard operating procedures."

Mr. Wilber said, to Mr. Cannon's point, there is no doubt they will be back to discuss this as it develops at the State level and as they have experience with it at the local level.

Ms. Acle said they could adopt the State Law and then come back and amend it, to which Mr. Cannon responded, a few times, as this is going to be a long process. He said he thinks the idea is to try to wrap this up with the extreme deadline they have been given by the State of Maryland to meet the original deadline, and then the real work will probably begin after that. Mr. Wilber said they need to hit their starting point deadline and then will figure it out going forward.

Mr. Holloway said this is going to be changed many times and will be a trial and error.

Mr. Cannon asked if there is anything the attorneys need clarification on from the Council, to which Mr. Illuminati responded, he has the portal to apply, the transparency in the application, revisiting the standards for the Chair, revisiting the standards for prior criminal conduct for the Accountability Board, and then the training involving the Accountability Board all as possible amendments, and he can put together possible amendments that would address those and where they could go based on the feedback received today.

Mrs. Hurley said, for everyone's benefit, including the public, they will be having a Public Hearing before the actual consideration of the Bill. She said there is also an online portal where citizens can submit their comments and questions, and she will try to respond as quickly as possible. She clarified, they have already received two comments that they have responded to. She said they received a question today that suggests picking from the jury duty list, and she is assuming they are talking about getting the members, so she will email that out to everyone so they have that. She reiterated, there will be a Public Hearing on April 26 and there is an online portal for comments.

Mr. Dodd said they have already stated that there is going to be a cost to this. He then asked if they have any idea what that will be from the start, to which Mr. Wilber responded, he is not aware that they put any dollars on this. Mr. Illuminati said he does not believe so, but he thinks the one known is that there is going to have to be a staff member to facilitate when these Boards are going to meet and distribute the materials as a starting point, and there is going to be the cost associated with the sitting judge. He said, outside of that, this current Legislation does not pay any of the Board members. He clarified, there has not been a request to date to make that amendment into this Legislative Bill, and that is something that, depending on how much time, effort, and energy this all takes, compensation may be required down the line. Mr. Wilber added, there are also investigators.

Mr. Dodd said they just got the budget book, but it sounds like there may be an amendment coming up. Mr. Wilber said they will try to discuss that with the Executive and have some thoughts.

Mr. Mitchell asked if there is the possibility of sharing investigators with other Counties, to which Mr. Illuminati responded, the law enforcement agency is the agency that conducts the investigation into the

misconduct, so that is going to be a cost borne by that actual law enforcement agency, so he does not know where fulltime investigators would really play a role in this process. Mr. Mitchell said, even the schedulers and administrators that they are talking about could be shared, but he does not know.

Mr. Holloway said this may be something they could possibly talk to the Tri County Council about and get them involved because each County will have the same burden, so maybe some of this could be shuttled over to them. Mr. Cannon said he is not sure if that is possible as they focus more on economic development more than anything else. Mr. Holloway said he understands that, but they still have the connection to the three Counties. He said he is not talking about putting them in charge of it, he is talking about having cohesion there in resources for all of it, and they are close to Wor-Wic.

Mr. Hastings asked if both attorneys have copies of the public comments, to which Mr. Illuminati responded, yes. Mr. Hastings said, personally, he would love for the attorneys to look through that and if there is anything that stands out that other Counties are doing, or if there is something that they somehow missed, scanning that could be helpful. He said he does not know if any other Counties have come out and said that they are paying their participants and, if so, that gives them a baseline of understanding, but that could be helpful.

There was no further discussion.



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