



BALTIMORE CITY COUNCIL
PUBLIC SAFETY SUBCOMMITTEE
COUNCILMAN JAMES B. KRAFT, CHAIR



**REPORT ON
THE POLICE PERFORMANCE
ENHANCEMENT PROGRAM
AND RECOMMENDATIONS TO
IMPROVE THE PROCESS FOR
EXPUNGEMENT OF ARREST
WHEN NO CHARGES ARE
FILED**



SEPTEMBER, 2005

PUBLIC SAFETY SUBCOMMITTEE REPORT SEPTEMBER, 2005

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PUBLIC SAFETY SUBCOMMITTEE REPORT

SEPTEMBER, 2005

I. BACKGROUND: *CREATION OF THE TASK FORCE ON POLICE PERFORMANCE ENHANCEMENT AND EXPUNGEMENT OF ARREST*

At the commencement of the current term of the Baltimore City Council in December 2004, many Members of the Council were concerned about press reports regarding both the Baltimore City Police Department and the Central Booking Intake Facility (CBIF).

Numerous reports had been published suggesting that the Police Department took, or had intended to take, sanctions against Officers who did not meet a pre-determined number of required arrests. Based on this information, assumptions were being made that (1) the Police Department had set quotas for arrests by its officers and (2) consequently, a large number of unjustified, legally insufficient, arrests were occurring in Baltimore City. Council Members Kenneth N. Harris, Sr. (4TH District), Belinda K. Conaway (7th District), Bernard C. “Jack” Young (12th District), James B. Kraft (1st District), and Keiffer J. Mitchell, Jr. (11th District), and Rochelle “Rikki” Spector (5th District) held a meeting with Police Commissioner Leonard Hamm and others regarding this issue, at which time the Commissioner agreed to a review of the Police Department’s Enhancement Program by the Council’s Public Safety Subcommittee, chaired by Councilmember James B. Kraft (1st District).

In addition, Members of the Public Safety Subcommittee conducted an investigation to determine the extent of these problems. A review of records revealed that Baltimore City had substantially more arrests that do not result in charges being brought by the State’s Attorney’s Office than any other jurisdiction in the State of Maryland.

After these preliminary inquiries the Public Safety Subcommittee announced formal hearings focusing on two primary questions:

- 1. Does the Baltimore City Police Department’s Performance Enhancement and Training Program encourage arrest quotas?**

2. **Are citizens who are arrested and detained at CBIF, then subsequently released without formally being charged, adequately informed of not only their right to have the record of the arrest expunged but sufficiently instructed and provided with the forms to do so?**

A formal meeting of the Subcommittee was convened on April 8, 2005. Present were representatives of the Police Department, the Fraternal Order of Police, the Baltimore City Criminal Justice Coordinating Council and concerned citizens.

Kristen Mahoney, Chief of the Technical Services Division of the Baltimore City Police Department, advised the meeting that the Police Department Performance Enhancement Program does not have a quota system for arrests. The remedial program was created to assist officers and supervisors by addressing deficiencies in performance before they seriously impact an officer or supervisor's career or public safety. Chief Mahoney further explained the criteria for evaluating the officers in the program and presented the Subcommittee with a document referred to as "the Green Sheet". The Green Sheet is a performance evaluation report completed by the commanders.

As to the other issue, expungement of arrests, Tammy Brown, Executive Director of the Baltimore City Criminal Justice Coordinating Council, explained the procedure for expunging an arrest under Maryland law. She also explained that the process had not been publicly accessible in the past because no form to expunge¹ arrests had been available to the public. However, she further explained that an expungement form had recently been created and was being distributed to individuals released from CBIF without being charged.

At the close of the meeting, Chairman Kraft assigned research functions to members of the Subcommittee to create a performance evaluation model.

¹ To "expunge" an arrest is not to completely delete it from all records but from the public record, which is separate from the private record that is utilized by police and other authorities.

On May 6, 2005, Chief Mahoney and Ms. Brown presented a draft report that contained a copy of the green sheet as well as the new expungement form. The Task Force discussed revisions to the forms and made suggestions for changes and distribution.

On May 9, 2005, Councilman Young introduced Council Resolution 05-0057R, calling on all the parties involved in the operation of CBIF to report to the Baltimore City Council on plans to produce an efficient booking and intake system. The Resolution was referred to the Public Safety Sub-Committee and heard on July 6, 2005. The hearing was attended by the public, Councilmembers Kraft, Harris, Young, Welch, and Mitchell, the Baltimore City Criminal Justice Coordinating Council, the State's Attorney's office, the Office of the Public Defender, the City Solicitor, the Police Commissioner, Senator Verna Jones, the Office of Parole and Probation, and District Court Judge Charlotte Cooksey. The Department of Public Safety and Correctional Services was not present.

Further meetings of the Public Safety Subcommittee Workgroup on Police Performance Enhancement and Expungement of Records were held on May 24, 2005, June 24, 2005, July 1, 2005, and August 10, 2005. These meetings focused on revising the comprehensive report to be finalized for presentation during September 2005.

II. THE PERFORMANCE ENHANCEMENT AND TRAINING PROGRAM: *DOES THE BALTIMORE CITY POLICE DEPARTMENT'S PERFORMANCE ENHANCEMENT PROGRAM ENCOURAGE ARREST QUOTAS?*

The mission of the Baltimore Police Department is to reduce violent crime through targeted proactive enforcement. To accomplish this mission, the Baltimore Police Department has created the Performance Enhancement and Training Program. It is a data-driven early warning management initiative intended to help improve the professional development of Lieutenants, Sergeants, and Police Officers. This innovative program seeks to improve public confidence in the police as it ensures that every member of the Baltimore Police Department attains the highest standards of integrity, service and professionalism. The Program assists the Baltimore Police

Department in continuing to work towards its goal of being the best-trained, best-equipped police department in the country.

The Department has also created the Performance Enhancement and Training Program to fill gaps in the post-academy training curriculum because it recognizes that in past years, with the near elimination of the field training officer program, the Department's training efforts were limited in scope. This program also provides structured guidance and assistance to supervisors so that they are better able to motivate and manage the officers in their command. The Performance Enhancement and Training Program is coupled with other new professional development initiatives recently launched by the Police Department, which include training for newly promoted lieutenants and sergeants and civilian supervisors.

The program exemplifies the Department's commitment to those members who the Department may have failed; it also allows the Department to demonstrate to the hard-working men and women that their work is valued. Properly executed, through using "green sheets", "28 day stat sheets" (see Addendum I, attached) and all available management and motivational tools, the program will enable the Department to reach its stated goal.

CRITERIA

A comprehensive analysis of an officer or supervisor's performance must be in place. The following provides a sample, but not an exhaustive list, of the performance indicators that could be considered during this analysis:

- Police report writing abilities
- Driving record with police vehicles
- Years on the force
- Training history and whether it included a comprehensive field training program
- Timeliness for work
- Number of unexcused absences
- Abuse of medical leave
- Crime control prevention and enforcement

- Performance evaluation within the last 6 months
- Record of sustained disciplinary findings
- Unexcused absences at court proceedings
- Professional appearance, care of uniform and police equipment

To recommend an officer, sergeant, or lieutenant for this remedial program, a supervisor must articulate that the individual has a combination of the above referenced and/or other quantitative and qualitative indicators signaling a need for help. Initially, three officers per district were recommended for participation in this program. As the program evolves, the Department will consider recommendations to participate in the program as needed.

Interventions to Success

Recognizing that the obstacles to success are often in the work environment itself, the program provides the individual with a fresh start because it will, in most cases, temporarily detail the individual to work with a new supervisor throughout the duration of the program.

The program provides regular, intensive, constructive feedback to the officer on areas where the individual needs to improve. The interactive nature of the program provides the individual with the opportunity to both question policies and procedures and work with his/her supervisor to make necessary improvements in performance. Simply put, if an officer has a weakness, either identified by his/her supervisor or self-identified, the officer will get the specific assistance he/she needs to improve his/her level of service.

In addition, the program provides police supervisors with guidance as to how better supervise and motivate officers. Increased evaluations help police supervisors develop attainable goals for those working under them so that performance levels are constantly raised.

Finally, the Police Department and the Police Union are examining additional ways to motivate officers to succeed. In addition to the Performance Enhancement Program, both the Police Department and Police Union hope to have proven recognition programs in place for top

performers by the end of the year. The Public Safety Subcommittee Workgroup applauds this additional effort that both parties are willing to put forth for our heroes in blue.

RESULTS TO DATE

Overall, commanders felt that the first 27 officers selected to participate in the program portrayed a desire to work and improve their performance levels. 17 of the 27 received very positive evaluations in the Districts where they were temporarily assigned. Some of these officers made significant arrests, which resulted in multiple clearances of crimes while others simply gained a refreshed outlook on their role in the Department's crime fighting efforts. Several officers requested to be permanently assigned to their new detail.

Here is some actual feedback about officer performance:

Officer A - Upon arriving at District 1, Officer A had difficulty answering the radio in a timely manner. His sergeant worked with him at District 1 advising him of the importance and safety issues regarding proper radio communications in police work and providing him with hands on training regarding radio use, discipline and maintenance.

Officer B - In District 2, Officer B made an arrest of two armed men who fell asleep in a citizen's home. They were waiting for the citizen to come home so that they could rob or harm the individual. Officer B's quick response and proper handling possibly prevented serious violence. His District 2 sergeant advised that he enjoyed having Officer B as a member of his squad and would like to have him permanently assigned to it if possible.

Officer C - In District 3, during his detail, Officer C demonstrated poor report writing skills and had a preventable automobile accident in his squad car. He was provided with intensive report writing assistance from his sergeant who

recommended that he continue under the 30 day green sheet evaluation program in his parent command with a focus on improved driving skills and report writing.

In summary, the Performance Enhancement and Training Program is just one part of the improved education and training curriculum that Commissioner Hamm hopes to deliver to the Police Department and to citizens of Baltimore. It does not establish arrest quotas. The Subcommittee believes, based upon its research and work with the involved parties, that this is a commitment within the Department and the Union to make the Program a success. If the role of the Performance Enhancement and Training Program is clearly communicated to all and if management is willing to make adjustments to ensure its success, then not only will Baltimore City benefit, but we will have a better BCPD.

III. RECOMMENDATIONS TO IMPROVE THE PROCESS FOR EXPUNGEMENT OF ARRESTS WHEN NO CHARGES ARE FILED: *ARE CITIZENS WHO ARE ARRESTED AND DETAINED AT THE CENTRAL BOOKING INTAKE FACILITY ("CBIF"), THEN SUBSEQUENTLY RELEASED WITHOUT BEING FORMALLY CHARGED, INFORMED OF NOT ONLY THEIR RIGHT TO HAVE THE RECORD OF THE ARREST EXPUNGED BUT ALSO SUFFICIENTLY INSTRUCTED ON HOW TO DO SO AND PROVIDED WITH THE FORMS TO DO SO?*

INTRODUCTION

Once an individual is arrested in Baltimore City, they are transported to CBIF where their fingerprints are taken in order to identify them. This process results in a record being created stating that the person has been arrested. Even if the States Attorney's office then decides not to charge the person, information will still remain on their record about the arrest. It is under these circumstances that the person must file a Petition for Expungement (the "Petition") with the Police Department.

According to the States Attorney's Office Annual Statistical Reports, there are approximately 1,600 arrests each month that do not result in the person being charged with a crime.

Specifically, in 2004 there were 20,794 arrests that did not result in formal charges against the arrestees (see *Addendum II*, attached, which contains the Statistical Reports for 2002, 2003 and 2004).

However, the data, shown in *Addendum II* of this report, are taken from the “Baltimore City State’s Attorney’s Office Annual Statistical Report, 2002 – 2004”, and reflect the different booking and intake system that exists in Baltimore City than in other Maryland jurisdictions. The system in Baltimore City is the only one in the state where the State’s Attorney’s office is present in the detention facility (i.e. CBIF) in a charging capacity to decide whether or not to charge an arrestee before seeing a judge in court. In all other jurisdictions, they do not use an early resolution process. The decision to charge or not charge is made in the courtroom.

Table 1: Number of Persons Booked in Baltimore City versus 8 other jurisdictions in Maryland, April 2004 to March 2005.

# Booked	Baltimore City	Charles	Frederick	Harford	Howard	Montgomery	Prince George's	St. Mary's	Wicomico
2004 April	7,239	331	347	370	321	862	855	303	282
2004 May	8,782	356	393	391	425	856	872	318	330
2004 June	8,309	382	339	385	396	900	950	330	349
2004 July	8,738	382	426	420	440	977	1,059	376	286
2004 Aug	8,426	384	452	459	421	955	991	357	285
2004 Sept	8,362	385	388	389	373	975	986	301	300
2004 Oct	8,478	335	377	427	337	959	987	355	266
2004 Nov	7,219	322	385	389	374	877	808	312	249
2004 Dec	7,011	393	366	415	315	901	955	282	271
2005 Jan	7,252	373	358	416	358	937	1,179	314	292
2005 Feb	7,328	325	350	427	366	888	1,336	314	297
2005 Mar	8,763	432	394	511	373	1,034	1,319	411	302
TOTAL	95,907	4,400	370	4,999	4,499	11,121	12,297	3,973	3,509

Data Source: Maryland Department of Public Safety and Correctional Services

Table 2: Number of Persons Booked But Not Charged in Baltimore City versus 8 other jurisdictions in Maryland, April 2004 to March 2005.

# Not Charged	Baltimore City	Charles	Frederick	Harford	Howard	Montgomery	Prince George's	St. Mary's	Wicomico
2004 April	1,559	-	-	-	4	-	-	-	-
2004 May	2,051	-	-	-	1	34	3	-	-
2004 June	1,816	-	-	-	5	-	14	-	-
2004 July	2,158	-	-	-	4	-	17	-	-
2004 August	1,767	-	-	-	5	-	1	-	-
2004 Sept	1,829	-	-	-	13	1	-	-	-
2004 Oct	1,943	-	-	-	10	-	1	-	1
2004 Nov	1,629	-	-	-	5	-	8	-	-
2004 Dec	1,524	-	-	-	5	-	6	-	-
2005 Jan	1,581	-	-	-	4	-	9	-	-
2005 Feb	1,695	-	-	-	6	-	3	-	-
2005 Mar	2,169	-	-	-	9	-	10	-	-
TOTAL	21,721	-	-	-	71	35	72	-	1

Data Source: Maryland Department of Public Safety and Correctional Services

The highest crime rates in Maryland are found in the poorest communities of Baltimore City. As a result, these communities are more regularly policed. African Americans heavily populate most of these areas. The unintended consequence of this is the disproportionate arrest of both African Americans and the poor. Therefore, they are more likely to have a criminal record preventing them from having a job that provides a living wage or, in many cases, no job at all.

While Maryland employers are restricted to asking job applicants about convictions, they do have access to arrest records through criminal record checks. Criminal record checks can be conducted on-line through private companies for a small fee. Arrests are not convictions, however, individuals are denied employment because arrests show up on their record. Currently, the only way to solve this problem is to expunge the record of the arrest. After it is expunged, the arrest will be removed from the public record.

Process to Expunge Arrest

In an effort to address the problem created by arresting thousands of people without formal charges being placed against them, the Police Department has created a form entitled "Application for Expungement When No Charges are Filed" (the "Petition") (see *Addendum III*

attached). Initially, arrestees did not know about the need to file the Petition, thus, they were left with a permanent record of the arrest.

Then, the Police Department partnered with the Department of Public Safety and the Petition was given to the arrestee, without instruction, upon release. While this was an effort to solve the problem, it too has been rife with problems including, but not limited to: (1) the arrestee was illiterate; (2) the arrestee did not fully understand why they had been given the Petition; (3) the arrestee, in many instances, was unaware of the reason that they had been arrested in the first place and, thus, was unable to fully complete the Petition; (4) the arrestee lost, forgot, or was unable to properly file or complete the Petition or (5) the arrestee, not knowing the importance of filing the Petition, simply threw it away.

In a number of cases, the identification of the arrestee results in a person being held for some other reason, e.g. outstanding charges, failure to appear, violation of parole or probation, etc. This only complicates the process. If the arrestee is subsequently released on their own recognizance, then it becomes imperative that they be informed of which charges have actually been placed against them so that the Petition reflects the arrest for which they were not charged.

If the arrestee is not released and transferred into the system, then the situation is most dire because once they are committed, it is more unlikely that the Petition would be completed even if the petition had been provided. Once again it becomes imperative that they not only be informed of which charges have not been placed against them so that the Petition actually reflects the arrest. They should also be given the opportunity and resources to complete and file the Petition prior to the transfer.

EXISTING PROBLEMS WITH THE PROCESS

➤ ***Individuals are required to waive the right to file a civil suit.***

The current process not only puts the burden on the individual to complete and mail the form to the Police Department but, under the current expungement law, the individual must also agree to waive their right to file a civil suit against the complainant, i.e. the Police

Department and/or the State, by filing a “Waiver and Release” with the Petition. If they choose not to waive their right to bring a civil claim, then they must wait for three years past the arrest in order to fill the Petition. Therefore, in the event that the person has a claim for police brutality, malicious prosecution, etc., they must choose to waive their right to bring that claim or have the arrest remain on their record for three years at which time they must still file the Petition to have it removed. This quid pro quo is not acceptable.

➤ ***Police must process paperwork.***

This process is cumbersome for the Police Department because: (1) they are required to verify that the person who files the Petition is eligible for the expungement; and (2) they have to process all of the paperwork required by the State and the Federal Government to ensure all of the public records of the arrest are removed.² They are also required to send notice to the individual who filed the request. Currently, there are only two employees in the Police Department who process these Petitions. With an increase in distribution of the forms it is anticipated there will be a large increase in the number of forms being filed. Therefore, additional personnel will be required.

➤ ***Information regarding the arrest is not provided to individuals not charged.***

The process is difficult for the Police Department because they must manually look up the individual’s arrest information, e.g. the complaint number, because the individuals are not provided with any information by CBIF as to why they were arrested in the first place.

SHORT-TERM SOLUTIONS AND RECOMMENDATIONS

- Continue to distribute the expungement form at CBIF and require that the releasing officers at CBIF insert all pertinent information such as the date of arrest, the charge, and the central complaint number on the form.
- Require releasing officers at CBIF to distribute documentation regarding the arrest to individuals released without being charged.

² The State of Maryland, as the custodian of CBIF and of criminal records, processes expungements, further complicating an already burdensome process for the Police Department.

- Make the Petition for Expungement forms available to the general public so that individuals with previous arrests without charge may complete and file them without charge. Forms should be available at the Circuit and District Courts, City Council Members' offices, City Libraries and online through various City websites.
- Require the Office of the Public Defender and Legal Aid Bureau to provide resources for and train community-based social service providers in publicizing the need for those who have been previously arrested without charge to file the Petition for Expungement.

LONG-TERM SOLUTIONS AND RECOMMENDATIONS

- Amend Md. Criminal Procedure § 10-103 to allow arrests without charge in Baltimore City to be automatically expunged.
- Amend Md. Criminal Procedure § 10-103 to allow individuals to file a Petition for Expungement without having to file the Waiver and Release form.
- Require the Police Department to submit a plan on how to decrease the number of individuals being brought to CBIF for identification and develop alternatives to arrest for nuisance/quality of life crimes.
- Support Community Agencies that help people provide identification to individuals.

Addendum I:

*BALTIMORE POLICE DEPARTMENT
“GREEN SHEET” AND “INDIVIDUAL 28-
DAY STAT REPORT”*

Addendum II:

*BALTIMORE CITY STATE'S ATTORNEY'S
OFFICE ANNUAL STATISTICAL REPORT,
2002 TO 2004*

Addendum III:

EXPUNGEMENT FORM

Addendum IV:

*MARYLAND ANNOTATED CODE,
CRIMINAL PROCEDURE SECTION,
TITLE 10. CRIMINAL RECORDS,
SUBTITLE 1. EXPUNGEMENT OF
POLICE AND COURT RECORDS.*