



Committee: PS
Committee Review: At a future date
Staff: Khandikile Mvunga Sokoni, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #Police#PolicingAdvisoryCommission#PAC
 #Community Advisory Commission on Public Safety

AGENDA ITEM#2
 September 12, 2023
Public Hearing

SUBJECT

Bill 32-23, Police – Policing Advisory Commission - Amendments
 Lead Sponsor: Councilmember Luedtke

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION:

N/A

DESCRIPTION/ISSUE

Bill 32-23 would:

- (1) rename the Policing Advisory Commission so that it will now be known as Community Advisory Commission on Public Safety;
- (2) amend the law regarding the Policing Advisory Commission regarding appointment of members and scope of the Commission; and
- (3) generally amend the law regarding policing, public safety and law enforcement.

SUMMARY OF KEY DISCUSSION POINTS

None

This report contains:

Staff Report	Pages 1-3
Bill 32-23	© 1
Md. Public Safety Code Ann. §3-101 <i>et seq.</i>	© 6
Climate Assessment	© 14
Economic Impact Statement	© 17
Racial Equity and Social Justice Impact Statement	© 20
Fiscal Impact Statement – OMB Extension Request	© 25

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MEMORANDUM

September 7, 2023

TO: County Council

FROM: Khandikile Mvunga Sokoni, Legislative Attorney

SUBJECT: Bill 32-23, Police - Policing Advisory Commission - Amendments

PURPOSE: Public Hearing – no Council vote required

Bill 32-23, Police – Policing Advisory Commission - Amendments, whose lead sponsor is Councilmember Luedtke, was introduced on July 25, 2023. A public hearing is scheduled for September 12, 2023, and a worksession before the Public Safety Committee is tentatively scheduled for Monday September 18, 2023.

Bill 32-23 would:

- (1) rename the Policing Advisory Commission so that it will now be known as Community Advisory Commission on Public Safety;
- (2) amend the law regarding the Policing Advisory Commission regarding appointment of members and scope of the Commission; and
- (3) generally amend the law regarding policing, public safety and law enforcement.

BACKGROUND.

The purpose of Bill 32-23 is to amend the provisions in the County Code that provide for and govern the Policing Advisory Commission (PAC). The PAC was established by Bill No. 14-19¹ which was enacted on December 3, 2019, and took effect on March 13, 2020. The Bill provided that the PAC would consist of 13 voting members (appointed by the Council with each Councilmember nominating one member), and two ex-officio non-voting members (nominated by the County Executive). On July 28, 2020², the Council, by [Resolution No: 19-573](#) appointed the Commissioners to the PAC, whose terms are set to expire on July 31, 2023.

Subsequent to the creation of the PAC, on April 10, 2021 the State Assembly amended the Maryland Public Safety Article to among other things require each County to have a police accountability board.³ The County, pursuant to this State mandate enacted [Bill No. 49-21](#), which took effect on May 2, 2022, to:

¹ <https://apps.montgomerycountymd.gov/ccllims/BillDetailsPage?RecordId=2610&fullTextSearch=14-19>

² Any vacancies arising since the original appointment(s) were filled for the remainder of the term.

³ Md. Public Safety Code Ann. §3-102.

- (1) establish the Police Accountability Board for the County;
- (2) define the membership and duties of the Police Accountability Board;
- (3) establish the Administrative Charging Committee for the County;
- (4) define the membership, duties, and compensation for members of the Administrative Charging Committee; and
- (5) generally amend the law governing police accountability and discipline.

Members of the Police Accountability Board were appointed on June 28, 2022 by [Resolution 19-1313](#), to terms that started on July 1, 2023.

According to the sponsor of this expedited bill, because of the establishment of the Police Accountability Board and the Administrative Charging Committee it is important to clarify the role of the PAC. Hence this bill.

The bill sponsor previously introduced Expedited Bill 27-23, co-sponsored by Councilmember Katz which sought to repeal⁴ the PAC. However, Councilmember Luedtke moved, and the Council voted to withdraw that bill. In its place Councilmember Luedtke introduced Bill 32-23 on July 25, 2023.

BILL SPECIFICS

In summary, some of the changes to the PAC proposed by Bill 32-32 include:

- Renaming the PAC.
- Introducing term limits of two consecutive three-year terms.
- Staggering of initial terms.
- Making it clear that the Commission is responsible for advising the County Council on certain policing matters and is not an oversight body of the Police Department.
- Clarifying that the Commission does not consider policing matters relative to police misconduct and discipline that are within the scope of the PAB to align with a proposed amendment to Bill 27-23 that OLO had recommended in its Racial Equity and Social Justice Impact Statement for Bill 27-23.
- Changing the number and eligibility of commissioners.
- Changing voting eligibility of commissioners.

⁴ After introduction the bill sponsors presented proposed amendments to the Committee.

This packet contains:

Bill 32-23
Md. Public Safety Code Ann. §3-101 *et seq.*
Climate Assessment
Economic Impact Statement
Racial Equity and Social Justice Impact Statement
Fiscal Impact Statement – OMB Extension Request

Circle #

© 1
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Bill No. 32-23
Concerning: Police – Policing Advisory Commission - Amendments
Revised: 8/4/2023 Draft No. 2
Introduced: July 25, 2023
Expiration: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Luedtke

AN ACT to:

- (1) rename the Policing Advisory Commission so that it will now be known as Community Advisory Commission on Public Safety;
- (2) amend the law regarding the Policing Advisory Commission regarding appointment of members and scope of the Commission; and
- (3) generally amend the law regarding policing and law enforcement.

By amending

Montgomery County Code
Chapter 35
Sections 35-6 and 35-6A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 35-6 is amended as follows:**

2 **35-6. [Policing Advisory Commission] Community Advisory Commission on**
3 **Public Safety**

4 (a) Definitions. In this Section the following words have the meanings
5 indicated:

6 *Commission* means the [Policing Advisory Commission] Community
7 Advisory Commission on Public Safety.

8 *Department* means the Montgomery County Police Department.

9 *Institutional members* are: (A) the Police Chief or the Police Chief's
10 designee; and (B) the President of an employee organization certified
11 under Article V of Chapter 33 or the President's designee.

12 (b) Established. The County Council must appoint a [Policing Advisory
13 Commission] Community Advisory Commission on Public Safety.

14 (c) Composition and terms of members.

15 (1) The Commission has [13]15 members consisting of 13 public
16 members and 2 institutional members.

17 (2) The Council must appoint [9 public]all members. [Each] Except
18 for the institutional members, every other member should
19 represent a community organization operating in the County or
20 be an individual. [Each Councilmember should nominate one
21 member].

22 (3) [The Council should appoint 4 public members nominated by the
23 Executive.] Staggering of initial terms. Of [these]the initial
24 public members:

25 (A) [one member should be 25 years of age or younger at the
26 time of appointment]5 must be appointed to 1-year terms;
27 [and]

28 (B) [one member should be 26-35 years of age at the time of
29 appointment.]5 must be appointed to 2-year terms; and

30 (C) 3 must be appointed to 3-year terms.

31 (4) The public members appointed under paragraphs (2) and (3)
32 should:

33 (A) reflect a range of ethnicities, socioeconomic status, and
34 places of origin to reflect the racial and economic diversity
35 of the County’s communities, including religious creed,
36 age, sex – including on the basis of gender identity or
37 orientation, disability, and geographic location, with
38 emphasis on those disproportionately impacted by
39 inequities; [and]

40 (B) include representation from business owners or
41 organizations, Urban Districts, homeowners’ associations,
42 common ownership communities, and tenants’
43 associations; and

44 (C) have an interest or expertise in policing matters.

45 (5) [The Council should appoint the following as non-voting ex
46 officio members:

47 (A) the Police Chief or the Police Chief’s designee; and

48 (B) the President of an employee organization certified under
49 Article V of Chapter 33 or the President’s designee.

50 (6) The term of each member is 3 years. A member must not serve
51 more than two consecutive terms. Members continue in office
52 until their successors are appointed and qualified. After an
53 appointment to fill a vacancy before a term expires, the successor
54 serves the rest of the unexpired term.

- 55 (d) Citizens Academy participation. The public members appointed under
56 paragraph (c) must participate in the Montgomery County Police
57 Department Citizens Academy.
- 58 (e) Voting, officers, meetings, and compensation.
- 59 (1) [~~Except the ex officio members, all~~]All members of the
60 Commission are voting members.
- 61 (2) The Commission must elect a Chair and Vice-Chair from among
62 its [voting] members.
- 63 (3) The Commission meets at the call of the Chair. The Commission
64 must meet as often as necessary to perform its duties, but not less
65 than 6 times each year.
- 66 (4) A member must serve without compensation. However, a
67 member may request reimbursement for mileage and dependent
68 care costs at rates established by the County.
- 69 (f) Duties. The Commission must:
- 70 (1) advise the Council on policing matters;
- 71 (2) provide information regarding best practices on policing matters;
- 72 (3) recommend policies, programs, legislation, or regulations for the
73 Council's consideration;
- 74 (4) comment on matters referred to it by the Council;
- 75 (5) conduct community outreach for community input on policing
76 matters;
- 77 (6) accept correspondence and comments from members of the
78 public[;], except that the Commission must not accept
79 complaints involving police misconduct and discipline that fall
80 under the jurisdiction of the Police Advisory Board pursuant to
81 Section 35-24; and

- 82 (7) engage in public education.
- 83 (g) Requests for information. The County, including the Police
- 84 Department, should respond to Commission requests for information
- 85 within 30 days after the County receives the request.
- 86 (h) Annual Report. By July 1 each year, the Commission must submit to
- 87 the Executive and the Council an annual report on its functions,
- 88 activities, accomplishments, and plans and objectives.
- 89 (i) Advocacy. The Commission must not engage in any advocacy activity
- 90 at the State or federal levels unless that activity is approved by the
- 91 Office of Intergovernmental Relations.
- 92 (j) Staff. The Executive Director of the Office of the County Council must
- 93 provide appropriate staff to the Commission.
- 94 (k) The Commission is not an oversight body of any law enforcement entity
- 95 operating in Montgomery County.

96 * * *

97 **Sec. 35-6A. Community Informed Police Training.**

98 * * *

99 (c) *Reporting requirements.*

100 * * *

101 (6) The Department must also provide the information reported under

102 paragraph (1) to the [Policing Advisory Commission] Community

103 Advisory Commission on Public Safety established under Section 35-

104 6.

[Md. Public Safety Code Ann. § 3-101](#)

Current through Chapter 8 of the 2023 Regular Session of the General Assembly; and including legislative changes ratified by the voters at the November 2022 election.

Michie's™ Annotated Code of Maryland > Public Safety (Titles 1 — 15) > Title 3. Law Enforcement. (Subts. 1 — 7) > Subtitle 1. Police Accountability and Discipline. (§§ 3-101 — 3-114)

§ 3-101. Definitions.

- (a) In this title the following words have the meanings indicated.
- (b) “Administratively charged” means that a police officer has been formally accused of misconduct in an administrative proceeding.
- (c) “Disciplinary matrix” means a written, consistent, progressive, and transparent tool or rubric that provides ranges of disciplinary actions for different types of misconduct.
- (d) “Exonerated” means that a police officer acted in accordance with the law and agency policy.
- (e) “Law enforcement agency” has the meaning stated in § 3-201 of this title.
- (f) “Not administratively charged” means that a determination has been made not to administratively charge a police officer in connection with alleged misconduct.
- (g) “Police misconduct” means a pattern, a practice, or conduct by a police officer or law enforcement agency that includes:
 - (1) depriving persons of rights protected by the constitution or laws of the State or the United States;
 - (2) a violation of a criminal statute; and
 - (3) a violation of law enforcement agency standards and policies.
- (h) “Police officer” has the meaning stated in § 3-201 of this title.
- (i) “Serious physical injury” has the meaning stated in [§ 3-201 of the Criminal Law Article](#).
- (j) “Superior governmental authority” means the governing body that oversees a law enforcement agency.
- (k) “Unfounded” means that the allegations against a police officer are not supported by fact.

History

[2021, ch. 59, § 3.](#)

Annotations

Notes

Editor's note. —

Md. Public Safety Code Ann. § 3-101

Acts [2021, ch. 59, § 8](#), provides that “Title 3, Subtitle 1 of the Public Safety Article, as enacted by Section 3 of this Act, shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to:

“(1) any bona fide collective bargaining agreement entered into on or before June 30, 2022, for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original contract; or

“(2) a disciplinary matter against a law enforcement officer based on alleged misconduct occurring before July 1, 2022.”

Acts [2021, ch. 59, § 12](#), provides that “except as provided in Section 11 of this Act, this Act shall take effect July 1, 2022.”

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Md. Public Safety Code Ann. § 3-102

Current through Chapter 8 of the 2023 Regular Session of the General Assembly; and including legislative changes ratified by the voters at the November 2022 election.

Michie's™ Annotated Code of Maryland > Public Safety (Titles 1 — 15) > Title 3. Law Enforcement. (Subts. 1 — 7) > Subtitle 1. Police Accountability and Discipline. (§§ 3-101 — 3-114)

§ 3-102. County police accountability board — Purpose — Local governing body — Complaint of police misconduct — Forwarded to law enforcement agency.

- (a) Each county shall have a police accountability board to:
- (1) hold quarterly meetings with heads of law enforcement agencies and otherwise work with law enforcement agencies and the county government to improve matters of policing;
 - (2) appoint civilian members to charging committees and trial boards;
 - (3) receive complaints of police misconduct filed by members of the public; and
 - (4)
 - (i) on a quarterly basis, review outcomes of disciplinary matters considered by charging committees; and
 - (ii) on or before December 31 each year, submit a report to the governing body of the county that:
 1. identifies any trends in the disciplinary process of police officers in the county; and
 2. makes recommendations on changes to policy that would improve police accountability in the county.
- (b)
- (1)
 - (i) Subject to subparagraph (ii) of this paragraph, the local governing body shall:
 1. establish the membership of a police accountability board;
 2. establish the budget and staff for a police accountability board;
 3. appoint a chair of the police accountability board who has relevant experience to the position; and
 4. establish the procedures for record keeping by a police accountability board.
 - (ii) An active police officer may not be a member of a police accountability board.
 - (2) To the extent practicable, the membership of a police accountability board shall reflect the racial, gender, and cultural diversity of the county.
- (c)
- (1) A complaint of police misconduct filed with a police accountability board shall include:
 - (i) the name of the police officer accused of misconduct;
 - (ii) a description of the facts on which the complaint is based; and

Md. Public Safety Code Ann. § 3-102

(iii) contact information of the complainant or a person filing on behalf of the complainant for investigative follow-up.

(2) A complaint need not be notarized.

(d) A complaint of police misconduct filed with a police accountability board shall be forwarded to the appropriate law enforcement agency within 3 days after receipt by the board.

History

[2021, ch. 59, § 3.](#)

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[Md. Public Safety Code Ann. § 3-103](#)

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§ 3-103. Complaint filed with employing entity — Items included.

(a) An individual may file a complaint of police misconduct with the law enforcement agency that employs the police officer who is the subject of the complaint.

(b)

(1) A complaint of police misconduct filed with a law enforcement agency shall include:

(i) the name of the police officer accused of misconduct;

(ii) a description of the facts on which the complaint is based; and

(iii) contact information of the complainant or a person filing on behalf of the complainant for investigative follow-up.

(2) A complaint need not be notarized.

History

[2021, ch. 59, § 3.](#)

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Md. Public Safety Code Ann. § 3-104

Current through Chapter 8 of the 2023 Regular Session of the General Assembly; and including legislative changes ratified by the voters at the November 2022 election.

Michie's™ Annotated Code of Maryland > Public Safety (Titles 1 — 15) > Title 3. Law Enforcement. (Subts. 1 — 7) > Subtitle 1. Police Accountability and Discipline. (§§ 3-101 — 3-114)

§ 3-104. Administrative charging committee — Statewide committee — Training on police procedures — Investigative files forwarded to committee — Meetings — Confidentiality.

(a)

- (1)** Each county shall have one administrative charging committee to serve countywide law enforcement agencies and local law enforcement agencies within the county.
- (2)** A county administrative charging committee shall be composed of:
 - (i)** the chair of the county's police accountability board, or another member of the accountability board designated by the chair of the accountability board;
 - (ii)** two civilian members selected by the county's police accountability board; and
 - (iii)** two civilian members selected by the chief executive officer of the county.

(b)

- (1)** There shall be at least one statewide administrative charging committee to serve statewide and bi-county law enforcement agencies.
- (2)** A statewide administrative charging committee shall be composed of:
 - (i)** three civilian members appointed by the Governor;
 - (ii)** one civilian member appointed by the President of the Senate; and
 - (iii)** one civilian member appointed by the Speaker of the House.

(c) Before serving as a member of an administrative charging committee, an individual shall receive training on matters relating to police procedures from the Maryland Police Training and Standards Commission.

(d) On completion of an investigation of a complaint of police misconduct involving a member of the public and a police officer, regardless of whether the complaint originated from within the law enforcement agency or from an external source, the law enforcement agency shall forward to the appropriate administrative charging committee the investigatory files for the matter.

(e) An administrative charging committee shall:

- (1)** review the findings of a law enforcement agency's investigation conducted and forwarded in accordance with subsection (d) of this section;
- (2)** make a determination that the police officer who is subject to investigation shall be:
 - (i)** administratively charged; or
 - (ii)** not administratively charged;

Md. Public Safety Code Ann. § 3-104

- (3) if the police officer is charged, recommend discipline in accordance with the law enforcement agency's disciplinary matrix established in accordance with § 3-105 of this subtitle;
 - (4) review any body camera footage that may be relevant to the matters covered in the complaint of misconduct;
 - (5) authorize a police officer called to appear before an administrative charging committee to be accompanied by a representative;
 - (6) issue a written opinion that describes in detail its findings, determinations, and recommendations; and
 - (7) forward the written opinion to the chief of the law enforcement agency, the police officer, and the complainant.
- (f) In executing its duties in accordance with subsection (e) of this section, an administrative charging committee may:
- (1) request information or action from the law enforcement agency that conducted the investigation, including requiring additional investigation and the issuance of subpoenas;
 - (2) if the police officer is not administratively charged, make a determination that:
 - (i) the allegations against the police officer are unfounded; or
 - (ii) the police officer is exonerated; and
 - (3) record, in writing, any failure of supervision that caused or contributed to a police officer's misconduct.
- (g) An administrative charging committee shall meet once per month or as needed.
- (h) A member of an administrative charging committee shall maintain confidentiality relating to a matter being considered by the administrative charging committee until final disposition of the matter.

History

[2021, ch. 59, § 3](#); [2022, ch. 141, § 2](#).

Annotations

Notes

Effect of amendments. —

Acts 2022, ch. 141, § 2, effective July 1, 2022, substituted “complaint of police misconduct involving a member of the public and a police officer, regardless of whether the complaint originated from within the law enforcement agency or from an external source” for “complaint made by a member of the public against a police officer” in (d).

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[Md. Public Safety Code Ann. § 3-105](#)

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§ 3-105. Model uniform disciplinary matrix — Adoption.

- (a) The Maryland Police Training and Standards Commission shall develop and adopt, by regulation, a model uniform disciplinary matrix for use by each law enforcement agency in the State.
- (b) Each law enforcement agency shall adopt the uniform State disciplinary matrix for all matters that may result in discipline of a police officer.
- (c)
- (1) Within 15 days after an administrative charging committee issues an administrative charge against a police officer, the chief of the law enforcement agency shall offer discipline to the police officer who has been administratively charged in accordance with the disciplinary matrix.
 - (2) The chief may offer the same discipline that was recommended by the administrative charging committee or a higher degree of discipline within the applicable range of the disciplinary matrix, but may not deviate below the discipline recommended by the administrative charging committee.
 - (3) If the police officer accepts the chief's offer of discipline, then the offered discipline shall be imposed.
 - (4) If the police officer does not accept the chief's offer of discipline, then the matter shall be referred to a trial board.
 - (5) At least 30 days before a trial board proceeding begins, the police officer shall be:
 - (i) provided a copy of the investigatory record;
 - (ii) notified of the charges against the police officer; and
 - (iii) notified of the disciplinary action being recommended.

History

[2021, ch. 59, § 3](#); [2022, ch. 141, § 2](#).

Annotations

Notes

Effect of amendments. —

Acts 2022, ch. 141, § 2, effective July 1, 2022, added “for all matters that may result in discipline of a police officer” in (b).

Climate Assessment

Office of Legislative Oversight

Bill 32-23: Police – Policing Advisory Commission - Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 32-23 will have no impact on the County's contribution to addressing climate change as it is proposing changes regarding the name and composition of an existing committee.

BACKGROUND AND PURPOSE OF BILL 32-23

The Police Advisory Commission (PAC) was established by Bill 14-19, which was enacted on December 3, 2019, and took effect on March 13, 2020.¹ The Commission was established in response to the ongoing public dialogue around policing practices and as an effort to increase community involvement in matters of public safety by advising the Council on policing matters and recommending policies, programs, legislation, or regulations regarding policing.

In 2021, the Maryland Legislature passed the Maryland Police Accountability Act, which mandated the creation of three distinct police oversight boards. These boards include a Police Accountability Board, an Administrative Charging Committee, and a Trial Board.² The Police Accountability Board (PAB) is composed of nine members appointed by the County Executive and holds quarterly meetings with heads of law enforcement agencies and County officials to enhance policing practices. The Board also receives complaints of police misconduct filed by members of the public and on a quarterly basis, reviews outcomes of disciplinary matters considered by the charging committee. To comply with this new policy change, on April 19, 2022, Bill No. 49-21 was enacted to establish the Police Accountability Board for the County.³

Due to the implementation of this state law, in May 25, 2023, Expedited Bill 27-23, Police – Police Advisory Commission – Repeal, was introduced by the County Council in order to repeal the Police Advisory Commission, out of concerns that it would duplicate the functions of the Police Accountability Board.⁴ Specifically, according to the sponsor of this expedited bill, because of the establishment of the Police Accountability Board and the Administrative Charging Committee it is important to clarify the role of the Policing Advisory Commission. The bill sponsors are now proposing amendments to the bill rather than repealing the PAC.

Hence, on July 25, 2023, the County Council introduced Bill 32-23, Police – Policing Advisory Commission – Amendments.⁵ The purpose of Bill 32-23 is to amend the provisions in the County Code that provide for and govern the Policing Advisory Commission (PAC). This Bill would:

- (1) Rename the Policing Advisory Commission so that it will now be known as Community Advisory Commission on Public Safety.
 - (2) Amend the law regarding the Policing Advisory Commission regarding appointment of members. This includes introducing term limits of two consecutive three-year terms, staggering of initial terms, changing the number and eligibility for commissioners and changing voting eligibility of commissioners.
 - (3) Remove the selection of one member by each Councilmember and make all four existing County Executive selections be Council selections so these 13 total members are selected by a vote of the entire Council; Additionally, make the two current ex-officio members full voting members – the Fraternal Order of Police (FOP) and the Police Department representatives – for a total of 15 voting members.
 - (4) Mandate the Commission to perform community outreach and discussion with an emphasis on getting feedback and input from those living or working in Equity Focus Areas.
-

ANTICIPATED IMPACTS

As Bill 32-23 proposes changes to an existing committee, OLO anticipates it will have no impact on the County’s contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.⁶ OLO does not offer recommendations or amendments as Bill 32-23 is likely to have no impact on the County’s contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptative capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptive capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ [Bill 14-19 Police – Policing Advisory Commission – Established, Montgomery County Council, December 2, 2019](#)

² [House Bill 670, Maryland Police Accountability Act of 2021 – Police Discipline and Law Enforcement Programs and Procedures.](#)

³ [Bill 49-21 Police – Police Accountability Board – Administrative Charging Committee – Established, April 19, 2022](#)

⁴ Khandikile Sokoni, Memorandum to County Council, [Introduction Staff Report for Expedited Bill 27-23](#), May 22, 2023

⁵ [Bill 32-23, Police – Policing Advisory Commission -- Amendments](#)

⁶ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022

Economic Impact Statement

Montgomery County, Maryland

Bill 32-23

Police – Policing Advisory Commission – Amendments

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Bill 32-23 would have an insignificant impact on economic conditions in the County in terms of the Council’s priority indicators.

BACKGROUND AND PURPOSE OF BILL 32-23

The Police Advisory Commission (PAC) was established by Bill 14-19, which was enacted on December 3, 2019, and took effect on March 13, 2020.¹ The Commission was established in response to the ongoing public dialogue around policing practices and as an effort to increase community involvement in matters of public safety by advising the Council on policing matters and recommending policies, programs, legislation, or regulations regarding policing.

In 2021, the Maryland Legislature passed the Maryland Police Accountability Act, which mandated the creation of three distinct police oversight boards. These boards include a Police Accountability Board, an Administrative Charging Committee, and a Trial Board.² The Police Accountability Board (PAB) is composed of nine members appointed by the County Executive and holds quarterly meetings with heads of law enforcement agencies and County officials to enhance policing practices. The Board also receives complaints of police misconduct filed by members of the public and on a quarterly basis, reviews outcomes of disciplinary matters considered by the charging committee. To comply with this new policy change, on April 19, 2022, Bill 49-21 was enacted to establish the Police Accountability Board for the County.³

Due the implementation of this state law, in May 25, 2023, Expedited Bill 27-23, Police – Policing Advisory Commission – Repeal, was introduced by the County Council in order to repeal the Police Advisory Commission, out of concerns that it would duplicate the functions of the Police Accountability Board.⁴ Specifically, according to the sponsor of this expedited bill, because of the establishment of the Police Accountability Board and the Administrative Charging Committee it is important to clarify the role of the Policing Advisory Commission. The bill sponsors are now proposing amendments to the bill rather than repealing the PAC.

Hence, on July 25, 2023, the County Council introduced Bill 32-23, Police – Policing Advisory Commission – Amendments.⁵ The purpose of Bill 32-23 is to amend the provisions in the County Code that provide for and govern the Policing Advisory Commission (PAC). This Bill would:

¹ Bill 14-19.

² House Bill 670.

³ Bill 49-21.

⁴ Sokoni to County Council, Memorandum.

⁵ Bill 32-33.

- (1) Rename the Policing Advisory Commission so that it will now be known as Community Advisory Commission on Public Safety.
- (2) Amend the law regarding the Policing Advisory Commission regarding appointment of members. This includes introducing term limits of two consecutive three-year terms, staggering of initial terms, changing the number and eligibility for commissioners and changing voting eligibility of commissioners.
- (3) Remove the selection of one member by each Councilmember and make all four existing County Executive selections be Council selections so these 13 total members are selected by a vote of the entire Council; additionally, make the two current ex-officio members full voting members – the Fraternal Order of Police (FOP) and the Police Department representatives – for a total of 15 voting members.
- (4) Mandate the Commission to perform community outreach and discussion with an emphasis on getting feedback and input from those living or working in Equity Focus Areas.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess the impacts of Bill 32-23 on County-based private organizations and residents in terms of the Council’s priority economic indicators and whether the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.⁶ OLO sees no direct connection between the changes to the law and economic outcomes. For this reason, OLO anticipates that the Bill would have insignificant impacts on private organizations, residents, and overall economic conditions in the County in terms of the indicators prioritized by the Council.

VARIABLES

Not applicable

IMPACTS

WORKFORCE ■ TAXATION POLICY ■ PROPERTY VALUES ■ INCOMES ■ OPERATING COSTS ■ PRIVATE SECTOR CAPITAL INVESTMENT ■ ECONOMIC DEVELOPMENT ■ COMPETITIVENESS

Not applicable

DISCUSSION ITEMS

Not applicable

⁶ Montgomery County Code, [Sec. 2-81B](#).

WORKS CITED

[House Bill 670](#). Maryland Police Accountability Act of 2021 – Police Discipline and Law Enforcement Programs and Procedures.

Khandikile Sokoni to County Council. Memorandum. [Introduction Staff Report for Expedited Bill 27-23](#). May 22, 2023.

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements](#).

Montgomery County Council. [Introduction Staff Report for Bill 32-23, Police – Policing Advisory Commission – Amendments](#). Introduced on July 25, 2023.

Montgomery County Council. [Bill 14-19 Police – Policing Advisory Commission – Established. December 2, 2019](#).

Montgomery County Council. [Bill 49-21 Police – Police Accountability Board – Administrative Charging Committee – Established. April 19, 2022](#).

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 32-23: POLICE – POLICING ADVISORY COMMISSION – AMENDMENTS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 32-23 could have a negative impact on racial equity and social justice (RESJ) in the County as its amendments changing the composition of the Policing Advisory Commission (PAC) could diminish its independence and power in promoting policing best practices that advance RESJ in the County. To offset the potential negative RESJ impact of Bill 32-23, OLO offers several policy options for consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 32-23

In recent years, the County has launched a variety of initiatives aimed at advancing best practices for racial equity and social justice in policing. These efforts have included the Reimagining Public Safety Initiative and Reimagining Public Safety Task Force, and enacting legislation for enhanced data collection by the Montgomery County Police Department (MCPD), community-informed police training, reports on settlements, reporting requirements for internal affairs, and the formation of the civilian-led Policing Advisory Commission to advise the Council on policing matters.

The purpose of Bill 32-23 is to amend the Policing Advisory Commission (PAC).³ According to the Bill's sponsor, the purpose of the Commission needs to be clarified due to the establishment of the Police Accountability Board (PAB).⁴ If adopted, Bill 32-23 would enact several changes to the PAC that include:

- Renaming the Policing Advisory Commission to the Community Advisory Commission on Public Safety.
- Increasing the size of the Commission from 13 to 15 members.
- Adding the Police Chief and President of the Fraternal Order of Police (or their designees) as voting members.
- Eliminating the two young adult members requirement (age 25 or younger; age 26 to 35 when appointed).
- Limiting members' terms to two-consecutive terms of three years.
- Requiring representation from business owners, Urban Districts, homeowners' associations, common ownership communities and tenants' association among members appointed by the Council.
- Prohibiting the Commission from accepting police misconduct complaints.
- Prohibiting the Commission from serving as "an oversight body of any law enforcement entity operating in Montgomery County."

RESJ Impact Statement

Bill 32-23

Bill 32-23 to amend the Policing Advisory Commission was introduced by the County Council on July 25, 2023, following the withdrawal of Expedited Bill 27-23, introduced on May 25, 2023, that would have repealed the Commission.⁵ This RESJ impact statement (RESJIS) builds off two prior OLO RESJIS:

- In January 2022, OLO published a RESJIS for Expedited Bill 49-21, Police – Police Accountability Board – Administrative Charging Committee – Established.⁶ For background information on policing in the U.S., racial disparities in police interactions with the public, and civilian review board best practices, refer to this RESJIS.
- In June 2023, OLO published a RESJIS for Expedited Bill 27-23, Police – Policing Advisory Commission – Repeal.⁷ For background describing the origins and functions of the Policing Advisory Commission (PAC) and the Police Accountability Board (PAB), refer to this RESJIS.

CIVILIAN OVERSIGHT BOARDS AND RACIAL EQUITY

As issues of trust and accountability have characterized community-police relations, particularly in Black, Indigenous, and Other People of Color (BIPOC) communities, civilian oversight of law enforcement has emerged as a best practice to enhance police accountability and performance. Civilian oversight agencies are often established after an alleged incident of police misconduct when a community identifies a need. The June 2018 death of Silver Spring resident Robert Smith triggered questions about whether MCPD fosters trust, transparency, and accountability with all constituents and communities across the County. In response to this incident, the Policing Advisory Commission was proposed in 2019.

The Policing Advisory Commission (PAC) was initially proposed to enable public reviews and oversight of police disciplinary matters. With state law in 2019 precluding civilian oversight of police disciplinary matters, the Council enacted the PAC as a civilian commission to provide information about best practices in policing.

With Bill 14-19, the County Council intentionally limited voting membership within the PAC to civilians and required that two members represent younger constituents disproportionately impacted by interactions with law enforcement: a member aged 25 years or younger and another member between the ages of 26 and 35 at the time of their appointments. Further, the Council included the Chief of Police and President of the FOP (or their designees) as non-voting members to provide information and support to the PAC's civilian voting members. Duties of the PAC include:⁸

- Advising the Council on policing matters;
- Providing information regarding best practices on policing matters;
- Recommending policies, programs, legislation, or regulations;
- Commenting on matters referred to it by the Council;
- Conducting at least one public forum each year for community input on policing matters;
- Accepting correspondence and comments from members of the public;
- Engaging in public education; and
- Submitting an annual report.

As noted in the RESJIS for Expedited Bill 49-21, three conditions are essential for a civilian oversight agency to succeed:

- **Independence** from law enforcement so the civilian agency's recommendations can be trusted;
- **Power** so law enforcement cannot ignore the civilian agency's recommendations; and
- **Resources** to meet civilian oversight agency goals in a timely fashion (e.g., investigate cases, issue reports).

RESJ Impact Statement

Bill 32-23

These three essential conditions overlap with 12 core elements of successful civilian oversight of law enforcement identified by the National Association of Civilian Oversight in Law Enforcement (NACOLE): independence, adequate jurisdictional authority, adequate resources, unfettered access to records, access to law enforcement executives and internal affairs staff, full cooperation, support of process stakeholders, public reporting or transparency, patterns analysis, community outreach, community involvement, and respect for confidentiality requirements.

Among the three essential conditions of effective civilian oversight agencies, the PAC most closely aligns with the first condition – independence - because it operates independently of law enforcement in the County. However, the inclusion of MCPD leaders (the Chief and FOP President) as non-voting members in the PAC aligns with NACOLE-identified best practice of having access to law enforcement executive and internal affairs staff.

A review of the PAC’s efforts via its website and meeting minutes demonstrates a focus on racial equity in policing.⁹ The PAC has focused on four priorities: discretionary policing (traffic stops, drug enforcement, and pedestrian stops); emergency responses; hiring and discipline; and safety in schools. The PAC has also met with BIPOC stakeholders and policing experts to solicit their perspectives on community needs and best practices for advancing RESJ in policing. Additionally, the PAC has offered proposed amendments for legislation aimed at advancing RESJ.

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 32-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

In response to the first question, OLO finds that MCPD and FOP would be the primary beneficiaries of this Bill as converting their non-voting positions to voting ones and prohibiting the PAC from serving as “an oversight body of any law enforcement entity operating in Montgomery County” would diminish MCPD’s accountability to the PAC.

As noted in the PAC meeting minutes, there have been ongoing debates within the PAC about the timeliness and value of information submitted by MCPD in response to their requests. For example, data requests regarding the demographics of marijuana arrests and citations remain outstanding.¹⁰ Inclusion of MCPD and FOP as voting members may preclude the PAC from requesting policing data in the future, reducing MCPD’s accountability to the PAC and to the public at large for information and transparency about MCPD’s operations. The amendment to prohibit the PAC from serving as an oversight body to any law enforcement entity operating in the County also benefits MCPD and other law enforcement agencies by reducing their accountability to the PAC and the public at large.

In response to the second question, advancing community policing and other best practices that diminish racial disparities in police interactions with the public has been a PAC priority. As noted in the RESJIS for Expedited Bill 49-21, Black constituents are over-represented among traffic stops, arrests, and use of force incidents compared to their share of the County’s population. Youth and young adults are also over-represented in interactions with law enforcement, with persons under the age of 40 accounting for 82 percent of MCPD use of force incidents and 91 percent of MCPD pursuits in 2022.¹¹ Racial disparities and social inequities may also characterize other police interactions with the public in the County that are not currently reported.

RESJ Impact Statement

Bill 32-23

The PAC has advocated for greater transparency and data disaggregated by race and ethnicity on police interactions with the public. Including law enforcement leaders as voting members could diminish the advocacy for disaggregated policing data by the PAC. The PAC has also advocated for promising policies and practices to advance racial equity in policing. The inclusion of law enforcement leaders, business owners, and homeowners as PAC members combined with eliminating the requirement to include two young constituents as PAC members could diminish this advocacy.

Further, the demographics of law enforcement, business owners, and homeowners suggests that current BIPOC members on the PAC could likely be replaced by White members. Moreover, without a requirement for young adult members, the two young adult PAC members could likely be replaced by older members. Both potential shifts in PAC membership shifts power from marginalized groups to advantaged groups and widens racial and social disparities.

Taken together, OLO finds that racial and social disparities in police interactions with the public could widen with amendments to the PAC authorized under Bill 32-23 as civilian-led advocacy for racial equity in policing among those most impacted by policing disparities could diminish. More specifically, efforts the PAC has undertaken to understand and address racial disparities in traffic stops and drug enforcement, to support the coordination of emergency responses, and to ensure police personnel have proper training to serve increasingly diverse constituents could diminish with the proposed changes to the membership of the PAC.

While there have been other working groups and task forces that have focused on reducing racial inequities in policing, the PAC is the only group codified in County law with a long-term commitment to reduce racial disparities in policing. Including law enforcement as voting members and shifting membership to reflect older and more affluent County constituents could negatively impact RESJ in the County.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹² OLO anticipates Bill 32-23 could widen racial disparities in police interactions with the public by diminishing accountability for MCPD to implement more racially equitable policing practices. Should the Council seek to maintain RESJ considerations in policing, OLO offers several policy options for discussion and consideration:

- **Repeal adding the Police Chief and President of the FOP (or their designees) as voting members.** A combined civilian and law enforcement advisory commission undermines the independence needed for civilian oversight agencies to garner legitimacy and trust with community members and BIPOC constituents. The PAC emerged in response to concerns that the MCPD lacked the wherewithal to hold itself accountable for investigating and preventing incidences of police misconduct in the community. Retaining the Police Chief and FOP President as non-voting members would allow the PAC to remain a civilian oversight agency that the community could trust.
- **Repeal eliminating the age requirements for two voting members.** Young people are disproportionately impacted by police interactions with the public, particularly in uses of force and police pursuits. As the age group most impacted by policing interactions and likely incidents of police misconduct when they occur, it is critical that they be represented among PAC members and in decision-making. Retaining the young adult members requirement promotes power-sharing with constituents most impacted by policing as well as RESJ.

RESJ Impact Statement

Bill 32-23

- **Repeal requiring the PAC to represent business interests and homeowners.** Under current law, members of the PAC should “reflect the racial and economic diversity of the County’s communities, including religious creed, age, sex – including on the basis of gender identity or orientation, disability, and geographic location, with emphasis on those disproportionately impacted by inequities.” Requiring the PAC to also include representation from business owners or organizations, homeowners’ associations, common ownership communities and tenants’ associations could shift PAC membership from those unfavorably impacted by inequities to those that benefit from inequities.
- **Repeal prohibiting the PAC from serving as an oversight body of any law enforcement entity.** The power that the PAC has in its current oversight of MCPD, and local law enforcement more broadly, is limited at best. One of three essential conditions of effective civilian oversight agencies is to have sufficient power so that law enforcement cannot ignore their recommendations. Yet, the PAC too often lacks sufficient power to have MCPD meaningfully respond to its data requests despite the law (Bill 14-19) requiring them to do so within 30 days. This amendment to prohibit the PAC from serving as an oversight body of any law enforcement entity undermines the PAC’s effort to promote accountability and transparency in local policing and best practices for advancing RESJ.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffer Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ Impact Statement with assistance from Kayla Jones, OLO Summer Fellow.

¹ Definition of racial equity and social justice adopted from [“Applying a Racial Equity Lens into Federal Nutrition Programs”](#) by Marlysa Gamblin, et.al. Bread for the World, and from [Racial Equity Tools](#).

² Ibid

³ Khandikile Sokoni, Memorandum to County Council, [Introduction Staff Report for Expedited Bill 27-23](#), May 22, 2023

⁴ Ibid

⁵ Ibid

⁶ Elaine Bonner-Tompkins, [Racial Equity and Social Justice Impact Statement for Expedited Bill 49-21](#), Office of Legislative Oversight, January 10, 2022

⁷ Elaine Bonner-Tompkins, <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2023/Bill27-23E.pdf>, Office of Legislative Oversight, June 5, 2023

⁸ [Bill 14-19](#), Enacted December 3, 2019

⁹ See for example [Policing Advisory Commission 2021 Annual Report](#)

¹⁰ [Meeting Minutes](#), Policing Advisory Commission, December 12, 2022

¹¹ See Montgomery County Department of Police, Annual Use of Force Report, 2022 and Annual Pursuit Report, 2022

¹² [Bill 27-19 Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established](#), Montgomery County Council, December 2, 2019



OFFICE OF MANAGEMENT AND BUDGET

Marc Elrich
County Executive

Jennifer Bryant
Director

MEMORANDUM

August 17, 2023

TO: Evan Glass, President
County Council

FROM: Jennifer Bryant, Director
Office of Management and Budget

SUBJECT: Extension Request: Fiscal Impact Statement for Council Bill 32-23, Police –
Policing Advisory Commission - Amendments

As required by Section 2-81A of the County Code, we are informing you that transmittal of the Fiscal Impact Statement for the above referenced legislation will be delayed because more time is needed to collect information to conduct meaningful analysis on the Bill. We are requesting an extension and will transmit the Fiscal Impact Statement no later than **Friday, September 8, 2023.**

JB:cm

cc: Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive
Earl Stoddard, Assistant Chief Administrative Officer, Office of the County Executive
Debbie Spielberg, Special Assistant to the County Executive, Office of the County Executive
Dale Tibbitts, Special Assistant to the County Executive, Office of the County Executive
Ken Hartman, Director of Strategic Partnerships, Office of the County Executive
Barry Hudson, Director, Public Information Office
Rachel Silberman, Manager, Office of Management and Budget
Derrick Harrigan, Fiscal and Policy Analyst, Office of Management and Budget