



POLICING ADVISORY COMMISSION

October 11, 2023

The Honorable Evan Glass, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear President Glass:

I am pleased to submit to you the 2022-2023 Annual Report of the Policing Advisory Commission (PAC). The report summarizes the work of the PAC in its third and final year of our three-year appointment.

In the months until our terms expire this winter, the PAC is continuing to examine the broad issues of implicit bias, use of force, training, data collection and the use of data in the management of the MCPD, emergency response and specialized populations such as those who have intellectual or developmental disabilities, the questions of arrest policy and MCPD's declining rates of clearances of violent crimes, and the issues of body worn camera review and virtual reality training.

We want to thank the staff of the Council who have supported us since the initial appointment of the PAC, Legislative Analyst Susan Farag, and the assistance of postgraduate fellows Logan Anbinder and Nazeefa Hossain. We also greatly appreciate the faithful participation of MCPD Sgt. Cate Brewer from the FOP and other officers from the MCPD, especially Captain Jordan Satinsky and Captain Stacey Flynn.

We greatly appreciate the support of the Council and especially the members of the Public Safety Committee and Councilmember Jawando.

With best wishes,

Eric E. Sterling, Chair
Policing Advisory Commission

cc: County Executive Marc Elrich

Annual Report 2022-2023



September 11, 2023

Policing Advisory Commission
Montgomery County, Maryland

Table of Contents

<u>Executive Summary</u>	3
<u>Commission Background</u>	7
<u>PAC Membership</u>	8
<u>Appointment of Commissioners</u>	9
<u>Police Oversight and Reform</u>	9
<u>Meetings</u>	10
<u>Issues Addressed by the PAC (2022-23)</u>	10
<u>The Future of the PAC</u>	20
<u>Outstanding Projects for Continued Oversight</u>	20
<u>Appreciation</u>	21
<u>Conclusion</u>	22
<u>Appendix 1: Questions for State’s Attorney (July 2022)</u>	23
<u>Appendix 2: Statement on the Death of Tyre Nichols</u>	26
<u>Appendix 3: Letter to the County Council</u>	
<u>Regarding Bill 12-23 (STEP Act)</u>	27
<u>Appendix 4: Letter to the Public Safety Committee</u>	
<u>Regarding Expedited Bill 27-23</u>	32

Executive Summary

Commission Background

The Policing Advisory Commission (PAC) was created by the Montgomery County Council (Council) in December 2019 (Bill 14-19) to provide a formal role for community oversight of the Montgomery County Police Department (MCPD). The PAC grew out of ongoing concern among Montgomery County residents regarding the performance of the MCPD especially regarding the use of force and perceived disparities in the effects of various enforcement activities. These concerns intensified after the May 25, 2020, murder of George Floyd by a Minneapolis, MN police officer. The initial members of the PAC were appointed on July 20, 2020 for three year terms. Since that time there has been some turnover in membership and leadership of the PAC.

The PAC was created at a time when other efforts to examine and reform police practices were taking place in the County and the State. The County Executive appointed a Reimaging Public Safety Task Force and contracted for an independent performance audit of the MCPD by the specialist consultants, Effective Law Enforcement for All, which both issued comprehensive reports, both of which the PAC commented on when released in 2021. The General Assembly's Work Group to Address Police Reform led to enactment of the Police Accountability Act of 2021 (HB 670) which led to the creation of a Police Accountability Board (PAB) by the Council in May 2022.

Meetings

Although only required to meet a minimum of six times per year, the PAC met eleven times in 2022-23, including holding a public forum (held virtually) as required, on traffic enforcement.

Issues Addressed by the PAC

The PAC provided advice to the Council regarding legislation and addressed other issues regarding the MCPD.

Development of the Police Accountability Board (PAB) and the Administrative Charging Committee. After the PAB was appointed, the PAC met with the PAB leadership to reiterate some of the concerns the PAC had raised regarding PAB independence during the Council's work sessions on the PAB bill. The PAC discussed the importance of clarifying the distinction in the roles of the PAC and the PAB and how the PAC could support and publicize the complaint receipt function of the PAB.

Use of Force. The PAC obtained a briefing by the MCPD on its 2021 annual report on use of force. The definition of "use of force" changed as the Council enacted use for force legislation eliminating the ability to draw conclusions regarding year-to-year changes in reported use of force incidents. Nevertheless, PAC noted that as calls for service generally declined from 2017 to 2021, the percentage of the calls that involved a use of force incident increased. The PAC also noted that there continued to be a significant disparity in the race and ethnicity of members of the public involved in reported use of force incidents.

Use of virtual reality technology for training. The PAC, having participated in the MCPD Citizen Academy, was aware of the computer-assisted firearm training in response to a threat. Virtual reality technology has the potential to provide many more scenarios for training police officers and for trainers to observe reactions of trainees. The virtual reality technology enables training in more sophisticated scenarios and to identify reactions with potential to exhibit explicit or implicit racial bias. PAC member Ty McKinney, a long-time veteran Federal law enforcement officer, led the PAC effort to review potential systems. Currently the MCPD is in the process of purchasing such a system.

Role of State's Attorney in Police Oversight. The PAC believes that the State's Attorney's Office, because of its day-to-day role working with MCPD officers, can be and should be a useful source of information for evaluation of MCPD officers, and to assess MCPD programs such as laboratories and other units that support prosecutions. Assistant State's Attorneys may also be able to hear comments or observe behavior that may reveal explicit or implicit racial bias. The PAC invited the State's Attorney to meet with it and submitted questions regarding the State's Attorney's interactions with MCPD, but a meeting could not be arranged.

Traffic Enforcement and the STEP Act – Bill 12-23. Traffic enforcement is the law enforcement activity with the greatest number of interactions with the general public. The PAC, since its creation, has been considering the role of MCPD in traffic enforcement. This role has also been examined by the Reimagining Public Safety Task Force, in the course of the performance audit by Effective Law Enforcement for All, and by the Council's Office of Legislative Oversight (OLO). The PAC prepared an extensive report on traffic enforcement, posted on our webpage, held a public forum regarding traffic enforcement, and provided a detailed response to the Council regarding Bill 12-23, the [Safety in Traffic and Equity Policing Act \(the STEP Act\)](#). (Appendix 3). Montgomery County data has revealed racial and ethnic disparities in traffic enforcement.

Emergency Response for Mental Health/Autism/Intellectual or Development Disability (IDD) Related Calls. The population with concerns regarding mental health or autism or with an intellectual or development disability has a greater rate of interactions with the police than the general public, and such interactions have a higher rate of misunderstanding or adverse consequence to members of that population. A long-time focus of police oversight and reform activity has been the management of those interactions. PAC member Jenn Lynn has a special expertise on these matters and represented the PAC in many working groups and meetings. She reported to the PAC on the status of these relationships in Montgomery County, and on efforts to assure that the HHS Crisis Center was playing a central role in responding to calls for service regarding the issues of this population.

Police Training. A key issue in all community concerns about the activities of the police is the extent and appropriateness of training to maximize compliance with policy, and to assure that the customs and practices of police officers are consistent with training. The PAC obtained briefings on various training matters.

Data on the Effectiveness of MCPD activities in view of concern about increasing violent crime. The PAC, in its concern to be analytic in its review of MCPD programs, policies and practices, has sought data that the MCPD produces and to understand the benchmarks that MCPD uses to evaluate its performance. This remains an outstanding area of inquiry.

Statement regarding police misconduct in the context of national concern. The national outcry upon the release of footage from stationary video cameras in Memphis, TN in the killing of Tyre Nichols was addressed in statements by MCPD Chief Marcus Jones and the Council. The PAC concluded that it should make a statement to residents of Montgomery County about the programs in place to reduce the likelihood that such an incident would take place here. (Appendix 2).

Body Worn Camera (BWC) issues. A requirement that police officers whenever they begin enforcement activity should wear and activate a BWC is a major innovation in police reform and oversight and a potentially valuable tool for police management. In November 2021, the Council enacted legislation for the review of BWC footage (Bill 18-21). The PAC obtained a briefing on the MCPD review of BWC. The PAC raised numerous questions about the function and utility of the review program. Subsequent to that briefing, the MCPD undertook its own review of the BWC review program and considered some of the questions raised by the PAC. The review of the procedures of the review program remains ongoing.

The Future of the PAC

The appointments of the members of the PAC were to terms that expired on July 31, 2023. No new appointments to replace the members have been made. Thus, pursuant to Montgomery County Code section 2-148(a)(4), the current members are continuing to serve another six months, but no more. At this point, the PAC will cease to have any members as of January 31, 2024.

On May 25, 2023, Councilmembers Dawn Luedtke and Sidney Katz introduced Expedited Bill 27-23 to repeal the County Code section creating the Policing Advisory Commission, effective August 1, 2023. The PAC testified against the bill. A Public Safety Committee work session on the bill was scheduled for June 26, 2023. Several days before the work session, a set of substantial amendments that would continue the PAC, with a new name, and with substantial change in its duties and membership were made public. The Public Safety Committee decided the amendment would be most appropriately considered as a new bill to provide the opportunity for a public hearing. Most of the amendment package was introduced as Bill 32-23 on July 25, 2023. The PAC responded to the June 26 amendment package in a letter to the Public Safety Committee. (Appendix 4).

Outstanding Projects for Continued Oversight

The PAC intends to be available to provide advice to the Public Safety Committee in its work sessions regarding Bill 12-23 (the STEP Act). In addition, preliminary to providing further information to the Council, the PAC would continue to examine the broad issues of implicit bias, use of force, training, data collection and the use of data in the management of the MCPD, emergency response and specialized populations such as those who have intellectual or developmental disabilities, the questions of arrest

policy and MCPD's declining rates of clearances of violent crimes, and the targeted issues of body worn camera review and virtual reality training.

Appreciation

The PAC is extremely grateful to its staff from the County Council: Legislative Analyst Susan Farag, and the assistance of postgraduate fellows Logan Anbinder and Nazeefa Hossain. We also greatly appreciate the faithful participation of Sgt. Cate Brewer from the FOP and other officers from the MCPD, especially Captain Jordan Satinsky and Captain Stacey Flynn.

Conclusion

The PAC believes that a county commission of community members charged with the civilian oversight of the MCPD to provide advice to the Council is fundamental to effective management of the MCPD and the county government. A civilian oversight board is essential to assuring Black persons, Indigenous persons, and other People of Color (BIPOC) as well as immigrants and refugees that the county is committed to protecting them from racism generally and potential police misconduct more specifically. An August 2022 report by the Pew Research Center, "Black Americans Have a Clear Vision for Reducing Racism but Little Hope It Will Happen; Many say key U.S. institutions should be rebuilt to ensure fair treatment," found that 60 percent of Black adults say "police brutality is an extremely big problem for black people in the U.S. today," and 49% say the institution of "policing needs to be completely rebuilt for Black people to be treated fairly." Such findings are a strong argument that the PAC is needed.

Unfortunately, the PAC feels that its potential is not being utilized, and that it is not being taken seriously in some quarters. For example, the MCPD and the Executive created a working group to evaluate for adoption the recommendations of the Reimaging Public Safety Task Force and the recommendation of the audit by the consultant, Effective Law Enforcement for All. The PAC was not invited to participate. Indeed, the PAC was not notified that such a working group was operative until the public meeting on July 12 that unveiled the status of the working group's evaluations.

Nevertheless, as this annual report documents, the PAC believes it has been an important step forward for Montgomery County to assure its residents that their fears and concerns regarding policing are effectively heard and being considered.

Commission Background

The Policing Advisory Commission (PAC) was created on December 12, 2019, by the Montgomery County Council (Council) in Bill 14-19 in response to the ongoing public dialogue around policing practices and as an effort to establish a role for community oversight¹ of the Montgomery County Police Department (MCPD). Growing out of that role is the PAC's mission to advise the Council on policing matters and recommend policies, programs, legislation, or regulations with regards to policing. Central to the PAC's functions is the development of questions about the performance of the MCPD.

A major impetus to the creation of the PAC was the extensive public concern following the shooting of Robert White on June 11, 2018, by an officer of the Montgomery County Police Department (MCPD).

These concerns intensified after the May 25, 2020, murder of George Floyd by Minneapolis police officer Derek Chauvin. Throughout the nation, protests and demonstrations galvanized around the demand that "Black Lives Matter," which followed for months. Legislation was introduced at all levels of government. There is widespread recognition that while the overwhelming majority of police officers are dedicated to impartial public service, in many departments there are policies, practices, habits, or culture that have led to a variety of improper interactions – whether simple disrespect or the improper use of deadly force – and the creation of discord between various communities and police departments and officers.

Like many parts of the country, Montgomery County was the site of numerous protests in May and June of 2020. To note just a few: Protestors blocked Germantown Road on May 31, 2020. On June 1, 2020, there was a protest in Gaithersburg led by Magruder High School students.² On June 2, 2020, nearly 1000 persons protested in Bethesda.³ On Friday, June 5, over 200 marchers took over Rockville Pike in Rockville in protest.⁴ A few days later there was another protest in Bethesda on the steps of Macedonia Baptist Church on River Road.⁵ In much of America there was recognition that it was at a turning point in both oversight of police departments and a more fundamental reckoning with the legacy of enslavement, Jim Crow and racism.

¹ The term "oversight" is used in this report in a general sense. The PAC advises the County Council – which has legal oversight responsibility for the Montgomery County Police Department.

² Dan Reed, "Suburban protestors speak out against police brutality", June 2, 2020
<https://ggwash.org/view/77877/suburban-protestors-speak-out-against-police-brutality>

³ Stephanie Ramirez, "'Everyone thinks Bethesda doesn't care' - hundreds of Montgomery County residents protest Tuesday", June 2, 2020,
<https://www.fox5dc.com/news/everyone-thinks-bethesda-doesnt-care-hundreds-of-montgomery-county-residents-protest-tuesday>

⁴ Dan Schere, "Protesters take over Rockville Pike to support Black Lives Matter; Hundreds march in the heat, call for criminal justice reform," June 5, 2020,
<https://moco360.media/2020/06/05/protesters-take-over-rockville-pike-to-support-black-lives-matter/>

⁵ Sam P.K. Collins, "Rally Places Spotlight on Montgomery County's Police-Involved Shootings", June 10, 2020,
<https://www.washingtoninformer.com/rally-places-spotlight-on-montgomery-countys-police-involved-shootings/>

PAC Membership (July 31, 2023)

Eric Sterling, Chair
Ty McKinney, Vice Chair
Cherri Branson
Dr. Laurie Ekstrand
Ruhama Endishaw
Kristy Daphnis
Dr. Robin Gaster
Christina DeLane
Jenn Lynn
Vernon Ricks

Captain Jordan Satinsky, ex officio
Sergeant Cate Brewer, ex officio

Appointment of Commissioners

Members of the PAC were finally appointed July 20, 2020, pursuant to Resolution 19-946, to serve for three years until July 31, 2023. On March 8, 2022, Ruhama Endishaw was appointed as a youth member under age 25 pursuant to Resolution 19-1182. On March 22, 2022, Ty McKinney and Dr. Laurie Ekstrand were appointed pursuant to Resolution 19-1194.

The membership of the PAC at the start of the 2023 fiscal year consisted of ten members: Cherri Branson (Vice Chair), Ruhama Endishaw, Caroline Fredrickson, Jenn Lynn, Ty McKinney, Vernon Ricks, Eric Sterling, Dr. Laurie Ekstrand, Dr. Robin Gaster, and Nadia Salazar (and three vacancies due to the appointment of PAC member Alicia Hudson to the Police Accountability Board by Resolution 19-1313 (June 28, 2022), and the resignations of Jerome Price and Dalbin Osorio, the Chair).

The 2022-2023 year also began with a transition in leadership. Our chair, Dalbin Osorio, resigned unexpectedly because he moved out of the county. Our Vice Chair, Cherri Branson, succeeded him in August 2022. However, on October 27, 2022, Chair Branson took a leave of absence from the PAC to serve temporarily on the Maryland National Capital Park and Planning Commission pursuant to County Council Resolution 19-1429. On November 14, 2022, the PAC elected Eric Sterling as Chair and Ty McKinney as Vice-Chair. There were additional transitions in membership. On November 1, 2022, Christina DeLane was appointed pursuant to Resolution 19-1440. On November 29, 2022, Kristy Daphnis was appointed pursuant to Resolution 19-1476.

Police Oversight and Reform

After the murder of George Floyd, the PAC became one of various County and state efforts to address police oversight and reform.

The County Executive created a Reimagining Public Safety Task Force in order to develop recommendations that would “reimagine” public safety broadly which included numerous recommendations for changes for the Montgomery County Police Department (MCPD). The Task Force issued its [final report](#) February 4, 2021.

The County Executive also arranged for an independent performance audit of MCPD by the national consultant Effective Law Enforcement For All (ELE4A) which issued [its final report and recommendations in July 2022](#).

At the state level, the General Assembly’s Work Group to Address Police Reform and Accountability in Maryland produced recommended legislation including HB 670 – the Maryland Police Accountability Act of

2021. A key feature of HB 670 was the repeal of the Law Enforcement Officers’ Bill of Rights (LEOBOR) and the creation of new mechanisms to review complaints alleging misconduct by police officers.

The heart of the repeal of LEOBOR was a directive for each county to create a Police Accountability Board (PAB) and affiliated Administrative Charging Committee (ACC). On December 14, 2021, Council President Alborno, upon the request of the County Executive, introduced Bill 49-21E to carry out the General Assembly’s mandate. The PAC began working closely with the Council’s Public Safety Committee in its consideration of the bill and participated in the committee work sessions in January and February, and then with the full Council in March and April as the structure, powers and independence of the PAB and ACC were being considered. Bill 49-21E was enacted on May 2, 2022.

The PAC has monitored the work done by these institutions, as well as collaborated with numerous entities involved in advancing police reform efforts to support and advance evidence-based policies that will improve public safety in Montgomery County.

Meetings

Although the code only requires the PAC to meet a minimum of six times each year, the PAC met virtually throughout the year eleven times:

- August 22, 2022,
- September 9, 2022,
- October 10, 2022,
- November 14, 2022,
- January 9, 2023 (public forum on traffic enforcement),
- February 13, 2023,
- March 13, 2023,
- April 10, 2023,
- May 31, 2023,
- June 12, 2023,
- July 10, 2023.

The PAC also met on August 15, 2023, and September 11, 2023.

Issues Addressed by the PAC (2022-23)

Development of the Police Accountability Board and the Administrative Charging Committee

Once the Police Accountability Board was appointed on June 28, 2022, by Council Resolution 19-1313, the PAC at our July 11, 2022, meeting, began to discuss how we could support the work of the PAB. One of

our first steps was to propose community education to raise awareness on how to file a complaint on the PAB website. Suggestions from PAC members included partnering with Regional Services Centers that have community networks, and using the mailing lists the RSCs use to distribute to their communities. We encouraged the use of the County Council press releases, nonprofit organization email lists and issue-specific advocacy organizations such as Jews United for Justice, the Silver Spring Justice Coalition, Impact Silver Spring, and Youth for Progress.

Our second step was to invite Bishop Paul Walker, the chair of both the PAB and the ACC, to our October 2022 meeting. After Bishop Walker explained the plan the PAB and ACC had for addressing the complaints it receives alleging police officer misconduct, the PAC raised questions about the planning for hiring an Executive Director for the PAB by the Executive and the degree to which the Executive Director would be ultimately answerable to the PAB or not. These concerns reflected earlier concerns that the PAC had raised with the Council in the Spring of 2022 regarding Bill 49-21E and the question whether the legal counsel for the PAB and ACC could independently serve the PAB/ACC or would have a conflict of interest due to the legal counsel's position under the County Attorney.

Use of Force

The MCPD issues a report for each calendar year providing some data regarding incidents in which "force" is used by *or against* a police officer ("use of force"). In October 2022, the PAC reviewed the annual report for 2021, and was briefed by MCPD Captain Marc Erme.

In 2021, overall, with 593 reported incidents there was about a 25% increase in use of force incidents compared to 2020 (474 incidents). Captain Erme noted that 2020 had been an outlier year, due to COVID. In 2019 there were 553 incidents, in 2018, 542 incidents and, in 2017, 523 incidents.

PAC noted that the percentage of uses of force to the number of calls for service was going up (as the number of calls for service was going down).

Percentage of use of force incidents in calls for service increasing

Year	Calls for Service	Use of Force Incidents	Percentage of Calls
2021	187,620	593	0.32%
2020	185,973	474	0.25%
2019	211,259	553	0.26%
2018	219,162	542	0.25%
2017	229,884	523	0.23%

Use of force is broadly defined and should not be confused with an allegation of improper or excessive use of force.

The members of the PAC observed that the MCPD use of force report did not report data in ways that are completely straightforward. For example, on page 9, figure 6, “Subject Race and Ethnicity Involved in Use of Force Incidents” has bars comparing 2020 with 2021 and reports percentage increases in reports for the various racial and ethnic categories (e.g., reporting “the number of [increases] African American (24%), Caucasian (22%), Asian or Pacific Islander (88%), and Hispanic (18%)”). But a more relevant analysis of the data would be to compare the *percentages* of these categories to the total number of incidents (670), that is: African American (325 or 54.8%), Caucasian (126 or 21.2%), Asian or Pacific Islander (15 or 0.03%), and Hispanic (114 or 19.2%).

MCPD 2021 Use of force data presentation

	2021 MCPD Report Presentation	More Relevant Data (according to PAC)
	% Increase 2020-2021	% of total 670 incidents in 2021
African-American	22	54.8 (325)
Caucasian	24	21.2 (216)
Asian or Pacific Islander	88	0.03 (15)
Hispanic	18	19.2 (114)

This is not representative of the county’s demographics and is highly disparate, a point obscured in the report.⁶

In our conversation with Captain Erme, the PAC specifically suggested the MCPD do a better job of capturing data and providing more context.

Use of virtual reality technology for training

In October, the PAC designated member Ty McKinney, a long time veteran Federal law enforcement officer, look into virtual reality training technology for law enforcement officers. Mr. McKinney arranged for Montgomery County PAC members to go to the Maryland State Police training center on November 7, 2022. Mr. McKinney and Member Dr. Laurie Ekstrand closely observed the demonstrations of new virtual technologies to train law enforcement officers. The use of new virtual technology, which can be designed

⁶ In the 2022 Use of Force Report, MCPD data is more clearly stated although the accuracy of the characterization of the data is debatable: “In 2022, the categories of White, Black, Hispanic, Asian-Pacific Islander (API), and Native American subjects remained statistically consistent with the category breakdown in 2021. Sixteen percent of the subjects involved in encounters that resulted in some force in response to resistance were White, 59% were Black, 20% were Hispanic, and 1% were Asian or Pacific Islander.” When the percentage of African American subjects increases from 54.8% to 59% and the percentage of white subjects drops from 21.2% to 16%, some may reasonably object that the pattern between 2021 and 2022 does not demonstrate “statistical consistency.”

to depict many scenarios that law enforcement officers encounter, appears to be an extremely valuable and versatile training tool.

At our November 2022 meeting, Mr. McKinney summarized the advantages of the system demonstrated, which include its ability to improve officer retention, support data collection, and its cost effectiveness. He expressed that one negative feature includes the limited number of scenarios currently available, though the number is expanding. Mr. McKinney encouraged commissioners to write their thoughts on the system so the PAC can determine whether to support wider implementation of such a system. Dr. Ekstrand shared that the system is flexible and allows for the officer leading the training to react to increase the level of immersion of the training. She indicated that she would like to be more analytical about the information being collected during the training. Mr. Sterling expressed concerns that the possible outcomes of the training scenarios might be unrealistically limiting compared to the number and type of options that an officer would have in real-life to resolve the scenario. Mr. McKinney indicated that he would review various VR systems and would like to coordinate with the appropriate MCPD representative regarding the assessment of these systems. After observing the demonstrations, Mr. McKinney met with MCPD staff to discuss the features of the various programs offered for sale.

At our August 2023 meeting, the PAC was briefed by Capt. Jordan Satinsky that the MCPD is in the process of procuring a virtual training system that will enable the presentation of many realistic scenarios and the evaluation of the trainee officer including body language and other features. Regarding use of the tool for training and detection of implicit bias, our briefer said that this is a feature that will be addressed after it is procured. MCPD was asked by former County Procurement Chief Cherri Branson for more information on how the system is being obtained.⁷

Role of State's Attorney in Police Oversight

The PAC is aware that the State's Attorney's Office works closely with the police in many ways. A high-profile issue was the challenge of the State's Attorney in investigating the police officers for misconduct since the State's Attorney relies upon the police for investigations, arrests, and testimony in prosecutions. Until 2021, in cases involving homicides allegedly caused by police officers in Montgomery County, the Montgomery County State's Attorney had an agreement with the State's Attorney for Howard County to delegate to the Howard County State's Attorney to undertake those investigations (and prosecutions). The Montgomery County State's Attorney had a reciprocal role for such police-involved homicides in Howard County. This agreement to avoid potential conflicts of interest between the State's Attorney and the police

⁷ On July 6, 2023, the Maryland Governor's Office of Crime Control and Prevention (GOCCP) notified County Executive Marc Elrich that it has made an FY 2024 Police Accountability, Community, and Transparency (PACT) Grant Award to MCPD of \$400,000 for the purchase of an "Axon Virtual Reality Simulator." (Grant Award No. PACT-2024-0016). The grant sets forth 36 performance measures regarding the numbers of officers trained, review of body worn camera, use of force complaints, and other matters.

departments was made unnecessary by state legislation assigning such investigations to the Attorney General which has established an “Independent Investigations Division.”⁸

More importantly, prosecutors in the State’s Attorney’s Office see daily how police officers prepare investigations, prepare reports, work with witnesses, and testify at hearings and trials. The role and responsibility of the police in public safety and providing justice does not end with police activity on the street and making arrests. Who can best determine if police officers or bureaus in a police department are effective investigators and competent, credible, and honest witnesses? Who can keep track of whether police officers show up to testify? The State’s Attorney’s Office is an invaluable source of information on the performance of individual police officers and the overall performance of a police agency.

In July 2022, the PAC invited State’s Attorney John McCarthy or his designee to speak to it and to address questions submitted in advance. Attached in **Appendix 1** are some of the questions submitted to the State’s Attorney. Unfortunately, the State’s Attorney declined to send a representative to meet with us.

Traffic Enforcement

In Montgomery County, the most frequent interaction between members of the public and public safety agencies are in the form of the 200,000 calls for service answered primarily by 9-1-1 dispatchers. But the most frequent face-to-face interaction is in the course of traffic enforcement. To be in a vehicle that is being followed by a police vehicle with flashing lights and possibly a siren is at best anxiety- producing, and perhaps the start of an inconvenient delay. But for millions of Americans, the initiation of a traffic stop can be terrifying. For hundreds of thousands, it is an occasion of humiliation and insult. For tens of thousands of people each year, the result of a traffic stop is an arrest and a potentially catastrophic denial of liberty leading to unemployment and homelessness. And tragically, for hundreds each year, the result is death.

Almost every study of policing points to traffic enforcement as an issue for reform.

In 2021, the PAC Subcommittee on Discretionary Policing studied data on traffic stops in Montgomery County and prepared an analysis of MCPD traffic enforcement. A key finding is that the rationale for traffic enforcement of focusing on the places where safety for vehicles and pedestrians is at great risk does not seem to be supported by the data on where traffic stops are taking place. This is disturbing to the PAC because of the racial disparity regarding who is stopped compared to the county’s population documented by the Council’s Office of Legislative Oversight reports. In Montgomery County, this has been a grievance of the Black community for decades.

To highlight our work on traffic enforcement, the PAC organized a [public forum](#) in January to receive written and oral statements about traffic enforcement by the MCPD.

⁸ 2021 Md. Laws chapter 132, § 1 (“Senate Bill 600”) and see <https://www.marylandattorneygeneral.gov/Pages/IID/IID.aspx>

The PAC in February agreed to support the expansion of the use and number of speed cameras.

Emergency Response for Mental Health/Autism/Intellectual or Development Disability (IDD) Related Calls

According to a 2016 study, by age 21, about 20% of young persons with autism spectrum disorders have been stopped and questioned by police or arrested. Other research has found that police are often called to respond to mental health crises. In the paper issued by the International Association of Chiefs of Police Law Enforcement Policy Center, “Interactions with Individuals with Intellectual and Developmental Disabilities,” (August 2017), the author notes, “Law enforcement officers may encounter people with I/DD [in original] in a variety of situations. Many encounters will relate to nuisance calls or situations, odd behavior, persons acting suspiciously or suspected of being affected by mental illness, in crisis, or under the influence of drugs, or situations in which a crime has been presumed to have been committed even though the person with I/DD is not aware of any wrongdoing.”

The PAC designated Commissioner Jenn Lynn as its liaison for emergency response for persons facing mental health, autism or intellectual or developmental disability issues.

Ms. Lynn provided an update on the county’s program for responding to calls for service related to this population at the PAC’s Dec. 12, 2022, meeting. Ms. Lynn reported that calls for service to the county’s Department of Health and Human Services (DHHS) 24-hour Crisis Center hotline (240-777-4000) have grown from pre-pandemic: FY2019: 36,889 to FY 2022: 45,981. The county has Mobile Crisis Outreach Teams (MCOTs) that provide emergency crisis evaluations for individuals who are experiencing a mental health crisis. These teams and the staff at the Crisis Center (1301 Piccard Drive, Rockville and satellite locations in Silver Spring and Germantown) can provide full crisis assessments and treatment referrals are provided for all crises, both psychiatric and situational. The number of MCT responses grew from FY 2019: 490 calls to FY 2022: 930 calls. In addition, from November 2021 to November 2022 there was a 520% increase in texting for help, and a 90% increase in chats. The key point is that 30-40% of all responses are civilian responses. The goal is to get to a level of 65-80% for civilian responses.

DHHS has crisis response teams composed of two therapists. However, DHHS is working towards teams of one therapist and one peer support specialist because of the difficulty in recruiting therapists. (Reportedly, Montgomery County pays a lower salary for therapists than many other locations). Overall, roughly 30 therapists work at the crisis centers around the clock. This is an increase of six therapists from January 2021. In December 2022, there were four vacancies for therapists with two additional vacancies at MCPD and Rockville PD. The PAC voted to write to the Council about the sufficiency of therapist salaries. [This letter was not written.

After that meeting, Commissioner Jenn Lynn made a presentation to U.S. Dept. of Justice (DOJ), “Directed Autism Behavioral Health Crisis Response.” She was invited to share some of the highlights with the PAC. An important point is that there are different funding sources for responding to autism and IDD and to

mental health crises. If it is at all possible, it is important and valuable for families with members who have autism/IDD to engage with and develop relationships with responders in order to enhance the potential responders' familiarity with the individual in advance of a potential crisis. Jenn Lynn has been placed on a DOJ workgroup to encourage the adoption of this practice nationally.

She reported that Councilmember Gabe Albornoz will be introducing a bill to create a commission specifically for individuals with autism/IDD and she will be following the development of this new commission and will advocate for a PAC representative on this commission.

The PAC voted to write to the County Executive and the Council suggesting that in the creation of the Intellectual and Developmental Disabilities Commission (Bill 10-23), a specific liaison be provided from the Policing Advisory Commission which was sent in March. As enacted on March 28, such a provision was not included. It took effect on July 10, 2023.

Police Training

On December 12, 2022, Sgt. Cate Brewer of the Police Academy provided an overview of training at the MCPD police academy. It has responsibility to train roughly 1,400 officers including municipal police officers. It offers in-service training for other groups including animal services. The Academy curriculum offers 325 more hours of training than required for accreditation by Maryland: 28 weeks of academy training total followed by an additional three weeks of field training. Dr. Gaster asked how much de-escalation training officers get. Sgt. Brewer replied that since almost all scenarios have an element of de-escalation it was not feasible to informally estimate.

Mr. McKinney asked what other elements of MCPD service – besides salary – encourage a person to join MCPD. Sgt. Brewer replied that smaller police departments (such as municipal ones) have fewer opportunities for officers whereas the larger MCPD has more opportunities for officer career development and advancement. Ms. Daphnis asked whether there is an employee satisfaction or engagement survey of officers. Sgt. Brewer replied that there is no consistent survey. In addition, Mr. Ricks noted that MCPD has taken trainees to the National Museum of African American History and Culture and Sgt. Brewer added that trainees also visit the United States Holocaust Memorial Museum.

Data on the Effectiveness of MCPD activities in view of concern about increasing violent crime

The PAC wanted a substantive response to the widespread concern about increasing violent crime in Silver Spring. On February 13, 2023, Dr. Gaster, an expert in policy review, presented an examination of the available crime data and determined that crime has increased in non-late nighttime periods over past six years, while it has decreased during late nighttime periods. He suggested that concerns about late night establishments (e.g., hookah lounges) might be misplaced.

Dr. Gaster noted that while reported crime data goes back 5 years, on the other hand, arrest data was only available for the previous 30 days, and there is no public record of crime clearance data. He also expressed concern that MCPD does not track any outcome data beyond arrests. The PAC voted to request data for crimes and arrests by the MCPD for the past 10 years. Staff transmitted the data request to the

MCPD. Capt. Satinsky indicated that post-arrest outcome data would be kept with the State's Attorney's office. He advised that the County crime data is in the NIBRS database and other data is with the Dept. of Corrections.

The follow-up on this subject, scheduled for April, was tabled until May, but not addressed because of the need to consider Expedited Bill 27-23 to abolish the PAC. It was postponed at the June meeting because of other pending business. When this issue was raised again on July 10, Captain Satinsky offered to do some research on the availability of the data. This issue was not addressed at the August meeting due to other business.

Statement regarding police misconduct in the context of national concern

In early January 2023, Tyre Nichols was beaten and killed by police officers Memphis, TN. Videos of this incident from stationary security cameras were released to the public and generated nationwide outrage. On January 27, MCPD Chief Marcus Jones and the Montgomery Council issued a joint statement about the incident. Some members of the PAC heard concerns from Montgomery County residents about the Memphis tragedy and believed that the PAC should issue a statement. The PAC was divided about the value of such a statement, but a majority voted to issue a statement. The statement is attached in **Appendix 2**.

Body Worn Camera Issues

In February 2023, the PAC decided to consider issues surrounding the MCPD use of Body Worn Cameras (BWC). The County Council had enacted Bill 18-21 on Nov. 19, 2021, effective, Feb. 18, 2022, to require the issuance of BWC and the random review of BWC recordings, and related matters.

Sgt. Cate Brewer advised the PAC that the MCPD engages in random review of the BWC footage pursuant to this section of the Body Worn Camera policy, Function Code-430 (Eff. Oct. 27, 2022, replacing the Jan.6, 2021 version):

XI. Internal Access, Review, and Use of Recordings

* * *

D. Professional Accountability Division Review

1. The Professional Accountability Division will conduct periodic random reviews of BWCS recordings to assess:

- a. Employee compliance with legal requirements and Department policy;**
- b. Employee performance; and**
- c. Consistency between employees' written reports and recordings.**

2. Except when performing a random review under Section XI.D.1, the Department must not review BWCS recordings, without cause, to discover acts of misconduct or instances of poor performance.

3. All reviews conducted in Section XI.D.1 will be performed utilizing the Department's approved software. All reviews will be documented via the approved software package or Departmental form.

4. Violations of legal requirements and/or department policy will be referred to the IAD for follow-up.

The policy is on the County's [website](#).

The PAC held a briefing on the random review program at our March 2023 meeting. MCPD Capt. Jordan Satinsky who is directly involved in the review of BWC footage was able to brief the PAC and answer questions. MCPD has created a division to review Body Worn Cameras (BWC). BWC footage is reviewed for positive and negative incidents. Examples of incidents that trigger an automatic review include use of force, a fatality, and allegations of employee by misconduct. As of March 2023, two sergeants had been working on this review for 4-5 months, working through a very large database of BWC footage. As of March 2023, MCPD was in the process of purchasing a program to review the backlog. Of course, many BWC files are being added every day.

Members of the PAC had many questions about the program. Dr. Gaster asked about the privacy of the BWC footage regarding persons whose behavior is recorded who are not arrested and those not subject to criminal justice system disclosures. Capt. Satinsky replied that individuals outdoors in public do not have an expectation of privacy although MCPD takes great pains to blur out individuals who are unrelated to the incident if the footage is released. The current footage review program tracks all actions performed in the program.

Dr. Ekstrand asked how footage is identified for review when it is not related to a specific problem. Capt. Satinsky personally reviews videos identified for use of force, training issues, and positive incidents. The random review committee reviews footage randomly. Dr. Ekstrand asked about the possibility of comparing patterns of conduct that might be problematic across districts or subsets of officers. Capt. Satinsky indicated that the BWC program generates a huge amount of data, so it is impractical to review in this way. He indicated that the MCPD is procuring a computer program that he believes will have the capacity to help identify footage to review. Currently the footage is just selected randomly. Dr. Ekstrand asked whether random selection could be done from districts. Capt. Satinsky replied that this would remove the randomness. Dr. Ekstrand asked if Capt. Satinsky could share the form used by reviewers to record information from the random reviews (Section XI.D.3.).⁹

Ms. DeLane asked what the objective of the random review program is and when videos are deleted. Capt. Satinsky replied that videos are deleted after 210 days unless there is an incident or felony (FC-430, X!!C). He indicated that the program would help with a review. He does not know when the computer

⁹ As of the completion of this report, the form used was not provided to the PAC. The PAC was told that the form "did not make it through bargaining. So they no longer use one." The PAC is concerned that failure to use a "data/information collection instrument" (DCI) risks inconsistency in reviews, inability to appropriately summarize findings, and severe limitations for oversight.

program to review footage will be purchased. Dr. Gaster inquired about meeting any objective of the random review program given that only a small proportion of recorded videos are randomly reviewed. Capt. Satinsky expressed acknowledgement of Dr. Gaster's comments that this is a small proportion of videos but clarified that he was not raising a concern with the review program. Mr. Sterling expressed that random review does not seem to be currently operating in a manner that allows for it to be a mechanism of useful oversight. Capt. Satinsky replied that the model is still in development and challenges in recruitment exacerbate these issues. Ms. DeLane expressed her concern with the methodology of the randomness and requested additional written information about the goal and objective about the program. Capt. Satinsky replied that the goal is to review as much as possible in order to respond to conduct (positive and negative) as necessary. He indicated that the policy has undergone thorough development.

Ms. DeLane offered to develop additional questions about the development of the program and the methodologies used for carrying out this policy for a subsequent meeting.

The STEP Act – Bill 12-23

In April 2023, the PAC was briefed by Council Member Will Jawando, the lead sponsor of Bill 12-23, The Safety in Traffic and Equity Policing (STEP) Act, at a meeting attended by senior MCPD staff who were able to address some of the questions.

Mr. Gaster asked whether officer searches that do not find anything are tracked, and whether searches that are requested but not approved are tracked. MCPD Capt. Brian Dillman responded that the online system can track whether a vehicle was searched and advised that body worn cameras are active on every traffic stop. The MCPD policy (Function Code 710 – Consent Searches) provides that “police officers shall capture the advisement of this right [to refuse consent for the search] and the person(s) acknowledgement and verbal approval/disapproval on a department-authorized recording device” (FC 710 II.D, effective February 10, 2023). The PAC inferred that MCPD was not systematically counting instances in which an officer's request for consent to search a vehicle is declined.

Ms. Branson noted that fees paid from tickets and citations issued during traffic stops are initially sent to the State and then sent back to the County and are allocated to the general fund. As of this report, the data regarding revenue from tickets and citations has not been provided to the PAC. Ms. Branson wondered what materiel or services the county purchases with the revenue from traffic stop citations rebated from the State. She noted that the County conducts a disparity analysis for its procurement practices and wondered if the disproportionate enforcement of traffic stops and the disproportionate issuance of citations for technical offenses is included in the disparity analysis.

The PAC carefully considered the STEP Act, and agreed on August 15, 2023, on the points it wished to convey to the Council. That letter was completed and transmitted on August 31, 2023, and is set forth in **Appendix 3**.

The Future of the PAC

Bill 14-19, enacting Montgomery County Code section 35-6 creating the PAC, does not provide that the PAC sunsets. Rather, Code section 35-6(c)(6) provides that members have three-year terms. The resolutions appointing each of the members of the commission specified their terms were to expire July 31, 2023.

Section 35-6(b) provides that the County Council “must appoint a Policing Advisory Commission.” But, as of the date of this report, it appears that the Council has not initiated any process to solicit applications to serve (as there had been in 2020) which would be the basis for the Council to make such required appointments. Thus, in the absence of new appointees and pursuant to Montgomery County Code section 2-148(a)(4), the current members are continuing to serve another six months, but no more. At this point, the PAC will cease to have any members as of January 31, 2024.

On May 25, 2023, Councilmembers Dawn Luedtke and Sidney Katz introduced Expedited Bill 27-23 to repeal the County Code section creating the Policing Advisory Commission, effective August 1, 2023. At a hearing of the County Council on June 13, 2023, the PAC testified against the bill to abolish it. On June 26, 2023, the Public Safety Committee was scheduled to consider Expedited Bill 27-23, but the sponsors planned to offer substantial amendments. A majority of the PAC members signed a letter to the Public Safety Committee noting their objections to the proposed amendments (attached as **Appendix 4**).

The Public Safety Committee decided at that point not to go ahead with the markup of Expedited Bill 27-23 because there had not been an opportunity for a public hearing on what was essentially, an entirely new bill. , but for a new bill to be offered that incorporated the amendments proposed for the June 26, 2023, Public Safety committee meeting. That bill, Bill 32-23, was introduced on July 25, 2023, by Councilmember Luedtke.

As set forth in the letter of June 26, 2023, the proposed amendments would substantially undermine the role and function of the PAC.

Outstanding Projects for Continued Oversight

As the Council considers Bill 12-23, the STEP Act regarding traffic enforcement, the PAC, which has devoted substantial energy on the topic hopes to continue to be a useful resource to the Council. The PAC sent a letter to the Council on August 31 with its recommendations. (Attached as **Appendix 3**). The PAC would continue to monitor traffic enforcement data and policy.

Preliminary to providing further information to the Council, the PAC would continue to examine the broad issues of implicit bias, use of force, training, data collection and the use of data in the management of the MCPD, emergency response and specialized populations such as those who have intellectual or developmental disabilities, the questions of arrest policy and MCPD's declining rates of clearances of violent crimes, and the issues of body worn camera review and virtual reality training.

Appreciation

The PAC is extremely grateful to its staff from the County Council, Legislative Analyst Susan Farag, and the assistance of postgraduate fellows Logan Anbinder and Nazeefa Hossain. We also greatly appreciate the faithful participation of Sgt. Cate Brewer from the FOP and other officers from the MCPD, especially Captain Jordan Satinsky and Captain Stacey Flynn.

Conclusion

The PAC believes that a county commission of community members charged with the civilian oversight of the MCPD to provide advice to the Council is fundamental to effective management of the MCPD and the county government. A civilian oversight board is essential to assuring Black persons, Indigenous persons, and other People of Color (BIPOC) as well as immigrants and refugees that the county is committed to protecting them from racism generally and potential police misconduct more specifically. An August 2022 report by the Pew Research Center, “Black Americans Have a Clear Vision for Reducing Racism but Little Hope It Will Happen; Many say key U.S. institutions should be rebuilt to ensure fair treatment,” found that 60 percent of Black adults say “police brutality is an extremely big problem for black people in the U.S. today,” and 49% say the institution of “policing needs to be completely rebuilt for Black people to be treated fairly.” Such findings are a strong argument that the PAC is needed.

Unfortunately, the PAC feels that its potential is not being utilized, and that it is not being taken seriously in some quarters. For example, the MCPD and the Executive created a working group to evaluate for adoption the recommendations of the Reimaging Public Safety Task Force and the recommendation of the audit by the consultant, Effective Law Enforcement for All. The PAC was not invited to participate. Indeed, the PAC was not notified that such a working group was operative until **the** public meeting on July 12 that unveiled the status of the working group's evaluations.

Nevertheless, as this annual report documents, the PAC believes it has been an important step forward for Montgomery County to assure its residents that their fears and concerns regarding policing are effectively heard and being considered.

Respectfully submitted,

Policing Advisory Commission
September 12, 2023

Appendix 1

Questions for State's Attorney (July 2022)

Submitted by PAC member Eric E. Sterling, July 21, 2022

(1) Marijuana Prosecutions

On the eve of effective date of Maryland's decriminalization of marijuana possession of less than 10 g. in 2014, [The Baltimore Sun \(September 30, 2014\)](#) reported,

“But taking a cue from what he believes was the legislature's intent, [Montgomery County State's Attorney John] McCarthy has decided that Montgomery County authorities will now treat all possession cases, even those well above 10 grams, as a civil citation offense. **‘No one will be charged criminally for simple possession, regardless of quantity,’ McCarthy said in an interview.**”^[1]

A little more than five years later, according to [The Washington Post, January 2, 2020](#),

“In Montgomery County, State's Attorney John McCarthy's office has not prosecuted personal possession marijuana cases since the state decriminalized pot possession about six years ago, he said. His office, more recently, also has scaled back prosecution of small ‘distribution cases’ that, in reality, are no more than one friend selling a joint to another friend.”^[2]

Can you provide an in-depth description of how your office handles marijuana cases? In the years 2015 to 2021, has the MCPD referred cases alleging marijuana or marijuana possession with intent to distribute to your office? If so, how many? Are you aware that Montgomery County is reported by the Maryland State Police of having made 23,547 arrests for marijuana possession between 2015 and 2020? What does your office think about that?

How does your office review allegations of cultivation of marijuana, if any?

At any time did your office communicate directly to the MCPD your policies regarding marijuana cases?

(2) Persistence and integrity of MCPD in prosecutions

How frequently does your office have difficulty prosecuting a case because MCPD police officers:

- fail to appear as witnesses;
- inadequately investigate the allegations;
- respond poorly to efforts by assistant state's attorneys to prepare them for testimony and cross-examination;
- improperly withhold exculpatory evidence;
- deliberately misrepresent the evidence or even commit perjury?

Does your office maintain any kind of list – formal or informal – of MCPD officers who should not be asked to testify because they risk being seriously impeached regarding the honesty? If so, how many officers are in that category?

(3) Specialized investigative support

How would you characterize the specialized investigative support of the MCPD in fields such as laboratory analysis of evidence (CDS, fingerprints, ballistics, human tissue, etc.)?

How would you characterize the specialized investigative support in sensitive cases such those involving juveniles or sex offenses?

How would you characterize the specialized investigative support in cases involving fraud such as computer assisted fraud, scams over the telephone, embezzlement, identity theft or matters in which the perpetrators may be based physically outside Montgomery County?

(4) Racial, ethnic or gender insensitivity

Does your office make it a point to invite Assistant State's Attorneys to identify and report any instances in which police witnesses or investigators make comments or behave in ways that are inappropriate or may be offensive on racial, ethnic, gender, disability or other grounds? If so, what has such reporting revealed? If not, have Assistant State's Attorneys in the past five years volunteered to their supervisors any instances of that kind?

(5) Jury Selection

What is the training and supervision of your office to assure that in the selection of juries there is no decision-making in the *voir dire* process or in the use of challenges that favors or disfavors persons of any race, ethnicity, gender, etc.?

(6) Improper use of force by police officers

Does your office have any program to gather complaints from the public regarding allegations of improper use of force by police officers that is independent from the MCPD Internal Affairs Division or the other police departments in the county?

(7) Coordination of criminal justice priorities with police departments

What is your program to coordinate criminal justice priorities with the police departments at an operational level? How regularly and often does the senior management of the State's Attorney office meet with senior management of MCPD to coordinate and discuss issues of concern?

(8) Police cooperation with drug court and mental health court

Your office has been central to the standing up and success of the drug court and the mental health court in Montgomery County. What is your assessment of how MCPD officers collaborate with assistant State's Attorneys with these courts? How are effective and cooperative are MCPD officers in identifying appropriate defendants for such courts?

(9) Outstanding service

How often has your office communicated to the leadership of the MCPD any commendation of any MCPD officers for superlative work in connection with the many programs of the State's Attorney?

(10) Unspecified concerns

In addition to the subjects addressed in these questions, are there any matters of concern at the State's Attorney's office regarding any aspect of the role or service of the MCPD?

#

Appendix 2



POLICING ADVISORY COMMISSION

The Policing Advisory Commission's Statement on the Death of Tyre Nichols in Memphis, TN For Immediate Release: Friday, February 17, 2023

Many Montgomery County residents have seen video depicting the fatal beating of Tyre Nichols by police officers in Memphis, Tennessee after a traffic stop in early January. The Policing Advisory Commission (PAC) commends Chief of Police Marcus Jones' and the County Council's statements on January 27 about that fatal incident.

Inevitably, many of us ask (as we have asked after similar fatal incidents), "Could this happen to me or my child here in Montgomery County?" That question has been directed to some members of the PAC.

The County Council and the Montgomery County Police Department have created new policies to:

- minimize the use of force,
- de-escalate situations to prevent the use of force,
- use minimal force if force is necessary,
- strengthen and clarify the duty of officers to intervene if they witness another officer acting inappropriately, and
- train in such tactics and scenarios.

The Policing Advisory Commission was created by the County Council in 2020 as a tool to help the Montgomery County Police Department to further reduce the possibility of such incidents occurring here. The County Executive arranged for both a comprehensive professional audit of the MCPD and a public Task Force to Reimagine Public Safety in the county. Last year, a new system of state-mandated accountability with a County Police Accountability Board was inaugurated.

The PAC supports the MCPD's positive steps. We are well aware these issues will need continued work and vigilance.

Appendix 3



POLICING ADVISORY COMMISSION

August 31, 2023

The Honorable Evan Glass, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear President Glass and Members of the County Council:

Pursuant to the charter of the Policing Advisory Commission (PAC), we are pleased to provide you with our views regarding Bill 12-23, the Safety and Traffic Equity in Policing Act (STEP Act) that addresses traffic stop policy for the Montgomery County Police Department (MCPD).¹⁰

The Policing Advisory Commission has considered the issue of traffic stops in some detail beginning in 2021. After a number of meetings, in 2021 we issued a report that included a statistical analysis of the correlation between the locations of stops and traffic crashes.¹¹ We held a public meeting in January 2023 inviting the views of the public regarding traffic stops and traffic enforcement. We met with leaders of the MCPD and with Councilmember Will Jawando regarding these issues and this bill. And we updated our 2021 report to include data through the end of 2022.

The STEP Act is a significant effort to address issues related to traffic stops that were identified in our report, and which overlap with the findings of the subsequent report by the Council's Office of Legislative Oversight in October 2022 (OLO Memorandum Report 2022-12 "Analysis of

¹⁰ Following public notice of a meeting and published agenda, on August 15, 2023, the PAC met to discuss the STEP Act and our views and to consider a draft letter that had been circulated on August 14. After discussion that extended more than an hour after the scheduled adjournment, a motion to adopt in principle the draft letter with a number of oral amendments passed on a vote of 5 in favor, 1 opposed and 1 abstaining. This letter reflects the discussion and agreement. The letter has been approved by the 5 who voted yes. The member who abstained now supports the letter (voting "aye"), and the member who voted no has not changed his vote but wrote that we can "submit" the letter.

¹¹ Policing Advisory Commission, "Findings and Recommendations for Traffic Enforcement," Section III of the Appendix, p. 37 and following, (Dec. 2021 and June 2023)
<https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/PoliceAC/correspondence/FindingsRecommendationsTrafficEnforcement.pdf>

DataMontgomery Traffic Violations Dataset”). (There was also an analysis of racial disparity in traffic stops in an earlier OLO report -- OLO Report 2021-10, “A Study on Reassigning Traffic Enforcement from the Montgomery County Police Department to the Montgomery County Department of Transportation”).)

There are two issues. Most importantly, it is undeniable that there are significant racial imbalances in the incidence of traffic stops. Using the county population (as analyzed by the U.S. Census) as baseline, it is apparent that Black and Hispanic drivers are stopped and ticketed at rates far higher than White drivers.¹² Second, the data regarding the location of stops reveals that the stops are not being focused at the locations with the greatest number of crashes, fatalities and injuries. We are concerned that these two issues may be related – failure to focus on safety may be contributing to the racial imbalance of those who are stopped.

The MCPD’s primary rationale for traffic enforcement and traffic stops is to enhance traffic safety.¹³ PAC’s statistical analysis of Montgomery County traffic stop data by location showed that the link between stops and crashes is in many cases tenuous: there are locations in Montgomery County where there are hundreds or even thousands of stops but few crashes, and others with multiple crashes and few stops. If Montgomery County traffic stops were aimed efficiently to target traffic and pedestrian safety, the ratios of stops to crashes should be similar for locations across the county. They are not. This discontinuity has been underscored by sudden changes in the number of stops performed by MCPD during the COVID emergency and subsequently. The number of stops dropped sharply (down 63% between 2019 and 2022). Traffic volume has now recovered to pre-pandemic levels, but traffic stops remain at the reduced level. If MCPD traffic stops were having a significant effect on safety, we would expect to see with the depressed number of stops a sharp uptick in crashes causing injury. However, that has not been the case; according to the State of Maryland Open Data traffic crash data set crashes are down sharply over the same period.

In light of the disconnection between traffic stops and the incidence of traffic crashes, the evidence of racial disparities raises significant questions that MCPD should address, in particular, whether the traffic stop disparities may be a result of police officers acting with unconscious bias and/or are the result of systemic bias as a consequence of existing patterns of policing.

We note that MCPD official policy repeatedly prohibits racial discrimination in enforcement. MCPD Headquarters Memorandum 14-02 (June 25, 2014) says, “Discrimination in any form, including racial

¹² Demographics of the population is the standard used for analysis of potential disparities in traffic stops. Although it is an imperfect base for comparison it is informative when differences are significant. Further analysis of traffic stop data, such as analysis of the pattern of tickets issued by race and ethnicity and the residence of drivers and the location of the stop, and requests for vehicle searches following stops by race and ethnicity and residence of drivers can refine the analysis and offer further insight into the degree of confidence in the patterns shown in the overall traffic stop data.

¹³ “It is the policy of this department to promote the safe and efficient movement of traffic within the county. . . The goals of the system are to facilitate the safe and expeditious flow of vehicular and pedestrian traffic and to reduce traffic collisions and their resultant fatalities and injuries.” (FC 1000 Traffic Management System II., Effective July 1, 2022)

profiling, is strictly prohibited...” FC 1000, specifically addressing traffic management, prohibits officers from making race-based stops:

“Montgomery County Department of Police is commitment [sic] to unbiased law enforcement in all encounters between officer and the community. Discrimination in any form, including racial profiling and bias policing is strictly prohibited and the department will take immediate and appropriate action to investigate all allegations concerning such actions. Officers will not stop or detain any individual(s) based exclusively on their race, ethnicity, or national origin, unless this information relates to a specific “lookout” regarding a suspect’s physical description concerning a criminal investigation or other legitimate law enforcement action.” (FC 1000, Traffic Management System, Section IX.A. (Effective July 1, 2022))

Elsewhere, “complaints that allege racial prejudice” are defined as “serious allegations of misconduct” in the disciplinary process set forth in MCPD policy (Function Code 301, effective August 16, 2022).

In meeting with us, MCPD Chief Marcus Jones stated that no analysis of racial disparities in traffic stops had been conducted to date and that he would like additional and independent research on this point. However, the disparities revealed by the OLO report and the PAC data analysis must be seen in light of the participation of the MCPD and the County in a Memorandum of Agreement (MOA) with the U.S. Department of Justice entered into on January 14, 2000, “to institute management practices by the MCPD that **will promote nondiscriminatory law enforcement** and community support for the MCPD and its officers.” (emphasis added). A key allegation in the complaint to the Department of Justice that initiated the MOA was that MCPD traffic stops were being made in a racially discriminatory manner. Subsection IV.H of the MOA provided for analysis of traffic stop data by “comparison of racial/ethnic percentages.” We encourage the MCPD to acknowledge the disparities and to undertake any studies necessary to support management changes that will eliminate them.

The PAC believes, that, if evident, officers demonstrating unconscious bias should be retrained. If evident, systemic issues should be addressed through better data analytics, revision of the contributing policies, and better communication with Montgomery County communities. The MCPD should be reviewing and assessing the factors that drive the high number of stops made in Montgomery County, and the potential factors resulting in disproportionate stops. In this regard, MCPD should be more aggressive in identifying and addressing the potential factors leading to the observed disparities.

The proposed STEP Act takes direct aim at disparities in ways that overlap with our recommendations but are not identical to them. The Act offers three core reforms:

1. It provides a specific list of offenses for which officers may not stop a vehicle in proposed Code section 35-27(c). These “barred” offenses include suspected violations of Maryland Vehicle Law regarding certificates of title, vehicle licensing, registration or insurance, missing or damaged equipment, lighting, and excessive window tinting or other windshield obstructions, for example. It also would bar the stop of a pedestrian for pedestrian violations such as crossing against a cross walk signal or crossing at other than a crosswalk. It further requires that if in the course of a stop for an offense other than those “barred,”

there is evidence of a violation of a “barred” offense, in the case of a first offense, only a warning (verbal or written) may be issued, and a citation may only be issued for a subsequent such offense.

2. It seeks to eliminate the authority of police officers to request permission from a driver to conduct a consensual search of their vehicle. Instead, consent searches may only be requested “if reasonable suspicion or probable cause for a criminal offense arises during the stop.” (Proposed code section 35-27(e)(2)).
3. It requires additional data collection and annual reporting.

STEP Act traffic stop restrictions

The STEP Act seeks to address the problem of racial disparities in traffic stops with a blanket prohibition on stops for specified “minor violations.” The PAC report calls for a substantial reduction in the number of stops in order for the MCPD to be more efficient.¹⁴ However, our report did not specify any traffic violations to be deemphasized. We deferred to a list of “minor stops” provided for in the July 2021 OLO report. Legislatively, the PAC favors clarity and the approach of specification of offenses to deemphasize, as provided for in the STEP Act. However, the PAC has some concerns with some of the violations to be excluded from traffic stops in the STEP ACT:

- A violation of Transportation Article § 22-101. Driving with improper equipment prohibited. “(a) (1) A person may not drive and the owner may not cause or knowingly permit to be driven on any highway any vehicle or combination of vehicles that: (i) Is in such unsafe condition as to endanger any person...” (emphasis added) should remain a permissible basis for a traffic stop because of the explicit safety standard.
- Violations of Transportation Article § 22-219(a) (Brake light) We do not believe that stoplight violations are minor, and they are appropriate to continue to be targeted and ticketed by officers.
- A violation of Transportation Article § 22-406. Excessive window tinting is an offense because it makes traffic stops more dangerous – officers cannot see the behavior of persons within the vehicle and whether a weapon is being brandished or concealed. We believe excessive window tinting should continue to be an appropriate cause for a traffic stop.

STEP Act consent search prohibition

The PAC has concerns about the STEP Act provisions eliminating the ability of a police officer to request a driver’s consent to conduct a search. Current Constitutional law permits a police officer to make a search of a motor vehicle or its compartment that is not consented to if the officer has probable cause or articulable grounds for a reasonable suspicion that a crime may have occurred. As drafted in the STEP Act, it appears that the possibility of all “consent searches” would be eliminated and only unconsented-to-searches would take place.

¹⁴ Montgomery County Policing Advisory Commission, “Findings and Recommendations for Traffic Enforcement,” (June 2023), (“We do not accept that more stops mean more effective and better policing traffic enforcement. On the contrary, we believe that an appropriate mission for MCPD traffic enforcement is that it be effective, efficient, and equally enforced.” Recommendation 1, New mission.)(“ Specifically, minor violations should not be used by MCPD officers as the basis for a traffic stops. Recommendation 2, Focus on what matters.)

The PAC is persuaded that searches pursuant to the consent of the driver can be a potentially useful tool for law enforcement but we recognize that such requests can be intimidating. The latest MCPD policy for consent searches, adopted on February 10, 2023, provides that:

1. Officers must show that consent was given voluntarily and not due to “duress or intimidation.” (Function Code 710.II.A).
2. Officers “should be able to articulate their rationale for requesting the search.” (Function Code 710.II.B).
3. Officers “shall advise the person(s) involved that they have the right to refuse consent for the search.” (Function Code 710.II.C).
4. Officers “shall capture the advisement and the person(s) acknowledgement and verbal approval/disapproval on a department-authorized recording device,” (e.g., body worn camera, etc.). (Function Code 710.II.D).
5. Officers should complete a MCP Form 120 for every consent search and to record the nature of the consent (“written preferred”) and with “completed...demographic data” and forward the report by email to MCPD Policy and Planning Division. (Function Code 710.II.E and F).
6. The policy says that “The person giving consent to search can place limitations or conditions on the consent search or withdraw consent at any time.” (Function Code 710.II.H).

The PAC believes, to minimize intimidation and to assure that the policy is followed, that a standard protocol be established and mandated of a script for requesting consent to search, to include all the elements of the current MCPD policy as well as explicitly advising the person whose consent is being sought that they “can place limitations or conditions on the consent search or withdraw consent at any time” as the current MCPD policy provides.

STEP Act data collection and annual report

The STEP Act also calls for the collection of additional data. We support the Act’s call for additional data collection, and the requirement that officers report the primary reason for the stop to improve MCPD data analysis. This data collection is within the capability of MCPD today and could be implemented tomorrow. Since the reporting software assumes that the first offense entered is the primary offense, MCPD should require that officers enter the primary reason for the stop first.

The PAC also supports the Act’s call for an annual report on traffic enforcement. The STEP Act does not require MCPD to show the impact of traffic enforcement on safety, or to explain why it has adopted the specific strategies that it has deployed. Bias at the level of individual officers is important, as noted above, but systemic impacts are likely to be considerably more important, and attention should continue to be focused on these broader concerns.

In conclusion, the PAC believes that the STEP Act is a positive effort to address central concerns regarding policing in Montgomery County: both the racial disparities in traffic stops and the burden imposed by unnecessary stops on both drivers and county resources. We hope that the Council will fully address the issues that the STEP Act raises.

Respectfully submitted on behalf of the PAC,

Eric E. Sterling, Chair, PAC

Ty McKinney, Vice Chair, PAC

Appendix 4

June 26, 2023

Honorable Sidney Katz, Chair, Committee on Public Safety
Montgomery County Council
Honorable Dawn Luedtke, Council Member
Honorable Kristin Mink, Council Member

Re: Expedited Bill 27-23 and amendments

Dear Members of the Public Safety Committee:

Thank you, Chair Katz for inviting a few members of the Policing Advisory Committee (PAC) to meet with you on Thursday afternoon regarding consideration of Expedited Bill 23-27 in advance of the Public Safety Committee meeting today.

We are very pleased that the sponsors of the bill have recognized that abolishing the PAC is inappropriate and according to the staff packet for your meeting on June 26, an amendment with a number of changes in the PAC is proposed to be offered.

We have been able to make an abbreviated review of the amendments and wish to share our views.

Preliminarily, however, we wish to stress that the PAC was created out of the reality that Black people – men, women, and children -- are being shot and killed by police in the United States in numbers grossly disproportionate to their numbers in the society. Black people are regularly stopped and harassed by police officers in the United States. The fact that this is not the subject of daily, nationwide protests does not mean the problem has gone away. To state these facts is not an accusation against the officers or leaders of the Montgomery County Police Department. But the data gathered by Montgomery County reveals that police activity disproportionately impacts racial and ethnic minorities in this county. The PAC has been created by the County Council to provide the residents of the county with a forum in which these matters can be analyzed and discussed honestly and without rancor, where questions can be asked of the police, and where concrete suggestions can be made. On January 14, 2000, the Montgomery County Police Department, Montgomery County,

and the Fraternal Order of Police signed a Memorandum of Understanding with the U.S. Department of Justice to resolve a DOJ investigation following a complaint filed against them under the Civil Rights Act and other laws regarding police practices in the county. Unfortunately, some of the practices that were the subject of that complaint and to be resolved by the Memorandum of Understanding remain. It is in the interest of the county that the county's residents and the county government conscientiously address these matters without involving the federal authorities.

First, recognizing your intent to continue the PAC (probably renamed) and that the terms of the current members expire on August 1, 2023 (just five weeks from now), to enable a smooth transition for the newly appointed members, it would make sense to continue the terms of the current members until the persons selected to fill the new term have been confirmed. There is no value to the new members or to the County in emptying the PAC of its membership in the interim pending the confirmation of members to serve a new term. Or, perhaps the transition would be more easily planned and executed if the terms of the current members were extended to a time certain, such as for an additional 90 days, to December 1, 2023.

Second, the original appointment process produced a PAC with a great deal of diversity. County Code section 35-6 (c)(2) provides both that the Council should appoint 9 public members and that "Each member of the County Council should nominate one member." To carry forward that approach with the expanded, eleven-member County Council, the language should be amended to provide for the Council's appointment of 11 public members. Perhaps the paragraph should be amended to provide that if a council member's nominee leaves the PAC before the conclusion of their term, the council member (or their successor) has the privilege to again make a nomination to fill that seat. To the extent that persons with particular characteristics, such as age, are to be selected, entrusting the nomination of such appointees to the County Executive is one way to expedite those nominations.

Third, we think it is good policy to provide that the PAC includes two young adults, as County Code Section 35-6 (c) (3) currently provides. Youth and young adults have the most frequent interactions with the police. The County should continue to state clearly to the young people of the county that the voices of young people will be held up in the public review or oversight of the county police.

Fourth, we have found participation of the Chief of Police and the President of the Fraternal Order of Police lodge (or their designees) as *ex officio* members has worked very well. The designees have been diligent and well-informed, and they regularly provide very useful information and perspective. However, we oppose converting their role to that of a voting member. The ideal role of an advisory board such as the PAC is to represent the community that faces the police – as victims of crime, as persons stopped on suspicion of a traffic violation or as other subjects of police inquiry.

It is foreseeable that as voting members, the police voices would have undue influence in determining the inquiries and recommendations proposed by the citizen representatives. The principle to exclude police representatives *as voting members* is similar to the principle that often prevails in jury selection of excluding lawyers from serving. The lawyer as juror brings an authority that is widely recognized as risking the overshadowing of the non-expert jurors. The attentive, non-expert juror is one of the great equalizing features of the American justice system. Providing the police with a vote on what is essentially an oversight board violates the well-established principle against serving as a judge in one's own case. The essence of the role of the board or commission like the PAC is to provide a public or community focus in the review or oversight of the police. Inherently, such board or commission in making suggestions for change is making implicit criticism of some practice of the police. Even if a recommendation is to do more of something good, the recommendation is a criticism of the status quo for failing to devote sufficient resources to what the board sees as valuable. It is foreseeable that police voting members will resist measures that are explicitly or implicitly critical of the police.

Fifth, diffusing the focus of the mission from "policing matters" to "public safety matters" does not enhance the work of the commission. Council Member Luedtke introduced the expedited bill to eliminate what she perceived as the redundancy between the Policing Advisory Commission and the state-mandated Police Accountability Board. Yet public safety matters are the subject of the 32-member [Criminal Justice Coordinating Council](#) (of which CM Luedtke is an *ex officio* member). At best this revised mission creates a real redundancy of purpose in exchange for a non-existent redundancy only suggested by the similarity of the names of the PAC and the PAB. More particularly, what is gained by changing the mission to "public safety matters?" There is no perception of nor a body of complaints for Fire and EMS or the 9-1-1 call center regarding racial discrimination or disparity in service. In any event, the County Council has no jurisdiction over the Sheriff, the courts, or the state's attorney.

Sixth, the proposed amendments seek to change the composition of the PAC to provide that there is explicit representation from property owners: "business owners or organizations, Urban Districts, homeowners' associations, common ownership communities..." To my [our] knowledge, there is no evidence that representatives of these groups endure disproportionate contact or use of force by any police department, or that as crime victims they get inadequate responses. In general, most people would not feel that the business interests in the county have inadequate opportunity to express their concerns about county policies. If the Council is concerned that business is inadequately protected by the police and the criminal justice system, adding business representation to the Criminal Justice Coordinating Council might be the appropriate amendment.

No one questions that business owners are important members of our community, as they are for any community, but given the history and purposes of the PAC, specifying them for inclusion in this

body trivializes the concerns of minority communities in the county that experience disparate stops and arrests by the police. An additional concern was raised regarding the potential appointment of an “owner” of a business in Montgomery County who is not a resident of the County. Article XI of the County Code regarding boards, committees and commissions (Sections 2-141 through 2-149) does not contain a general requirement that members be residents of Montgomery County. However, the legislation creating the Policing Accountability Board had a requirement that its members “must reside in the county” (County Code Section 35-24(b)). We think members of the PAC should reside in the county.

Seventh, the proposed new requirement that the PAC engage in community outreach is not objectionable. The PAC has always embraced that responsibility and would welcome the resources of the Council and the County to better publicize our efforts at outreach. However, the “emphasis on getting feedback and input from those living or working in Equity Focus Areas” is problematic. As Montgomery Planning observes on its website where this concept is explained,

The primary goal of the Equity Focus Areas Analysis is to create a tool that will help guide numerous planning projects and processes of Montgomery Planning and Montgomery Parks, both part of the Maryland-National Capital Park and Planning Commission. Some of these efforts include the update to the county’s General Plan, known as Thrive Montgomery 2050, Montgomery Planning’s Equity in Master Planning Framework, and Montgomery Parks’ Capital Improvement Program prioritization.

Some observers feel that this planning board concept of such communities when made the target locations for “feedback and input” would diminish the attention of the renamed PAC away from the historic racial disparities that surround the lack of confidence in the police in certain communities.

Finally, we suggest that the Committee read closely the report of the Council’s Office of Legislative Oversight (OLO) in its Racial Equity and Social Justice Impact Statement found on pp. 46-50 of the staff packet. The OLO concluded,

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. As such, its abolition could negatively impact RESJ [Racial Equity and Social Justice] in the County. (emphasis added).

Once again, we are pleased that the sponsors of the Expedited Bill do not want to abolish the Policing Advisory Commission outright. We hope that your consideration of amendments to the Expedited Bill will take our concerns into consideration.

Those of us who have signed this letter do so without having had any meetings or communications that are contrary to the Maryland Open Meetings Act.

Sincerely yours,

Eric E. Sterling (Chair, Policing Advisory Commission)
Ty McKinney (Vice Chair, Policing Advisory Commission)
Cherri Branson (Immediate Past Chair, Policing Advisory Commission)
Vernon Ricks, Jr. (Inaugural Chair, Policing Advisory Commission)
Robin Gaster, Ph.D. (Inaugural member, Policing Advisory Commission)
Laurie Ekstrand, Ph.D. (Member, Policing Advisory Commission)