

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 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 (Member, Policing Advisory Commission)