

10.19.20

Intra-Commission Correspondence: PAC Comments on Bill 34-20

Question 1): Please share any thoughts, questions, concerns, or requests for clarification on [Bill 34-20](#).

Dalbin Osorio

I think the bill is a good step forward because it limits the power of the Fraternal Order of Police when it comes to challenging dismissals due to officer misconduct. I would request clarification on whether this bill will preclude the creation of a citizen's review board that would objectively review officer complaints.

Cherri Branson

The commission has not studied the issues set forth in this bill.

Alicia Hudson

Is this bill an attempt to address concerns of members of the community about LEOBR'S impact on the disciplining and firing of officers?

Caroline Frederickson

While I think it would be preferable to have the state legislature modify or repeal LEOBR, I believe MoCo should not wait on a result that may take some time or never happen. Perhaps an incremental step, nonetheless, this bill would put this county in similar stance to other MD counties in the use of alternative boards and thus would improve the ability to discipline officers in the interim.

Jenn Lynn

I am in favor of allowing the police chief more disciplinary authority and overall transparency & equality in the discipline process. LEOBR feels like an outdated and regressive way to operate, if we want to move forward with openness and improve public perception of police. I think it is also important to keep in mind the frequency (or lack of) of inappropriate police behaviors in our county. It is easy to get stuck in details, when the fact of the matter is, events requiring immediate, final and swift discipline/action do not happen often.

Robin Gaster

I broadly favor the proposed bill. I also believe that it is within the remit of the Police Advisory Commission to offer advice on legislation. However, I also believe that unless the Commission has itself undertaken appropriate review and discussion of possible or pending legislation, it is not in a position to offer recommendations. Accordingly, I recommend that as the bill falls within the broad proposed work plan for the Commission, we should consider prioritizing this issue for study and analysis, after which a recommendation would be appropriate. Given that the bill appears unlikely to be an immediate council priority, taking the time to fully study and address the issue seems appropriate. My yes vote below is therefore a vote to consider ways in which the Commission can review the bill and related

issues, and to then issue a public comment in due course. I do not believe we should offer a public comment at this time.

Jasmine Williams

While I think Bill 34-20 is a substantial piece of reform that can help increase accountability in our police force, I also think there is a more predominant need for reform that would move us away from reliance on police for public safety. Reform has consistently proven to not protect our black and brown communities from police brutality and mass incarceration in the way that abolition would. However, I do think it is more dangerous to wait for the perfect solution before we take any action to protect our marginalized communities. The law enforcement bill of rights disciplinary procedures as they stand makes it extremely difficult to hold officers accountable which is why I think this bill is a step in the right direction.

Nadia Salazar Sandi

I think that the idea to redistribute power is important to dive into. However, I am worried about one person having absolute power over the consequences that officers will face. It is ideal to have a review board or an entity that overviews each case with community representation.

Eric Sterling

Pursuant to the legislation creating the Commission, the President of the County Council has solicited our views on Bill 34-20.

This bill addresses perhaps the most important policy issue the Policing Advisory Commission (PAC) will address in three years: whether the Montgomery County government can change the way the police “do” business.

Right now, almost anything meaningful about how the police operate or are managed can be subject to collective bargaining. This simple fact provides the “certified employee organization,” i.e., the Fraternal Order of Police, a veto over all proposed reforms.

Over the next three years, any recommendation that we labor to develop to meet the needs of the community will be meaningless unless it can be implemented. If the FOP has a veto over implementing any recommendation, the likelihood that the status quo will be meaningfully changed is close to zero – and we will have wasted a lot of our time and betrayed the hopes of the residents of Montgomery County.

If the County Executive and the Chief of Police can’t implement change, change can’t take place except through legislation by the County Council. The County Council can’t be expected to be the expert manager that the Chief of Police and their senior staff are.

Management by the Chief of Police and the elected County Executive – subject to the oversight of the County Council -- is the proper way for the recommendations we make to be implemented.

Bill 34-20 goes to the heart of providing that decisions about how the police department are made by the management in lines 53-55 of the bill. The “employer’s right” to manage the department is spelled out in lines 21-41. Any of the recommendations that the PAC makes would be authorized by those employer’s rights! Our work, ultimately, will be to look at every one of those nine rights as they are carried out by the management of the police department. (The sentence in lines 38-39 is deleted because that very confusing sentence has been interpreted, it has been explained to me, to mean that almost anything can be subject to collective bargaining.)

I can’t understate why this is important. Think of one of the most important reforms of the police we have achieved – body worn cameras.

Body worn cameras are subject to TWO AND ONE HALF PAGES of the police contract (pages 120-122). Consider the following --

(1) *“BWCS recordings shall not be routinely reviewed for the express purpose of discovering acts of misconduct or instances of poor performance without cause.”* (Article 72 D.2)

Wow! This one sentence simply eliminates an enormously useful tool for identifying potential problem officers.

(2) The police contract provides that requests by the public (families of victims, the press, etc.) for the release of recordings shall be made available to the FOP, and the FOP has special rights to object to the release, and authorizes the FOP to go to court to block the release. (Article 72 E.3)

The right of the public and victims to see the recordings on police body cameras of all manner of incidents is restricted **because** it could be made a matter of collective bargaining.

This is just ONE example of why the collective bargaining provisions of Bill 34-20 are so urgently important.

This bill is also timely.

- The current police contract has expired, and recently a group of organizations including the ACLU, urged the County Executive to not sign the old contract.
- Some people have urged delaying consideration of this bill until we know what the General Assembly does with LEOBOR reform proposals. If Gov. Larry Hogan is going to keep open the option of running for President in the Republican party primaries in

2024, it is unlikely that he will sign any legislation that the Fraternal Order of Police will oppose if it passes the General Assembly.

- Bill 34-20 therefor is essential to lay the groundwork for reform of MCPD in the near future.

Therefore, I have drafted a resolution that could be the basis for taking action at our meeting on October 19:

Whereas, Council President Sidney Katz has requested that the Policing Advisory Commission share its views regarding Bill 34-20;

Whereas, the issues set forth in Bill 34-20 for collective bargaining (lines 6 -20) are entirely appropriate;

Whereas, the key issues for reforming the operations, budget and the relationship of the police department with the community are matters for the management by the Executive (the County Executive and the Chief of Police) (set forth in lines 23-42) and should not be subject to collective bargaining;

Whereas, the Police Officer Accountability Act, as set forth in Bill 34-20, reforms the manner in which hearing boards (to review allegations of police officer misconduct) are empaneled and regulated without diminishing the due process rights of accused individuals, and will improve the accountability of the police department as a whole when instances of misconduct are alleged.

Therefore, be it resolved that the Policing Advisory Commission of Montgomery County endorses Bill 34-20.

Question 2): Should the Commission offer public comment on the proposed legislation to the County Council, per Section 35-6(f)(3) of the County Code?

- Yes – 5 (Dalbin Osorio, Jenn Lynn, Robin Gaster, Jasmine Williams, Eric Sterling)
- No – 2 (Cherri Branson, Caroline Frederickson)
- Abstain – 2 (Alicia Hudson, Nadia Salazar Sandi)