



## POLICING ADVISORY COMMISSION

To: Montgomery County Council  
Cc: County Executive Marc Elrich  
From: Policing Advisory Commission  
Date: February 23, 2021  
Re: Request for the PAC to Review Bill 34-20E - Police - Disciplinary Procedures - Police Labor Relations - Duty to Bargain - Amendments

Dear County Council,

The Policing Advisory Commission (PAC) respectfully submits our comments on Bill 34-20E. We welcome this opportunity to comment on matters referred to us by the Council, per our authorizing statute (Montgomery County Code §35-6(f)4). After careful review, consultation with relevant stakeholders and experts, and deliberation amongst PAC members, **we recommend that the Council vote in favor of the bill in its current form.**

The PAC believes that the Maryland Law Enforcement Officers' Bill of Rights (LEOBR) needs to be repealed or significantly reformed, especially with respect to disciplinary measures. Bill 34-20E represents an effort by the Council to respond to the community's concerns about inadequate police discipline and while LEOBR embodies the larger obstacle to ensure police oversight, Bill 34-20E would move Montgomery County towards a system of greater accountability, even absent LEOBR repeal or reform.

### Background

The PAC received your request to review bill 34-20E on October 7, 2020. We convened a special meeting to discuss the bill at our meeting on October 19, 2020 and referred it to our subcommittee on Hiring & Discipline for further review. The members of the subcommittee have met numerous times to discuss the bill. They have researched, reviewed and discussed a copious amount of material, including: the legislative history of Bill 34-20E; Professor Christy Lopez's presentation regarding LEOBR; the Executive Director of the Department of Public Safety and Correctional Services Mr. Albert Liebno's memo response to subcommittee member Eric Sterling's pointed questions regarding training of citizens for the LEOBR hearing panel; Montgomery County Police Department (MCPD) FC300 Department Rules; and the 2019-20 Collective Bargaining Agreement between the Fraternal Order of the Police Lodge 35 and Montgomery County Government. The subcommittee presented their findings to the full PAC on January 11, 2021, and their statement is available on the PAC website. On January 25, 2021, **the PAC voted in favor of the subcommittee's recommendation to support Bill 34-20E with a vote of 11-1 with one abstention** (out of the 13 voting members of the PAC).



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### Rationale

The ability for officers to choose a hearing by a board comprised of mostly officers is not a luxury afforded to any other government employee in the County. If we are to rebuild trust between our community and MCPD, we need to ensure that there is meaningful accountability for officers. The current process simply does not work, as illustrated by the following examples:

- An MCPD officer was convicted by a jury in December for use of excessive force in July of 2019. However, this officer remained on the MCPD payroll awaiting a final determination on their disciplinary charge for over a year.
- An officer who used the N-word in White Oak also waited over a year to receive any disciplinary action.
- An officer was once on paid administrative leave for four years while waiting for the appeal of their termination to be resolved.

Bill 34-20E addresses some of the concerns that have been raised by the community: this bill would mandate a traditional hearing board with two voting public members in cases of citizens' complaints alleging excessive force; and would authorize the Police Chief to issue a final order based on the hearing board's recommendations and to exercise their right as an employer to terminate the officer's employment. Finally, the Bill would exclude collective bargaining over the composition of a police hearing board, the right of the Chief to make a final decision on discipline, and the right of the Chief to issue a directive or administrative order implementing an employer's right. This bill would simply move the County back to the traditional hearing board authorized by the LEOBR, including the additional public members for a case originating from a citizen complaint alleging excessive force. Bill 34-20E would not deny officers any appropriate due process protections but would rather restore a system that accords full but not excessive protections to law enforcement. This Commission believes that voting members of the public should be enough in number that the public (by and through the public voting members) would have a real impact on what disciplinary measure should be recommended for an accused officer.

Please feel free to contact us if you have any questions or requests for clarification.

Sincerely,

Shabab Ahmed Mirza, Chair & Dalbin Osorio, LMSW, Vice Chair

On behalf of the Policing Advisory Commission