

Montgomery County Council
June 13, 2023
Hearing on
Expedited Bill 27-23

Statement of the
Policing Advisory Commission

Submitted by Eric E. Sterling, Chair

Dear Council President Glass and members of the County Council:

Thank you for the opportunity to present a statement from the Montgomery County Policing Advisory Commission (PAC) to the County Council regarding Expedited Bill 27-23 to abolish the Policing Advisory Commission (PAC). I am Eric E. Sterling. I am one of the original appointees to the PAC in 2020 from the County Council when the PAC was created three years ago. I was nominated and elected Chair on November 14, 2022.

We unanimously oppose the bill.

First, I want to apologize to the County Council. The PAC did not write to you when you took office on December 5, 2022, or since you were sworn in. As the chair, I take responsibility for this oversight. I believed that you were going to be extraordinarily busy organizing, considering the County's budget, and addressing the demands of establishing your new offices. However, I should have anticipated that, with the terms of the members of the Policing Advisory Commission due to expire in July, the work of this commission would be a very high priority to the Council. It would have been most appropriate for us to reach out to you immediately to tell you what you were doing and what our plans were. Our failure to promptly communicate our plans to you is my responsibility and I urge you not to view the entire PAC through this oversight.

I also apologize for the confusion regarding my views as a result of an email I shared with the County Council staff on May 20, 2023 at 11:02 pm that created the misimpression that I supported the Expedited Bill. When I learned on May 25, 2023 that the email had been referred to by Councilmember Luedtke when the bill was introduced, I wrote to her to explain my May 20 email, to apologize for the confusion I created, and to express my deep support for the work of the PAC. My email to her is attached.

Second, on behalf of the Policing Advisory Commission:

We want to reiterate that the Policing Advisory Commission consists of highly committed volunteers, not paid by the county. We have a deep range of expertise – three of us are attorneys with experience in criminal justice, two of us were on Congressional staff addressing criminal justice issues, one is a retired federal law enforcement officer, two are professionals in government program oversight, three have experience researching justice issues, one is trained as an economist, one is a former city councilmember and former Mayor pro tem, another has

extensive experience in mental health issues, one served on County Council and as a department head in the county government. Previous members were equally qualified: two attorneys (one a law professor), a corporate administrator, an acclaimed high school teacher, a labor organizer, a social worker, etc. **At no cost to the county, the county's police oversight process has had the benefit of many decades of experience in criminal justice and public safety analysis.**

Third, over the past three years we have engaged in a lot of work to support the council and to oversee the MCPD. Briefly:

We have provided you with eight reports on legislation pending before council.

He have held two public on-line forums on MCPD drug enforcement and MCPD traffic enforcement seeking the greatest public participation we could.

We submitted numerous inquiries to the MCPD. A sample of the issues include –

Hiring and discipline.

Current status of issues addressed in the 2000 Memorandum of Agreement between the MCPD, the FOP Lodge and U.S. Department of Justice.

Marijuana arrest activity.

Traffic enforcement.

Body Worn cameras.

One of our members, Jenn Lynn from Upcounty Community Resources, has represented us extensively in MCPD planning and programs regarding persons with developmental disabilities or mental health issues. Her membership in the PAC has enabled her to work more deeply on several Crisis Response Workgroups, CAHOOTS training, CRISIS NOW research, and assist in planning the Restoration Center.

We arranged to hear from a variety of national experts on state of the art policing issues such as on managing internal affairs and preventing the recruitment of police officers by White supremacist organizations.

Thus, all of us who have been working on the PAC were shocked that legislation that has been introduced to abolish the PAC. At our meeting on May 31, we voted unanimously to present a statement opposing the bill as introduced.

The murder of George Floyd in May 2020 shocked all Americans. But even years earlier, after the killing of Trayvon Martin in 2012 and the shooting of Michael Brown in Ferguson, MO in 2014, the questions of how to properly manage the police use of force, the prevalence of deadly use of force, and the questions of managing police-community relations had been top issues on the public agenda. After the June 2018 killing of Robert White in Silver Spring, these issues became paramount issues in many communities in our county. The PAC was created by Council in response to the public's need for oversight overall – not simply to address matters of alleged misconduct as addressed by the state legislation creating the various PAB's. These concerns have not diminished! With increases in crime rates, the need for community oversight remains as great as ever.

The PAC conceives of its role in two related areas.

First, we are a vehicle to further enable different communities and groups in the county to submit their concerns about the policies, management, and activities of the MCPD pursuant to our duty under Code Section 35-6(f)(6) “accept correspondence and comments from members of the public,” and in the many statements submitted at our public forums. This is wholly different from allegations of individual officer misconduct which is the PAB’s responsibility.

Second, we are to provide advice to the council and assist in the oversight of the MCPD. These duties are set forth in **Code Section 35-6(f)(1) to (5): “to advise the Council on policing matters; provide information regarding best practices on policing matters; recommend policies, programs, legislation or regulations; comment on matters referred to it by Council; and conduct at least one public forum each year for community input on policing matters...”**

We have understood this role as providing a rigorous analytic perspective regarding the MCPD programs and activities. A requirement of our service, unlike the PAB, is to participate in the MCPD Citizens Academy. Our detailed training in the broad scope of the MCPD activities is a very different training than is provided to the PAB members by the Maryland Police Training and Standard Commission.

While there is a clause in the PAB legislation (“advise the Executive and the Council on policing matters;” County Code section 35-24(g)(5)) implying that there is an overlap in functions between these two bodies, our role is substantially unlike the central and critical role of the Police Accountability Board -- to oversee the consideration and discipline *regarding allegations of misconduct by individual officers in the various police departments in the county*. The Council had to create the PAB pursuant to the Maryland law of 2021 (H.B. 670) that abolished the police disciplinary procedures of the state’s “Law Enforcement Officers Bill of Rights” (LEOBOR).

The PAC is the creation of the County Council working with the community concerned about the relationships between the MCPD and many county communities, and issues such as use of force, the presence of uniformed police officers in schools, disproportionate rates of traffic stops, arrests and other matters.

These concerns have driven our work.

Before the PAB was created, our subcommittee on hiring and discipline held numerous meetings to learn about the disciplinary process under LEOBOR being briefed by the MCPD Internal Affairs staff.

Attempting to understand the outcomes of MCPD enforcement activities, we were concerned about the anomalously large number of reported arrests for possession of marijuana by the MCPD, notwithstanding the enactment of marijuana decriminalization in Maryland in 2010. We learned that the MCPD could not distinguish the issuance of citations for marijuana possession under that law from actual custodial arrests, and that the issuance of citations was reported to the

Maryland State Police as “arrests.” This instance illustrates a frustration that we have had with the data collection and management programs of the MCPD and our sense that the MCPD could better analyze the activities of its officers for more effective management.

The questions that we submit to the police department are always designed to encourage the police department to be more transparent, more equitable and just, and more efficient.

We have always been keenly aware of our need to represent the community. Until now, no one has complained to us that our existence has caused confusion about how to address allegations of police misconduct. Until now, no one has complained to us about our role or how we function. Unlike the PAB, we have thoughtful student representatives representing a sector of the community extraordinarily affected by police activity. Unlike the PAB, we have two ex officio law enforcement officers – representing the Chief of Police and the rank and file through the Fraternal Order of Police – who regularly participate in our meetings and quickly respond authoritatively in explaining questions we have about MCPD practices. Unlike the PAB, we have the benefit of a retired Federal law enforcement officer.

In conclusion, the PAC participates in the county’s oversight of the MCPD as the community voice regarding policy and complements other oversight mechanisms in a way that is neither duplicative nor wasteful. We unanimously oppose Expedited Bill 27-23.

Speaking for myself now, legislation that Council could consider would be to expand the PAC to include 11 members appointed by council, and -- to avoid the problem that the similarity of names of PAC and PAB presents -- the PAC name could be revised such as Advisory Commission on Police Oversight.

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Attached email re: Introduction of Expedited Bill 27-23

Email Sent May 25, 2023. 12:13 pm

Subject: Bill to sunset the Policing Advisory Commission (PAC)

Dear Council Member Luedtke:

I received a call this morning reporting that it is being represented that I am in support of your legislation, Bill 27-23. As I understand it, this is based on an email I sent to the PAC staff, Susan Farag, at 11 pm on Saturday, May 20, having just read her email of 10:24 pm, May 19, 2023 to the PAC that your bill, cosponsored by Chair Katz, was going to abolish the PAC.

This is the email that I wrote to Ms. Farag at 11:02 pm:

Dear Susan,

Thanks very much.

This is not a surprise to me. It makes sense.

I think the PAC should figure out how it wants to wind down in the next few months.

I will contact the others.

Eric

I regret that I responded at such a late hour, that I did not mark my private message to our staff as confidential, or indicate more clearly how preliminary my thoughts were. My reaction was grounded on the belief that Chair Katz's support made this legislation a "done deal" no matter what I or my colleagues thought. In that belief I wrote to our staff person that the PAC should figure out how it wants to wind down. I have great confidence in Susan Farag, and I think she and her team have supported the PAC well. I regret that I may have put her in the middle in this matter. She has forwarded to me email addresses of other Council staff who want to know my views, which I have not responded to because I do not have a consensus from the PAC.

Most importantly, my reaction of 11:02 pm on Saturday was the impulse of the moment and does not reflect what many of us on the PAC have thought since the state law directing the creation of the PAB was enacted. Members of the PAC have frequently spoken with each other about policy and program oversight that we have undertaken or are planning that we think would be valuable for the Council and that is outside the realm of the PAB. We think that we were able to provide the Council, in its last iteration, before you joined the Council, with well-considered, helpful guidance on bills pending before the Council. And before we received word of your legislation, we were planning other oversight matters involving training, use of body worn cameras, and preparing our comments on Bill 12-23, the STEP Act.

Certainly my email at 11:02 pm was not a considered response that weighed the pros and cons of the bill. I certainly did not reflect the views of my colleagues on the PAC regarding its termination. I am very sorry that I may have put you in the position of making a representation that does not accurately represent all my views, and that implicitly represents the view of the PAC. Aside from embarrassing myself, and you, I fear that my remarks have embarrassed the PAC because they do not

represent the views of the PAC that I have been elected to serve as Chair because we have not spoken to air such views.

I am sympathetic to the desire of your bill to avoid public confusion about who is carrying out the critical responsibility of independent public oversight of the police in general and the Montgomery County Police Department. I think we want the public that wants to make a formal complaint to have a clear avenue to do so. I don't think the existence of the PAC has prevented or circumvented the filing of any such complaint. And I think we can agree that beyond the realm of managing and investigating complaints alleging misconduct by individual officers there is a substantial need for policy and programmatic oversight by the public of the police department.

As described by [the county on its list of boards, committees](#) the missions and membership of the two entities are significantly different, even though there is some overlap. (And I note that the members of the PAC are not paid for their time, thus our dollar cost to the county is relatively negligible in this time of tight budgets.)

Police Accountability Board (9)  and Administrative Charging Committee (5)

Created: Mo. Co. Code Section 35-24

Description: Meets with law enforcement agencies, appoints civilian members of the Administrative Charging Committee (ACC), receives complaints of police misconduct, reviews ACC outcomes of disciplinary matters, advises the County Executive and Council on policing matters and refers complaints to the appropriate law enforcement agency. The ACC reviews the findings of law enforcement investigations and determines if a police officer should be administratively charged.

Type of Positions: Public and Civilians

Policing Advisory Commission (15)

Created: Mo. Co. Code Section 35-6

Description: Advises the County Council on policing matters; provides information regarding best practices on policing matters; recommends policies, programs, legislation, or regulations; comments on matters referred to it by the Council; conducts at least one public forum each year for community input on policing matters; and engages in public education. Members serve three year terms without compensation.

Type of Positions: 13 public voting members including 9

nominated by the County Council and 4 nominated by the County Executive, of which 1 is age 25 years or younger and 1 is age 26-35; and 2 non-voting members, the County Police Chief or designee, and the president of the County Fraternal Order of Police or designee.

It is clear that with the duties assigned to the PAC and how it operates, it has an important role to play in county police policy making that is distinct from that of the Police Accountability Board. One distinction between the PAC and the PAB is that our members get a formal grounding in the work of the MCPD by attending the Citizens Academy. Another distinction is the valuable, direct role that the ex officio members representing the Chief of Police and the Fraternal Order of Police provide to our work. Perhaps most importantly is the duty of the PAC to represent the various communities that have the greatest interactions with the police -- whether in a traffic stop or other encounter, an arrest, as a crime victim, as a young person -- as well as the members of the public who have have profound concerns about both crime and police misconduct.

Montgomery County is noteworthy with its tradition of engaging the public in the oversight and advising of the affairs of county government. And throughout that effort there is also a tradition of overlap (and frequent collaboration) between citizen advisory boards and commissions. To take one example, alcohol. The county has a Board of License Commissioners to regulate alcohol establishments. It also has an Alcohol Beverage Advisory Board and it has an Alcohol and Other Drug Abuse Advisory Council that together provide many dimensions and opportunities for public oversight. They all contribute to improving the county management of alcohol distribution and consumption and the associated problems.

As of this writing, I have not spoken with you, your staff or the staff of any member of the council about my views of your bill.

I have not taken a public position on the legislation.

I have not had the opportunity, with respect for the Open Meetings Act, to hear from all the members of the PAC about their analysis of the bill.

Therefore, I apologetically and respectfully ask you to no longer represent that I have endorsed your bill based on my email to Susan Farag.

With all my best wishes,

Eric E. Sterling