

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 18-21: POLICE-INTERNAL AFFAIRS PROCEDURES AND REPORTING REQUIREMENTS

SUMMARY

OLO anticipates that Bill 18-21 will favorably impact racial equity and social justice (RESJ) in Montgomery County. This impact could be further improved if it includes amendments to (1) increase civilian oversight of internal affairs investigations, and (2) make body-worn camera recordings available to civilian complainants.

BACKGROUND

Bill 18-21, Police - Internal Affairs Procedures and Reporting Requirements, was introduced to the County Council on May 18, 2021. The purpose of Bill 18-21 is to improve police accountability through the random review of body-worn camera (BWC) footage, the use of BWC footage to launch Internal Affairs Division (IAD) investigations, and through the prompt reporting of serious IAD investigations to County leaders. To achieve these goals, Bill 18-21 would require the following changes to County law:

- The issuance of body-worn cameras whenever an officer is on-duty wearing a uniform or prominently displaying insignia;
- The internal random review of certain body-worn camera recordings to evaluate officer performance and compliance with police rules;
- The internal reporting of IAD investigations to the Chief of Police monthly;
- Across the following five categories, IAD will investigate potential administrative misconduct discovered on BWC recordings and report investigations to the Chief of Police immediately:
 - Use of force,
 - Children,
 - Potentially criminal offenses by MCPD employees,
 - Fatality or serious bodily harm, or
 - Potential discrimination or harassment by a MCPD employee;
- The reporting of certain investigations, investigative files, and BWC recordings for the above-mentioned types of IAD investigations within 24 hours to the County Executive, County Council, and the State's Attorney;
- If the Executive or Council request a copy of the investigative file or body-worn camera footage, then the file or recording must be provided within seven days;
- The maintenance of a log of each time a body-worn camera recording is accessed or redacted; and
- The Chief to report to the Executive and County Council quarterly any IAD investigations that have been pending for more than 180 days.

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The overarching goal of Bill 18-21 is to increase the transparency and accountability of BWC footage to address policing misconduct. Other jurisdictions have implemented similar policing reform practices that use BWC footage to audit policing practices, including the Los Angeles Police Department.¹

CRIMINAL JUSTICE, BODY-WORN CAMERAS, AND RACIAL EQUITY

The War on Drugs and the system of mass incarceration that primarily impacts Black people is essential for understanding the potential impact of Bill 18-21 on racial equity and social justice in Montgomery County.

Racial equity occurs when race no longer predicts life outcomes and each racial group has the power to determine their own agency. Yet, as noted by Michelle Alexander, the War on Drugs has increased the number of people in the criminal justice system and exacerbated racial inequities in the system in three ways.² Alexander refers to this process of creating second-class citizens among Black people in the criminal justice system as the “New Jim Crow.”

- The first phase is the **Roundup** where the police conduct drug operations primarily in poor communities of color and sweep vast numbers of people into the criminal justice system. The police are rewarded for rounding up as many people as possible; they can stop, interrogate, and search anyone they choose for drug investigations, provided they get “consent.” Because there is no meaningful check on the exercise of police discretion, racial biases are granted free rein. In fact, police are allowed to rely on race as a factor in selecting whom to stop and search (even though people of color are no more likely to be guilty of drug crimes than Whites) – effectively guaranteeing those who are swept into the system are primarily Black and Brown.
- The second phase is **Conviction** where defendants, once arrested, are generally denied meaningful legal representation and pressured to plead guilty whether they are or not. Prosecutors are free to “load up” defendants with extra charges, and their decisions cannot be challenged for racial bias. Once convicted, due to the Drug War’s harsh sentencing laws, drug offenders spend more time under the criminal justice system’s formal control – in jail or prison, on probation or parole - than drug offenders anywhere else in the world. This period may last a lifetime, even for those convicted of extremely minor, nonviolent offenses, but the vast majority of those swept into the system are eventually released.
- The final phase is **Invisible Punishment** where individuals experience criminal sanctions after they have served their time. These sanctions, which are largely outside of public view, are imposed by the operation of law rather than the decisions of a sentencing judge. The collateral damages of invisible punishment can have a greater impact on individuals than the time spent incarcerated, denying individuals to fully mainstream back into society. The legal discriminations that manifest as invisible punishment include; denied employment, housing, education, and public benefits. Unable to surmount these challenges, most will eventually return to prison and then be released again, caught in this never-ending cycle that reinforces their marginality and second-class citizenship.

Within this mass incarceration context, body cameras are viewed as a key police reform to help interrupt the disproportionate entry of Black and Latinx people into the criminal justice system. The implied theory of action for Bill 18-21 is that greater transparency of police misbehavior documented by body-worn cameras will lead to greater accountability for constitutional policing that diminishes racial and ethnic inequities in the criminal justice system. BWC are viewed as a strategy to interrupt the biased “roundup” and “conviction” stages of the mass incarceration pipeline. Yet, the available research to date offers at best mixed results on whether BWC affect policing or improves accountability for policing misconduct in ways that improve racial equity.³

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For example, a recent summary of research on body-worn cameras by the CCJ Task Force on Policing finds that the use of BWC can be effective at reducing public complaints as a tool to support investigations, prosecutions, and public defense cases.⁴ Research from the University of Chicago suggests that BWC can reduce police use of force.⁵ Research from the federal monitor for the New York City Police Department finds that the use of BWC compels officers to provide a more accounting of their pedestrian stops.⁶

Yet, there is no research finding that the use of BWC has diminished racial disparities in policing.⁷ Moreover, Black residents are not as confident as White residents that BWC will improve police-community relations, narrow racial disparities, or improve officer accountability. Some Black residents fear that BWC footage can generate more harm than good by re-traumatizing Black residents with repeated views of state-sanctioned violence against their communities.⁸ These findings align with research demonstrate the disparate treatment of Black residents among BWC equipped officers who (a) spoke less respectfully to Black community members in one study and (b) engaged in more unlawful stop and frisk encounters among Black and Latinx residents in another study.⁹

The Leadership Conference on Civil and Human Rights and Upturn note that whether BWC make police more accountable, or simply intensify police surveillance of communities, depends on how the cameras and footage are used.¹⁰ The CCJ Task Force on Policing recommends that police departments employ strong accountability structures – training, supervision, appropriate policies, and oversight – to respond to misconduct revealed by video evidence.¹¹ The CCJ Task Force also notes that if BWC video is used routinely in officer trainings, performance reviews, BWC footage, supervisory audits, and misconduct investigations, BWC can uncover officer misconduct and enhance officer accountability. Enhanced accountability to address officer misconduct is required for BWC footage to impact disparities in policing by race and ethnicity.

The operation of internal affairs within police departments is also essential to promoting accountability for addressing allegations of police misconduct. Best practice recommends that internal affair functions focus on a broad range of concerns, rather than solely adjudicating individual cases.¹² Ideally, this should include a review of whether deficiencies in departmental policies, procedures or training have contributed to problematic policing behavior.¹³ Toward this end, the Building Trust Internal Affairs Promising Practices Guide offers three promising practices for enhancing accountability measures through internal affairs:

- Implement a citizen review or advisory function to reassure the community of the accountability of the department. This could include the use of:
 - Citizen review board as a panel of citizens that handles every aspect of the citizen compliant continuum;
 - Police review/civilian oversight where the police department handles every aspect of the compliant continuum, but citizens review their actions;
 - Police review/citizen-police appeal board where the police department handles every aspect of the compliant continuum, but the complainant may appeal the outcome to a board comprised of officers and citizens; and
 - An independent citizen auditor where the police department handles every aspect of the compliant continuum, but a citizen serves as an auditor.
- Use data systems to track complaints and assess departmental climate.
- Disseminate summary complaint and investigation outcomes to the public on a regular, consistent basis

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DEMOGRAPHIC DATA

A review of data demonstrates racial and ethnic disparities in the “roundup” phase of the criminal justice system in Montgomery County. While Black people accounted for 18 percent of County residents, they comprised:

- 32 percent of Montgomery County Police Department (MCPD) traffic stops,
- 44 percent of MCPD arrests, and
- 55 percent of MCPD use of force cases.¹⁴

Among those experiencing traffic stops by MCPD:

- Black men were three times as likely as White men to receive any traffic violations (46% v. 17%),
- Latino men were nearly twice as likely (32% v. 17%), and
- Other men were more than twice as likely (42% v. 17%).¹⁵

A review of state data also demonstrates racial disparities in the “roundup” and “conviction” phases of the criminal justice system. While Black people accounted for 29 - 30 percent of the state’s population, they accounted for:

- 54 percent of arrests for marijuana use across Maryland;¹⁶
- 71 percent of Maryland’s correctional population;¹⁷
- 77 percent of Maryland’s maximum-security correctional population and prisoners serving life sentences;¹⁸ and
- 100 percent of exonerated individuals across the state.¹⁹

ANTICIPATED RESJ IMPACTS

Bill 18-21 aligns with the research recommending greater accountability in the use of BWC footage to identify and sanction police misconduct. As such, OLO anticipates that Bill 18-21 will reduce racial inequities in policing and policing outcomes by holding more police officers accountable for misconduct and racially biased policing in particular.

To date, the greater transparency of policing behavior available with BWC footage has been used to improve the tactical functions of police departments aimed at collecting evidence for court, investigate support, social control (e.g. mass demonstrations) and protecting officers in the line of duty. These goals benefit officers, but not as much as the communities that police are sworn to protect and serve. To achieve the later requires an accountability infrastructure aimed at using BWC footage to investigate and hold police officers accountable for misconduct.

The key provisions of Bill 18-21 require the random review of BWC footage to identify serious incidents of alleged misconduct and to increase reporting of internal affairs investigations. These key provisions align with policy expert recommendations for improving policing equity and accountability for police misconduct. Given this alignment, OLO anticipates that Bill 18-21 will reduce instances of racial misconduct in local policing and, in-turn, help diminish disparities by race and ethnicity in criminal justice outcomes across the County.

METHODOLOGIES, ASSUMPTIONS, AND UNCERTAINTIES

OLO reviewed several sources of information to develop this RESJ impact statement, including the following:

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- Internal Affairs Division Annual Report, Montgomery County Department of Police, 2020
- Justin Ready and Jacob Young, The Unfulfilled Potential of Police Body Cameras in the Era of Black Lives Matter, Slate, October 1, 2020
- Ashley Southall, Police Body Cameras Cited as ‘Powerful Tool’ Against Stop and Frisk Abuses, New York Times, November 30, 2020
- Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement, 2009
- CCJ Task Force on Policing, Body-Worn Cameras, Policy Assessment, April 2021
- The Leadership Conference on Civil and Human Rights and Upturn, Policy Body Worn Cameras: A Policy Scorecard, November 2017
- PBS NewsHour, Body Cameras Are Seen As Key to Police Reform. But Do They Increase Accountability? June 25, 2020
- Cheryl Corley, Study: Body-Worn Camera Research Shows Drop in Use of Force, NPR Criminal Justice Collaborative, April 26, 2021
- Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, Community Oriented Policing Services, U.S. Department of Justice, 2008
- Sunyoung Pyo, Do Body-Worn Cameras Change Law Enforcement Behavior? A National Study of Local Police Departments, The American Review of Public Administration, December 27, 2020
- Rob Voigt, et al, Language From Police Body Camera Footage Shows Racial Disparities in Officer Respect, PNAS, June 20, 2017
- Erin M. Kerrison, Jennifer Cobbina, and Kimberly Bender, Stop-Gaps, Lip Service, and Perceived Futility of Body-Worn Police Officer Cameras in Baltimore City, Journal of Ethnic and Cultural Diversity in Social Work, June 8, 2018

OLO also reviewed Racial and Equity Impact Notes authored by Jasmon Bailey of the Maryland Department of Legislative Services for the 2021 Maryland General Assembly for three criminal justice bills: HB 3, HB 32, and HB 742.

RECOMMENDED AMENDMENTS

To further enhance accountability to identify and address police misconduct, OLO recommends the Council consider amendments to Bill 18-21 that increase citizen oversight of internal audit investigations and provide citizen complainants access to relevant BWC footage.

As noted in the Building Trust Internal Affairs Promising Practices Guide, the use of citizen reviews and advisory functions can improve departmental accountability for policing misconduct and reassure the community about the accountability of the department.²⁰ One of four common approaches - citizen review board, police review with citizen oversight, police review with citizen-police appeal board, or an independent citizen auditor - should be considered as recent changes to state law that now allow civilian oversight of police misconduct investigations.

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Another best practice for advancing accountability in policing as noted by the Leadership Conference on Civil and Human Rights and Upturn is making BWC footage available to individuals filing complaints.²¹ While MCPD officers can access BWC footage to file initial police reports and statements, civilians accusing police officers of misconduct do not have this same right.²² To improve both accountability and equity and to identify and address instances of misconduct, civilian complainants, like police officers, should be able to access BWC footage to help inform their complaints.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO Senior Legislative Analyst Dr. Elaine Bonner-Tompkins authored this RESJ impact statement.

¹ Haley Samsel, Los Angeles Police Plan to Review Body Camera Footage for Instances of 'Biased Policing', Security Today, November 8, 2019

² See pages 185-6 of Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, The New Press, 2012

³ PBS NewsHour, *Body Cameras Are Seen As Key to Police Reform. But Do They Increase Accountability?* June 25, 2020

⁴ CCJ Task Force on Policing: *Body-Worn Cameras*, Policy Assessment, April 2021

⁵ BWC Research Shows Drop in Police Use of Force, Cheryl Corley, NPR, April 26, 2021

⁶ New York Times, Ashley Southall, *Police Body Cameras Cites as "Powerful Tool" Against Stop-and-Frisk Abuses*, November 30, 2020

⁷ CCJ Task Force on Policing and Sunyoung Pyo, December 27, 2020

⁸ Lawrence, Peterson, and Thompson, 2018 cited in CCJ Task Force on Policing and Erin Kerrison, Jennifer Cobbina, and Kimberly Bender, *Journal of Ethnic and Cultural Diversity in Social Work*, 2016

⁹ Rob Voigt et al, *Journal of Psychological and Cognitive Sciences (PNAS)*, June 20, 2017 and Ashley Southall, *New York Times*, November 30, 2020

¹⁰ The Leadership Conference on Civil and Human Rights and Upturn, *Police Body Worn Cameras: A Policy Scorecard*, November 2017

¹¹ CCJ Task Force on Policing

¹² *Building Trust Between the Police and the Citizens They Serve: An Internal Affairs Promising Practices Guide for Local Law Enforcement*, 2009

¹³ *Protecting Civil Rights*, 2006, cited in *Building Trust Between the Police and the Citizens*.

¹⁴ OLO Report 2020-9, *Local Policing Data and Best Practices*,

<https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/OLOReport2020-9.pdf>

¹⁵ Ibid

¹⁶ Race and Equity Note for HB 32, <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-HB32-REIN.pdf>

¹⁷ Race and Equity Note for HB 3, <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-HB3-REIN.pdf>

¹⁸ Ibid

¹⁹ Race and Equity Note for HB 742, <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2021rs-HB742-REIN.pdf>

²⁰ *Internal Affairs Promising Practices Guide for Local Law Enforcement*

²¹ *Police Body Worn Cameras: A Policy Scorecard*

²² Ibid