

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

EXPEDITED POLICE – POLICING ADVISORY COMMISSION – BILL 27-23: REPEAL

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Expedited Bill 27-23 could have a negative impact on racial equity and social justice (RESJ) in the County as the functions of the Policing Advisory Commission (PAC) and Police Accountability Board (PAB) differ significantly, and the repeal of the PAC could diminish efforts to promote best practices for advancing RESJ in policing that are not within the scope of the PAB. To sustain RESJ in the County, OLO offers one policy option for consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF EXPEDITED BILL 27-23

In recent years, the County has launched a variety of initiatives aimed at advancing best practices for racial equity and social justice in policing. These efforts have included the Reimagining Public Safety Initiative and Reimagining Public Safety Task Force, and enacting legislation for enhanced data collection by the Montgomery County Police Department (MCPD), community-informed police training, reports on settlements, reporting requirements for internal affairs, and the formation of the civilian-led Policing Advisory Commission to advise the Council on policing matters.

The purpose of Bill 27-23 is to repeal the Policing Advisory Commission (PAC).³ According to the Bill's sponsors, they endorse the repeal of the Commission because it duplicates the functions of the Police Accountability Board (PAB).⁴ If enacted, Bill 27-23 would repeal the PAC effective August 1, 2023, allowing the Commission time to submit its annual report to the Council by July 31, 2023, as required.⁵

Expedited Bill 27-23, Police – Policing Advisory Commission – Repeal, was introduced by the County Council on May 25, 2023.⁶

In January 2022, OLO published a RESJIS for Expedited Bill 49-21, Police – Police Accountability Board – Administrative Charging Committee – Established.⁷ For background information on policing in the U.S., racial disparities in police interactions with the public, and civilian review board best practices for advancing RESJ, refer to this RESJIS.

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PAC AND PAB ORIGINS AND FUNCTIONS

Considering the anticipated impact of repealing the Policing Advisory Commission (PAC) on RESJ in the County requires understanding the functions of the PAC, the potential value of these functions for advancing RESJ, and whether the Police Accountability Board (PAB) duplicates these functions. While both the PAC and PAB are required to advise the County Council on policing matters, OLO finds their functions differ significantly.

Origins of PAC and PAB. The Montgomery County Policing Advisory Commission, established in 2019, originates with the County Council. The PAC was initially proposed as a civilian oversight board to enable public review and oversight of police disciplinary matters.⁸ The Law Enforcement Officers Bill of Rights (LEOBR) that was state law at the time, however, prohibited the formation of a civilian oversight board to hold police officers accountable for misconduct.⁹ Thus, the purpose of the PAC shifted from police oversight and discipline to a broader mission to provide the County Council information about best practices in policing. In addition to policing personnel, the PAC also advises on other policing policies that include data, training, emergency responses and police officers in schools.

The Montgomery County Police Accountability Board, established in 2022, originates with the General Assembly. With the repeal of LEOBR in 2021, the state mandated every Maryland jurisdiction to establish a new police disciplinary system for misconduct and to create a new oversight board inclusive of civilians by July 2022.¹⁰ Thus, the County's PAB embodies many of the functions originally proposed for the PAC in 2019 because it focuses on providing greater civilian oversight and transparency in police discipline and accountability for misconduct.

Functions of the PAB and PAC. Given the PAB's focus on police discipline and the PAC's focus on best practices and policies in policing, the functions of these two entities are distinct. As noted in the Maryland Public Safety Code (section 3-102), police accountability boards are required to:¹¹

- Hold quarterly meetings with law enforcement agencies and the County to improve policing matters;
- Appoint civilian members to charging committees and trial boards;
- Receive complaints of police misconduct filed by members of the public;
- Review outcomes of disciplinary matters considered by charging committees on a quarterly basis; and
- Submit annual report by December 31st of each year that identifies trends in the disciplinary process of police officers in the County and makes recommendations that would improve police accountability in the County.

Conversely, the activities of the Policing Advisory Commission center around providing information and recommendations to the Council for County-action based on its analysis of existing and proposed policies. Specific duties of the PAC enacted under Bill 14-19 include the following:¹²

- 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 the Council;
- Conduct at least one public forum each year for community input on policing matters;
- Accept correspondence and comments from members of the public;
- Engage in public education; and
- Submit an annual report by July 1st of each year.

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PAC and Racial Equity. A review of the PAC's efforts since its enactment demonstrates that a common theme of their work has involved a focus on racial equity in policing to understand what equitable policing and justice looks like and what shifts in local practices, programs, and policies are necessary to advance public safety and equitable justice in the County.¹³ The PAC has focused on four priorities in its work: discretionary policing (traffic stops, drug enforcement, and pedestrian stops); emergency responses; hiring and discipline; and safety in schools. The PAC has also met with Black, Indigenous, and other People of Color (BIPOC) stakeholders and policing experts to solicit their perspectives on community needs and best practices for advancing RESJ in policing. Additionally, the PAC has offered proposed amendments for legislation aimed at advancing RESJ (e.g., Bill 45-20).

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 27-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

In response to the first question, OLO finds that MCPD would be the primary beneficiary of this Bill as the elimination of the PAC would diminish MCPD's accountability to the Commission, including responding to requests for information on policing practices and data. Bill 14-19 requires that the County, including MCPD, respond to PAC requests for information within 30 days of receiving the request. Yet, PAC meeting minutes reveal there have been ongoing debates within the Commission about the timeliness and value of information submitted by MCPD in response to PAC requests. For example, data requests regarding the demographics of marijuana arrests and citations remain outstanding.¹⁴

In response to the second question, as described previously, advancing community policing and other best practices that diminish racial disparities in police interactions with the public has been a PAC priority. As noted in the RESJIS for Expedited Bill 49-21, racial disparities characterize traffic stops, arrests, and use of force incidents in Montgomery County. Racial disparities and inequities may also characterize other police interactions with the public in the County that are not currently reported. The PAC has advocated for greater transparency and data disaggregated by race and ethnicity on police interactions with the public. The repeal of the PAC would likely diminish the availability of and advocacy for disaggregated policing data. The PAC has also advocated for promising policies and practices to advance racial equity in policing; the repeal of the PAC would diminish this advocacy as well as advice to the Council on best practices for advancing RESJ in policing.

Taken together, OLO finds that racial disparities in police interactions with the public could widen with the repeal of the Policing Advisory Commission, as a community-based group advocating for racial equity in local policing would be lost. More specifically, efforts the PAC have undertaken with MCPD to understand and address racial disparities in traffic stops and drug enforcement, to support the coordination of emergency responses, and to ensure police personnel have proper training to serve increasingly diverse constituents could be lost or at minimum, slowed down with the repeal of the Commission. 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 in the County.

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RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.¹⁵ OLO anticipates Expedited Bill 27-23 could widen racial disparities in police interactions with the public by diminishing accountability for MCPD to implement more racially equitable policing practices. Should the Council seek to maintain RESJ considerations in policing, OLO offers one policy option for discussion and consideration:

- **Preclude the PAC from considering police misconduct and discipline.** This RESJIS notes one function of the PAC that overlaps with the PAB: both are charged to advise the Council on policing matters. Given the different priorities of the PAC (policing policies and practices) and the PAB (discipline for police misconduct), it is unlikely that each entity would offer advice to the Council on similar “policing matters.” However, to the extent that both the PAB and PAC offer advice on similar policing matters, it would only center around police misconduct and discipline, which the PAC has chosen to consider in its work. To reduce the potential for redundancy and duplicity across the PAC and PAB, Expedited Bill 27-23 could be amended to retain the PAC and preclude them only from considering policing matters relative to police misconduct and discipline that are within the scope of the PAB.

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 staffer Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ Impact Statement with assistance from Janmarie Peña, Performance Management and Data Analyst.

¹ Definition of racial equity and social justice adopted from [“Applying a Racial Equity Lens into Federal Nutrition Programs”](#) by Marlysa Gamblin, et.al. Bread for the World, and from [Racial Equity Tools](#).

² Ibid

³ Khandikile Sokoni, Memorandum to County Council, [Introduction Staff Report for Expedited Bill 27-23](#), May 22, 2023

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Elaine Bonner-Tompkins, [Racial Equity and Social Justice Impact Statement for Expedited Bill 49-21](#), Office of Legislative Oversight, January 10, 2022

⁸ Hans Riemer, Dear Colleague Letter, March 29, 2019 included in [staff packet by Amanda Mihill for Bill 14-19](#) (circle 6-7)

⁹ Ibid

¹⁰ Bonner-Tompkins

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¹¹ Included in Sokoni memorandum and staff packet for Expedited Bill 27-23

¹² [Bill 14-19](#), Enacted December 3, 2019

¹³ See for example [Policing Advisory Commission 2021 Annual Report](#)

¹⁴ [Meeting Minutes](#), Policing Advisory Commission, December 12, 2022

¹⁵ [Bill 27-19 Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established](#), Montgomery County Council, December 2, 2019