

# Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

## BILL 32-23: POLICE – POLICING ADVISORY COMMISSION – AMENDMENTS

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 32-23 could have a negative impact on racial equity and social justice (RESJ) in the County as its amendments changing the composition of the Policing Advisory Commission (PAC) could diminish its independence and power in promoting policing best practices that advance RESJ in the County. To offset the potential negative RESJ impact of Bill 32-23, OLO offers several policy options for consideration.

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### 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.<sup>1</sup> 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.<sup>2</sup>

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### PURPOSE OF BILL 32-23

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 32-23 is to amend the Policing Advisory Commission (PAC).<sup>3</sup> According to the Bill's sponsor, the purpose of the Commission needs to be clarified due to the establishment of the Police Accountability Board (PAB).<sup>4</sup> If adopted, Bill 32-23 would enact several changes to the PAC that include:

- Renaming the Policing Advisory Commission to the Community Advisory Commission on Public Safety.
- Increasing the size of the Commission from 13 to 15 members.
- Adding the Police Chief and President of the Fraternal Order of Police (or their designees) as voting members.
- Eliminating the two young adult members requirement (age 25 or younger; age 26 to 35 when appointed).
- Limiting members' terms to two-consecutive terms of three years.
- Requiring representation from business owners, Urban Districts, homeowners' associations, common ownership communities and tenants' association among members appointed by the Council.
- Prohibiting the Commission from accepting police misconduct complaints.
- Prohibiting the Commission from serving as "an oversight body of any law enforcement entity operating in Montgomery County."

# RESJ Impact Statement

## Bill 32-23

Bill 32-23 to amend the Policing Advisory Commission was introduced by the County Council on July 25, 2023, following the withdrawal of Expedited Bill 27-23, introduced on May 25, 2023, that would have repealed the Commission.<sup>5</sup> This RESJ impact statement (RESJIS) builds off two prior OLO RESJIS:

- In January 2022, OLO published a RESJIS for Expedited Bill 49-21, Police – Police Accountability Board – Administrative Charging Committee – Established.<sup>6</sup> For background information on policing in the U.S., racial disparities in police interactions with the public, and civilian review board best practices, refer to this RESJIS.
- In June 2023, OLO published a RESJIS for Expedited Bill 27-23, Police – Policing Advisory Commission – Repeal.<sup>7</sup> For background describing the origins and functions of the Policing Advisory Commission (PAC) and the Police Accountability Board (PAB), refer to this RESJIS.

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### CIVILIAN OVERSIGHT BOARDS AND RACIAL EQUITY

As issues of trust and accountability have characterized community-police relations, particularly in Black, Indigenous, and Other People of Color (BIPOC) communities, civilian oversight of law enforcement has emerged as a best practice to enhance police accountability and performance. Civilian oversight agencies are often established after an alleged incident of police misconduct when a community identifies a need. The June 2018 death of Silver Spring resident Robert Smith triggered questions about whether MCPD fosters trust, transparency, and accountability with all constituents and communities across the County. In response to this incident, the Policing Advisory Commission was proposed in 2019.

The Policing Advisory Commission (PAC) was initially proposed to enable public reviews and oversight of police disciplinary matters. With state law in 2019 precluding civilian oversight of police disciplinary matters, the Council enacted the PAC as a civilian commission to provide information about best practices in policing.

With Bill 14-19, the County Council intentionally limited voting membership within the PAC to civilians and required that two members represent younger constituents disproportionately impacted by interactions with law enforcement: a member aged 25 years or younger and another member between the ages of 26 and 35 at the time of their appointments. Further, the Council included the Chief of Police and President of the FOP (or their designees) as non-voting members to provide information and support to the PAC's civilian voting members. Duties of the PAC include:<sup>8</sup>

- Advising the Council on policing matters;
- Providing information regarding best practices on policing matters;
- Recommending policies, programs, legislation, or regulations;
- Commenting on matters referred to it by the Council;
- Conducting at least one public forum each year for community input on policing matters;
- Accepting correspondence and comments from members of the public;
- Engaging in public education; and
- Submitting an annual report.

As noted in the RESJIS for Expedited Bill 49-21, three conditions are essential for a civilian oversight agency to succeed:

- **Independence** from law enforcement so the civilian agency's recommendations can be trusted;
- **Power** so law enforcement cannot ignore the civilian agency's recommendations; and
- **Resources** to meet civilian oversight agency goals in a timely fashion (e.g., investigate cases, issue reports).

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These three essential conditions overlap with 12 core elements of successful civilian oversight of law enforcement identified by the National Association of Civilian Oversight in Law Enforcement (NACOLE): independence, adequate jurisdictional authority, adequate resources, unfettered access to records, access to law enforcement executives and internal affairs staff, full cooperation, support of process stakeholders, public reporting or transparency, patterns analysis, community outreach, community involvement, and respect for confidentiality requirements.

Among the three essential conditions of effective civilian oversight agencies, the PAC most closely aligns with the first condition – independence – because it operates independently of law enforcement in the County. However, the inclusion of MCPD leaders (the Chief and FOP President) as non-voting members in the PAC aligns with NACOLE-identified best practice of having access to law enforcement executive and internal affairs staff.

A review of the PAC’s efforts via its website and meeting minutes demonstrates a focus on racial equity in policing.<sup>9</sup> The PAC has focused on four priorities: discretionary policing (traffic stops, drug enforcement, and pedestrian stops); emergency responses; hiring and discipline; and safety in schools. The PAC has also met with 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.

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### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 32-23 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 and FOP would be the primary beneficiaries of this Bill as converting their non-voting positions to voting ones and prohibiting the PAC from serving as “an oversight body of any law enforcement entity operating in Montgomery County” would diminish MCPD’s accountability to the PAC.

As noted in the PAC meeting minutes, there have been ongoing debates within the PAC about the timeliness and value of information submitted by MCPD in response to their requests. For example, data requests regarding the demographics of marijuana arrests and citations remain outstanding.<sup>10</sup> Inclusion of MCPD and FOP as voting members may preclude the PAC from requesting policing data in the future, reducing MCPD’s accountability to the PAC and to the public at large for information and transparency about MCPD’s operations. The amendment to prohibit the PAC from serving as an oversight body to any law enforcement entity operating in the County also benefits MCPD and other law enforcement agencies by reducing their accountability to the PAC and the public at large.

**In response to the second question**, 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, Black constituents are over-represented among traffic stops, arrests, and use of force incidents compared to their share of the County’s population. Youth and young adults are also over-represented in interactions with law enforcement, with persons under the age of 40 accounting for 82 percent of MCPD use of force incidents and 91 percent of MCPD pursuits in 2022.<sup>11</sup> Racial disparities and social inequities may also characterize other police interactions with the public in the County that are not currently reported.

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The PAC has advocated for greater transparency and data disaggregated by race and ethnicity on police interactions with the public. Including law enforcement leaders as voting members could diminish the advocacy for disaggregated policing data by the PAC. The PAC has also advocated for promising policies and practices to advance racial equity in policing. The inclusion of law enforcement leaders, business owners, and homeowners as PAC members combined with eliminating the requirement to include two young constituents as PAC members could diminish this advocacy.

Further, the demographics of law enforcement, business owners, and homeowners suggests that current BIPOC members on the PAC could likely be replaced by White members. Moreover, without a requirement for young adult members, the two young adult PAC members could likely be replaced by older members. Both potential shifts in PAC membership shifts power from marginalized groups to advantaged groups and widens racial and social disparities.

Taken together, OLO finds that racial and social disparities in police interactions with the public could widen with amendments to the PAC authorized under Bill 32-23 as civilian-led advocacy for racial equity in policing among those most impacted by policing disparities could diminish. More specifically, efforts the PAC has undertaken 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 diminish with the proposed changes to the membership of the PAC.

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. Including law enforcement as voting members and shifting membership to reflect older and more affluent County constituents 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.<sup>12</sup> OLO anticipates Bill 32-23 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 several policy options for discussion and consideration:

- **Repeal adding the Police Chief and President of the FOP (or their designees) as voting members.** A combined civilian and law enforcement advisory commission undermines the independence needed for civilian oversight agencies to garner legitimacy and trust with community members and BIPOC constituents. The PAC emerged in response to concerns that the MCPD lacked the wherewithal to hold itself accountable for investigating and preventing incidences of police misconduct in the community. Retaining the Police Chief and FOP President as non-voting members would allow the PAC to remain a civilian oversight agency that the community could trust.
- **Repeal eliminating the age requirements for two voting members.** Young people are disproportionately impacted by police interactions with the public, particularly in uses of force and police pursuits. As the age group most impacted by policing interactions and likely incidents of police misconduct when they occur, it is critical that they be represented among PAC members and in decision-making. Retaining the young adult members requirement promotes power-sharing with constituents most impacted by policing as well as RESJ.

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- **Repeal requiring the PAC to represent business interests and homeowners.** Under current law, members of the PAC should “reflect the racial and economic diversity of the County’s communities, including religious creed, age, sex – including on the basis of gender identity or orientation, disability, and geographic location, with emphasis on those disproportionately impacted by inequities.” Requiring the PAC to also include representation from business owners or organizations, homeowners’ associations, common ownership communities and tenants’ associations could shift PAC membership from those unfavorably impacted by inequities to those that benefit from inequities.
- **Repeal prohibiting the PAC from serving as an oversight body of any law enforcement entity.** The power that the PAC has in its current oversight of MCPD, and local law enforcement more broadly, is limited at best. One of three essential conditions of effective civilian oversight agencies is to have sufficient power so that law enforcement cannot ignore their recommendations. Yet, the PAC too often lacks sufficient power to have MCPD meaningfully respond to its data requests despite the law (Bill 14-19) requiring them to do so within 30 days. This amendment to prohibit the PAC from serving as an oversight body of any law enforcement entity undermines the PAC’s effort to promote accountability and transparency in local policing and best practices for advancing RESJ.

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### 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.

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<sup>1</sup> 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](#).

<sup>2</sup> Ibid

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

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Elaine Bonner-Tompkins, [Racial Equity and Social Justice Impact Statement for Expedited Bill 49-21](#), Office of Legislative Oversight, January 10, 2022

<sup>7</sup> Elaine Bonner-Tompkins, <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2023/Bill27-23E.pdf>, Office of Legislative Oversight, June 5, 2023

<sup>8</sup> [Bill 14-19](#), Enacted December 3, 2019

<sup>9</sup> See for example [Policing Advisory Commission 2021 Annual Report](#)

<sup>10</sup> [Meeting Minutes](#), Policing Advisory Commission, December 12, 2022

<sup>11</sup> See Montgomery County Department of Police, Annual Use of Force Report, 2022 and Annual Pursuit Report, 2022

<sup>12</sup> [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