

Subject: Bill 14-19, Police – Policing Advisory Commission - Established	
Purpose: To introduce agenda item – no vote expected	
Analyst: Amanda Mihill, Legislative Attorney <i>A. Mihill</i>	Committee:
Keywords: #MoCoPolicingCommission Other Search Terms: Police Department, Public safety, Transparency	

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATIONS

None

DESCRIPTION/ISSUE

Bill 14-19 would create and specify the membership and duties of a Policing Advisory Commission.

SUMMARY OF KEY DISCUSSION POINTS

None

This report contains:

Staff Report and attachments

Page 1

F:\LAW\BILLS\1914 Policing Advisory Commission\Intro Cover Sheet.docx

Alternative format requests for people with disabilities. If you need assistance accessing this report you may submit alternative format requests to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at adacompliance@montgomerycountymd.gov

MEMORANDUM

June 14, 2019

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: Bill 14-19, Police – Policing Advisory Commission - Established

PURPOSE: Introduction – no Council vote required

Bill 14-19, Police – Policing Advisory Commission - Established, sponsored by Lead Sponsor Councilmember Riemer and Co-Sponsor Councilmember Jawando, is scheduled to be introduced on June 18. A public hearing is tentatively scheduled for July 9 at 7:30 p.m.¹

Bill 14-19 would create and specify the membership and duties of a Policing Advisory Commission.

This packet contains:	<u>Circle #</u>
Bill 14-19	1
Legislative Request Report	4
Letter from Councilmember Riemer	5
Council President memorandum to Councilmember Riemer	7
Councilmember Riemer letter to Council President	9
Letter from community organizations	11
<i>Washington Post</i> editorial	13

F:\LAW\BILLS\1914 Policing Advisory Commission\Intro Memo.Docx

¹ #MoCoPolicingCommission

Bill No. 14-19
Concerning: Police – Policing Advisory Commission - Established
Revised: 5/16/2019 Draft No. 6
Introduced: June 18, 2019
Expires: December 18, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Riemer
Co-Sponsor: Councilmember Jawando

AN ACT to:

- (1) create and specify the membership and duties of a Policing Advisory Commission;
- (2) generally amend County law relating to policing and boards, commissions, and committees.

By adding

Montgomery County Code
Chapter 35, Police
Section 35-6

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Section 35-6 is added as follows:**

2 **35-6. [Reserved] Policing Advisory Commission.**

3 (a) Definitions. In this Section the follow words have the meanings
4 indicated:

5 Commission means the Policing Advisory Commission.

6 Department means the Montgomery County Police Department.

7 (b) Established. County Council must appoint a Policing Advisory
8 Commission.

9 (c) Composition and terms of members.

10 (1) The Commission has 13 members.

11 (2) The Council should appoint 9 public members with an interest in
12 policing matters. Each member should represent a community
13 organization operating in the County or be an individual. Each
14 Councilmember should nominate one member.

15 (3) The Council should appoint 4 members nominated by the
16 Executive.

17 (4) The Council should appoint the following as non-voting ex officio
18 members:

19 (A) the Police Chief or the Police Chief's designee; and

20 (B) a representative of an employee organization certified under
21 Article V of Chapter 33.

22 (5) The term of each member is 3 years. After an appointment to fill
23 a vacancy before a term expires, the successor serves the rest of
24 the unexpired term.

25 (d) Voting, officers, meetings, and compensation.

26 (1) Except the ex officio members, all members of the Commission
27 are voting members.

- 28 (2) The Council must designate the Chair and Vice-Chair.
- 29 (3) The Commission meets at the call of the Chair. The Commission
30 must meet as often as necessary to perform its duties, but not less
31 than 6 times each year.
- 32 (4) A member must serve without compensation. However, a member
33 may request reimbursement for mileage and dependent care costs
34 at rates established by the County.
- 35 (e) Duties. The Commission must:
- 36 (1) advise the Council on policing matters;
- 37 (2) provide information regarding best practices on policing matters;
- 38 (3) recommend policies, programs, legislation, or regulations;
- 39 (4) comment on matters referred to it by the Council;
- 40 (5) conduct at least one public forum each year for community input
41 on policing matters; and
- 42 (6) engage in public education
- 43 (f) Annual Report. By July 1 each year, the Commission must submit to the
44 Executive and the Council an annual report on its functions, activities,
45 accomplishments, and plans and objectives.
- 46 (g) Advocacy. The Commission must not engage in any advocacy activity at
47 the State or federal levels unless that activities is approved by the Office
48 of Intergovernmental Relations.
- 49 (h) Staff. The Executive Director of the Office of the County Council must
50 provide appropriate staff to the Commission.

LEGISLATIVE REQUEST REPORT
Bill 14-19

Police – Policing Advisory Commission – Established

DESCRIPTION: Bill 14-19 would create and specify the membership and duties of a Policing Advisory Commission.

PROBLEM: Although the County has the Criminal Justice Coordinating Commission, there is not a County advisory Committee that focuses on best practices on policing matters.

GOALS AND OBJECTIVES: To create an entity that will inform the Council on policing best practices.

COORDINATION:

FISCAL IMPACT: To be requested

ECONOMIC IMPACT: To be requested

EVALUATION: To be requested

EXPERIENCE ELSEWHERE: To be researched

SOURCES OF INFORMATION: Amanda Mihill, Legislative Attorney, 240-777-7815

APPLICATION WITHIN MUNICIPALITIES: n/a

PENALTIES: n/a



MONTGOMERY COUNTY COUNCIL

ROCKVILLE, MARYLAND

HANS RIEMER
COUNCILMEMBER (AT LARGE)

CHAIR
PLANNING, HOUSING, AND
ECONOMIC DEVELOPMENT COMMITTEE

TRANSPORTATION, INFRASTRUCTURE,
ENERGY, AND ENVIRONMENT COMMITTEE

March 29, 2019

Dear Colleagues,

I am writing to ask for your support for legislation to create a Policing Advisory Commission to review our current practices in a variety of areas, research best practices from across the country, and provide recommendations to the Council.

Montgomery County's Police Department is widely respected for its progressive leadership and dedicated and professional officers. Our public safety agencies do an excellent job of keeping us safe. But our police can only keep all Montgomery County residents safe if they have the full trust of everyone in our community. Recent events in our County and the growing national dialogue about the role and practices of police, particularly in communities of color, have put a sharp focus on trust, transparency and accountability.

For the past six months I have worked with representatives from the Montgomery County chapter of the NAACP and other groups to consider several reforms.

We extensively discussed creating a Civilian Review Board to enable public review and oversight of police disciplinary matters. After careful analysis with Council legal staff, we concluded that state law puts significant limitations on what information could be shared with any Civilian Oversight Board, and ultimately with the public. I hope that the general assembly will reform these laws and I am pleased that the Council has supported state legislation this session to amend the MPIA and make it easier for a Civilian Review Board, members of the public, and even government officials like our Inspector General to view important records when their are complaints against police officers.

Councilmember Jawando, meanwhile, has proposed legislation to have an independent criminal investigation when there is an officer-involved death; as well as to make all possible information public after a charging decision has been made. I am a co-sponsor of that legislation and I appreciate Mr. Jawando's strong leadership on the proposal. Since joining the Council, he has worked closely with me on this legislation as well.

The concept for a Policing Advisory Commission was first presented to me and to others by Robin Gaster, a Silver Spring resident who has been active at the County and State level on criminal justice

reform issues. The Commission should examine the strategies that our department uses to promote public safety (for example, data collection and sharing, community policing, officer training, discipline) as well as the specific rules that officers are trained to follow (for example, use of force or when to pursue).

The Commission would report to the Council. There would be eleven civilian members of the Commission, as well an ex-officio or non-voting seat for the Police Department and for the Fraternal Order of Police. Each Councilmember would appoint one civilian member of the Commission (a suggestion made by Councilmember Jawando), and the Executive would recommend two civilian members for appointment. There would be an ex-officio or non-voting seat for the Department as well as the Fraternal Order of Police. The Public Safety Committee would review the reports and recommendations from the Commission.

Each Councilmember would decide who to appoint and I hope we can work together to ensure a broad spectrum of voices is heard. Perhaps you would recommend someone who is active with a community organization; or a career federal employee with expertise in police oversight issues; or an academic or criminal justice policy expert. There are many possibilities.

Thank you for your consideration. Please be in touch with Ken Silverman in my office if you would like more information or to co-sponsor the legislation.

Regards,

A handwritten signature in black ink that reads "Hans". The letters are cursive and slightly slanted.

Hans Riemer
Councilmember (At Large)



**MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND**

**COUNCIL PRESIDENT NANCY NAVARRO
DISTRICT 4**

**CHAIR, GOVERNMENT OPERATIONS AND FISCAL
POLICY COMMITTEE**

EDUCATION AND CULTURE COMMITTEE

MEMORANDUM

Friday, March 29, 2019

TO: Councilmember Hans Riemer
FROM: Council President Nancy Navarro
SUBJECT: Policing Advisory Commission Bill

Dear Hans,

I would like to acknowledge and thank you for the work you have put into your proposed legislation for the Policing Advisory Commission. Your legislation would create a body that would review our current practices in the various areas of law enforcement, research best practices from across the country and provide recommendations to the Council. This is a laudable initiative and I pledge my support in creating an effective oversight group that would work with the Police department and key stakeholders to ensure accountability and trust between our communities and those entrusted to keep them safe.

Let me share a few suggestions as you continue your work on this initiative:

1. The Montgomery County Police Department (MCPD) is currently a member of the Commission on Accreditation for Law Enforcement Agencies (CALEA), which awards accreditation to law enforcement agencies. As part of having their accreditation renewed, CALEA reviews current policies and compares them to recommended best practices. MCPD has been reaccredited every three years by CALEA since joining in 1993, with the most recent policy review and reaccreditation having occurred in 2016, and another to be expected sometime in 2019 under the current cycle. It would be helpful for you to review that process to see how it aligns with your goals and also whether its work could be integrated into this bill.
2. The Criminal Justice Coordinating Commission is a 32-member body, with 12 voting members (7 of whom are members of the general public) and 20 ex-officio members from various law enforcement, judicial, and legislative bodies within Montgomery County. The Commission has the power to review and comment on programs at the request of either the Executive or the Council, and it can make reports and recommendations to the Executive and Council periodically, as it deems appropriate. Additionally, the Commission can provide

STELLA B. WERNER COUNCIL OFFICE BUILDING • ROCKVILLE, MARYLAND 20850

(240) 777-7968 • TTY (240) 777-7914

COUNCILMEMBER.NAVARRO@MONTGOMERYCOUNTYMD.GOV • WWW.COUNCILMEMBERNAVARRO.COM

7

analyses concerning criminal justice programs at the request of the Executive, Council, or judicial system. The Office of the Chief Administrative Officer (CAO) provides staff, subject to appropriation. It would be helpful to work with the Office of Legislative Oversight (OLO) to review the work of the Commission, including its charter, reporting and oversight requirements with a view to seeing how the work of the commission aligns with your vision.

Based on your review and analysis of the above groups, you could recommend legislation that establishes one or both of the following:

- A. Create a new commission that reports to the County Council and request the County Executive to disband the Criminal Justice Coordinating Commission if you deem it duplicative and not meeting all the stated objectives of reporting and oversight.
- B. Based on OLO staff review, reconstitute the Criminal Justice Coordinating Commission by:
 1. Authorizing greater oversight authority to the Criminal Justice Coordinating Commission. Instead of solely focusing on program analyses, the Commission could also be authorized to look at broader departmental policies.
 2. Assigning the Office of Legislative Oversight to assist the Commission in a way similar to the current role of CAO staff.
 3. Requiring an annual report to the County executive and County Council that is presented before the full Council at a public session with follow-up work by the Public Safety Committee as appropriate
 4. Providing more independence to the Commission by making it a Commission of the Council, rather than of the County Executive.

Again, I thank you for all your work on this initiative and look forward to supporting you in the shared goal of ensuring greater oversight of our Police force.

Sincerely,



Nancy Navarro
Council President

CC: Councilmembers

Attachments: Police Advisory Commission Bill (f:\law\bill\19xx policing advisory commission\bill 4.docx)
[Montgomery County Code Section 2-60 webpage](#)
[MCPD's "About Us- Accreditation" webpage](#)
[CALEA's "Law Enforcement Accreditation: Cost" webpage](#)



HANS RIEMER
COUNCILMEMBER AT-LARGE

COMMITTEES:
CHAIR
PLANNING, HOUSING, AND ECONOMIC DEVELOPMENT (PHED)
MEMBER
TRANSPORTATION AND ENVIRONMENT (T&E)

MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

May 22, 2019

The Honorable Nancy Navarro
President, Montgomery County Council
Stella Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Navarro,

Thank you for agreeing to schedule introduction on June 18 of the Policing Advisory Commission legislation that I am proposing with Councilmember Jawando.

I am grateful for your support and I appreciate the opportunity to clarify why a new Commission is necessary. You requested that we review the possibility of adapting the existing Criminal Justice Coordinating Commission (CJCC) for this purpose. Other Council Members have also asked about this topic, as have the County Executive and Council staff.

Having now looked closely at the structure, mission, and operations of the CJCC, we believe it would not be a suitable body to take on the work of a Policing Advisory Commission, for three main reasons:

- 1) Membership and leadership. Only 7 of the 32 members of the CJCC are civilians, and the leadership is dominated by officers and staff from county criminal justice agencies. While their expertise is invaluable, they would collectively present the wrong impression for an entity that must be – and must appear to be – community driven and independent. The purpose of our proposed body is to provide for civilian or community participation in policing policy-making; the CJCC is substantially made up of public safety officials, as is appropriate for its mission.
- 2) Mission. The CJCC has the critical responsibility of coordinating between the numerous county agencies with responsibilities relative to the criminal justice system, or other organizations that interact with those agencies. CJCC's efforts and focus are tied directly to this cross-departmental mission – and not to the equally important task of improving MCPD in specific high-priority areas. It would not be fair or appropriate to burden the CJCC with this additional mission or to ask other county departments and agencies to recommend policies for MCPD. Nor would it be beneficial to allow the CJCC's work to be slowed or made more difficult by tasking that body with some of the more controversial issues that the Policing Advisory Commission should take on.

Council President Nancy Navarro

May 22, 2019

Page 2

3) Operations. The CJCC is a coordinating body. Its meetings are focused on smoothing links between the various entities, and making the first responder network as efficient as possible. It does not produce public reports or recommendations, and indeed has no defined process for doing so. Nor could CJCC provide the detailed assessment and firm empirical analysis, based on data, that should underpin any recommendations.

Some have suggested that the CCJC could use changes; we do not have a strong view on that question at this time. We would welcome a separate discussion about it to ensure that the mission of that body is well served.

You also alluded in your letter to CALEA, the police accreditation body. CALEA also plays an important role, but CALEA's mission is to ensure that police departments meet *minimum* standards; we believe this is already true for MCPD, but we want to see MCPD rise far above minimum standards, and adopt *best practices*. Furthermore, CALEA cannot directly address concerns raised by the community, which we see as a central function for the proposed PAC. As a national body, CALEA is not in a position to address local issues on an ongoing basis.

For these reasons, we believe that a new body is needed to perform the key function of ensuring community involvement in the development of police policy, and therefore building greater community trust.

Thank you for working with us to advance this legislation, supported by the NAACP, Identity, Casa de Maryland, Jews United for Justice, and ACLU of Maryland, among other groups.

Sincerely,



Hans Riemer

10



June 12, 2019

County Executive Marc Elrich
Montgomery County Executive Office Building
101 Monroe Street, 2nd Floor
Rockville, MD 20850

Dear County Executive Elrich:

We are writing to support the proposed legislation establishing a Policing Advisory Commission for Montgomery County. The Advisory Commission will address policing policy across several dimensions, and we believe will become an important pathway to enhance trust between the community and the Police Department. Thank you for meeting with a coalition of groups to discuss this issue on April 1, 2019, and for agreeing to lend your support for the legislation.

Our proposed Policing Advisory Commission differs in important ways from the Civilian Oversight Board model used in other jurisdictions. Most notably, our Commission would focus on *policy*, while a review board typically addresses matters of *discipline*. We stress that the proposed Policing Advisory Commission will *not* address discipline for individual officers. It will instead focus on key policy issues: use of force, recruiting and training, traffic stops, policing in schools, dealing with the mentally ill, technology and policing, and others. Such policies are the backbone of the Police Department's interaction with the community.

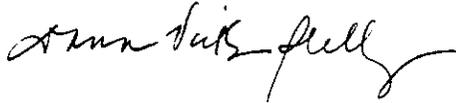
The Policing Advisory Commission will provide a high-quality review for these policies and will generate public reports and recommendations that can be the basis for further Police Department, Council, and Executive actions. But equally, the Commission will provide a direct voice for communities that have not always been heard on policing issues. We strongly believe that *our* voice has *not* been sufficiently heard and that the Policing Advisory Commission offers a pathway to a better and more sustained dialog between all segments of the community and the Police Department.

Current opportunities and institutions are insufficient. The Criminal Justice Coordinating Committee, for example, provides neither a voice for stakeholders (such as our organization) nor a focus on policing policy. It seems to be an important and useful body, but it cannot function as a Policing Advisory Commission.

Policing policy is a matter of considerable importance to us. As elsewhere, there are urgent issues to address here in Montgomery County. The police-involved shooting death of a man with mental illness in Silver Spring last year is one such issue, raising entirely understandable concerns about police policy and training for such situations. Similarly, sharp differences in rates of traffic stops by race need a clear explanation and a detailed analysis. These issues are included here to illustrate the kinds of cases in which a Policing Advisory Commission analysis and recommendations could address community concerns and also provide a way to build better relations between the Police Department and the community at large.

Given the significance of this progressive initiative both to our members and to Montgomery County as a whole, we hope that you become part of the coalition and that you will provide full and public support for the proposed legislation.

Cordially,



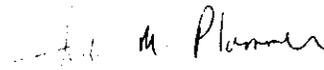
Dana Vickers Shelly
Executive Director, ACLU of Maryland



Jacob Feinspan
Executive Director, Jews United for Justice



Gustavo Torres
Executive Director, CASA



Linda Plummer
President, Montgomery County NAACP



Diego Uriburu
Executive Director, Identity

cc: Montgomery County Councilmembers

The Post's View Opinion

Allow civilian oversight of Montgomery police

By Editorial Board

May 18

THE IDEA that police are no good at conducting high-stakes investigations of themselves prompted Montgomery County lawmakers to enact a measure requiring that outsiders — meaning law enforcement officers from elsewhere — be enlisted to look into the county's own police-involved deaths and report the findings publicly. Nice idea. In practice, no outsiders want the job so far.

Prompted by the legislation, sponsored by council member Will Jawando (D-At Large), Montgomery officials have been scouring area localities in search of a police department willing to enter into a reciprocal arrangement to investigate each other's cases when a police officer causes a civilian's death. So far, they've found no takers, possibly because other nearby departments are smaller and are busy with their own matters.

That raises a larger question: What are best practices to ensure that police-involved deaths are subject to honest, transparent investigations fully accountable to the publics they serve?

Nationally, a number of state police departments or other state-level investigative agencies have units empowered to investigate police-involved deaths in localities. Maryland has no such provision. It should. Moreover, the Maryland legislature, in thrall to police unions, has barred civilians from access to police personnel records, meaning they can take no part in reviewing police-involved deaths when they occur.

In Montgomery, lawmakers on the all-Democratic County Council have limited options. They may not be able to change the status quo under which police investigate their own when police-involved deaths occur. However, they can inject some sensible civilian oversight of law enforcement, even if it is not in the investigative process. (A reciprocal arrangement under which state prosecutors in Montgomery and Howard counties have agreed to review police-involved deaths in each other's jurisdiction does not apply to initial police investigations.)

A bill being drafted by council at-large member Hans Riemer would establish a civilian board that would oversee and make recommendations on police policy and procedures. It is unpopular with police and getting a skeptical reception from some council members who question why such a board would be foisted on law enforcement but not on other county agencies and departments.

There's a simple and compelling answer to that: because other agencies and departments are not empowered and equipped to kill civilians. And while Montgomery's police department is highly professional and well regarded, it has had instances of police-involved deaths — including one last year — and likely will have them again. It is foolish to believe that the county's police force, with 1,200 sworn officers, is immune to mishaps, misjudgments and even malicious conduct, some of which may result in unwarranted deaths. (13)

With more than 1 million residents, Montgomery is Maryland's most populous jurisdiction. It is a bellwether and a leader whose example could prompt other localities to fashion more meaningful civilian oversight of law enforcement. It can move proactively now, or be forced to act later, under pressure and amid controversy, when an unwarranted death occurs at the hands of police. The former is the smarter way to go.

Read more:

Rachel Barkow: Prosecutors need to treat police shootings like a threat to public safety

Eugene Robinson: Bulldoze the 'blue wall' of silence — or black men will keep dying

The Post's View: Black man down — again

The Post's View: Police killed two good guys with guns. Arming more people isn't the answer.

The Post's View: The FBI stonewalls again on Bijan Ghaisar's killing