



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

September 14, 2020

TO: Interested Parties
FR: Councilmember Hans Riemer
RE: Police accountability legislation

Following is more information about the Police Accountability Act, Bill 34-20, which was introduced to the County Council on July 21st, authored by Councilmember Craig Rice and myself. I am providing this memorandum as additional background for those who may wish to testify on the legislation that Councilmember Rice and I have proposed.

The public hearing for this legislation is scheduled for 1:30pm on Tuesday September 22nd. Please consider signing up to testify (by phone) at the Council website at <https://www.montgomerycountymd.gov/council/calendar.html>

Additional resources include:

1. The legislation itself and an accompanying memorandum from Councilmember Rice and myself:
https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2020/20200721/20200721_12D.pdf
2. Coverage in the Bethesda *Beat*:
<https://bethesdamagazine.com/bethesda-beat/government/council-members-want-to-change-police-disciplinary-process/>
3. An editorial supporting the bill in the Washington *Post*:
https://www.washingtonpost.com/opinions/this-union-was-wrong-to-expel-a-man-for-taking-a-principled-position-on-police-reform/2020/07/19/43840312-c788-11ea-b037-f9711f89ee46_story.html

The goal of this legislation is to strengthen our police department. These reforms will help create a more accountable and transparent department; and make the County and MCPD more capable of implementing critical reforms in the future. The vision is for our Department to one day lead the country in community trust and accountability.

The proposed legislation would:

1. **Reform the disciplinary process**. MCPD's disciplinary process has large flaws. The FOP bargained for the current process as they were allowed to do under a provision of LEOBR (the County opposed this proposal in bargaining but lost in arbitration). The process allows an officer to appeal a disciplinary action to an "Alternative Hearing Board" composed of labor arbitrators. Specifically there is one arbitrator named by MCPD, one by FOP, and one by mutual agreement of MCPD and FOP.

The biggest problem with this arrangement is that the Chief does not have the final say over discipline. The alternative board has the final say if the officer petitions to that board. As a result, when it comes to discipline the Montgomery County police chief has among the weakest powers in the state of Maryland. Hopefully we can all agree that we want our department to have a strong disciplinary process that is effective and where accountability flows up through the ranks to the Chief. That is not what we have today.

To fix that problem, the legislation would restore the ability of the Police Chief to make a final determination on disciplinary matters, a critical power for creating a culture of accountability.

Additional problems with the alternative board arise because it relies upon outside arbitrators, creating opportunity for disputes over appointments and scheduling. In fact the County has gone four years now without a hearing, according to MCPD. Meanwhile officers who have violated MCPD policy remain on payroll. This system is not working.

The bill would therefore remove the availability of an "Alternative Hearing Board" and revert internal appeals back to a traditional trial board.

Finally, note that in an interview published by the Bethesda *Beat* on August 31, Chief Marcus Jones made this comment:

<https://bethesdamagazine.com/bethesda-magazine/september-october-2020/bethesda-interview-police-chief-jones/>

The collective bargaining agreement (CBA) gives some unique rights to members. For example, if I want to dismiss an officer, the CBA gives the officer a choice of a traditional hearing board or an alternative. The alternative board includes an arbitrator and, if they conclude that the officer did wrong but don't recommend dismissal, that decision is binding. So I can suspend an officer without pay, but I can't fire them—and that's a challenge. There are some things in the agreement where they've taken away the power of the chief, who is accountable to the county. It's sad, and in some way it's a waste of our resources.

This legislation will address that problem.

2. **Provide civilian oversight over discipline.** Thanks to recent changes in state law, the County can now add civilians to internal departmental hearing boards. As an additional improvement over the Alternative Hearing Board process, the legislation will require that the trial board include two civilian members whenever discipline stems from a civilian complaint alleging excessive force. Note that rules about how those civilians will be chosen have yet to be determined and will be an important question for discussion.

3. **Reform FOP bargaining rights.** The legislation improves the County Executive, Council and MCPD management's ability to implement the policy changes we wish to see, by ensuring that *when the Chief has an employer right to issue a management directive, it is not bargainable*. This critical component continues the effort the last Council undertook in partnership with former County Executive Leggett to repeal "effects bargaining."

In the recent excessive use of force legislation passed by the Council, the Council inserted analogous language for certain specific provisions of the law ensuring that they could not be subject to bargaining. While this demonstrates the Council's resolve to remove a key policy decision from bargaining, that bill could not address the underlying problem that critical policy reforms are subject to bargaining in the first place. While the Council can add such language on a case by case basis, our goal should be for the Chief and the County Executive to enact reforms as well. Without this legislation, critical executive branch policy reforms will be subject to bargaining.

As a case example, MCPD recently (and finally) enacted a directive on excessive use of force, imposing certain restrictions to promote safety and curb abuse. However, according to Chief Jones, that directive was "delayed by over 10 years due to bargaining demands." A ten year delay in implementing a new policy on use of force is unacceptable and reflects poorly on both MCPD and the FOP. Body-worn cameras were also subject to unacceptable delays from bargaining.

We need to do better. We need a Department that can be nimble and responsive and make changes in policy as we seek to reimagine public safety. We need a Department that embraces a culture of reform and change. That will not happen without both strong leadership from MCPD -- and reforming bargaining.

Thank you.

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Questions? Contact councilmember.riemer@montgomerycountymd.gov. To reach co-lead sponsor Craig Rice, use councilmember.rice@montgomerycountymd.gov